No. 132015

IN THE
SUPREME COURT OF ILLINOIS

MALIK CEDRICK BRIGHT, Plaintiff-Appellee, v. JEFFREY YENCHKO, in his official capacity as Chief of the Firearm Services Bureau, Defendant-Appellant, and VICTOR JURADO, HANNAH GOLDSTEIN, and GABRIEL RUVALCAHA, Defendants.	)	Direct Appeal from the Circuit Court of the Twenty-Fourth Judicial Circuit, Randolph County, Illinois No. 23-LA-12 The Honorable JEREMY R. WALKER, Judge Presiding.

REPLY BRIEF OF DEFENDANT-APPELLANT

KWAME RAOUL
Attorney General
State of Illinois

JANE ELINOR NOTZ
Solicitor General

115 South LaSalle Street
Chicago, Illinois 60603
(312) 814-3000

Attorneys for Defendant-Appellant
Jeffrey Yenchko

CARSON R. GRIFFIS
Assistant Attorney General
115 South LaSalle Street
Chicago, Illinois 60603
(312) 814-2447 (office)
(773) 505-5282 (cell)
CivilAppeals@ilag.gov (primary)
Carson.Griffis@ilag.gov (secondary)

ORAL ARGUMENT REQUESTED

E-FILED
1/16/2026 11:32 AM
CYNTHIA A. GRANT
SUPREME COURT CLERK

TABLE OF CONTENTS

Page(s)

ARGUMENT 1

POINTS AND AUTHORITIES

I. This Court should vacate the circuit court's judgment because Bright's Second Amendment claim is moot and the circuit court erred in applying the public interest exception 1

430 ILCS 65/8(n) (2024) 1

In re J.T.,
221 Ill. 2d 338 (2006) 1

A. The circuit court erred in applying the public interest exception 1

1. This case does not present an issue of public concern 2

Caulkins v. Pritzker,
2023 IL 129453 2

In re J.B.,
204 Ill. 2d 382 (2003) 3

Piasa Armory, LLC v. Raoul,
2025 IL 130539 3

Felzak v. Hruby,
226 Ill. 2d 382 (2007) 3

In re Christopher K.,
217 Ill. 2d 348 (2005) 3, 4

In re Marriage of Eckersall,
2015 IL 117922 5

Ill. State Police, Statistics,
FOID Processing Statistics,
https://bit.ly/4a4zIrd 5

430 ILCS 65/8(a)-(v) (2024) 5

U.S. Dep't of Commerce, U.S. Census Bureau,
Table 1. Apportionment Population and
Number of Representatives by State:
2020 Census, https://bit.ly/4aBVD99 5

Koshinski v. Trame,
2017 IL App (5th) 150398 5

Friddle v. Indus. Comm'n,
92 Ill. 2d 39 (1982) 5

Koshinski v. Yenchko,
2025 IL App (5th) 230009-U 6

In re Marriage of Donald B.,
2014 IL 115463 6

Commonwealth Edison Co. v. Ill. Com. Comm'n,
2016 IL 118129 7

2. There is no need to provide an authoritative determination on section 8(n)'s constitutionality 7

Commonwealth Edison Co. v. Ill. Com. Comm'n,
2016 IL 118129 ..... 7, 8

People v. Seymore,
2025 IL 131564 7-8

In re Rita P.,
2014 IL 115798 8

In re Shelby R.,
2013 IL 114994 8

People ex rel. Wallace v. Labrenz,
411 Ill. 618 (1952) 8

Jackson v. Bd. of Election Com'rs of City of Chi.,
2012 IL 111928 8

Sandholm v. Kuecker,
2012 IL 111443 8

Wisnasky-Bettorf v. Pierce,
2012 IL 111253 8

Goodman v. Ward,
241 Ill. 2d 398 (2011) 8

Cinkus v. Vill. of Stickney Mun. Officers Electoral Bd.,
228 Ill. 2d 200 (2008) 8

Eisenberg v. Indus. Comm'n of Ill.,
337 Ill. App. 3d 373 (1st Dist. 2003) 9

In re Marriage of Donald B.,
2014 IL 115463 9

Davis v. Yenchko,
2024 IL 129751 9

In re Christopher K.,
217 Ill. 2d 348 (2005) 9

In re India B.,
202 Ill. 2d 522 (2002) 9

Range v. Att'y Gen.,
124 F.4th 218 (3d. Cir. 2024) 9, 10

Range v. Att'y Gen.,
69 F.4th 96 (3d Cir. 2023) 10

United States v. Rahimi,
602 U.S. 680 (2024) 10

Garland v. Range,
144 S. Ct. 2706 (2024) 10

United States v. Quiroz,
125 F.4th 713 (5th Cir. 2025) 11

United States v. Gore,
118 F.4th 808 (6th Cir. 2024) 11

United States v. Perez-Garcia,
96 F.4th 1166 (9th Cir. 2024) 11

People v. Hatcher,
2024 IL App (1st) 220455 11

Awkerman v. Ill. State Police,
2023 IL App (2d) 220434 11

3. Bright offered no evidence that this issue is likely to recur 11

In re Alfred H.H.,
233 Ill. 2d 345 (2009) 11

Ill. Sup. Ct. R. 341(h)(7), (i) 12

Ballard RN Ctr., Inc. v. Kohll's Pharmacy & Homecare, Inc.,
2015 IL 118644 12

In re Marriage of Colangelo,
355 Ill. App. 3d 383 (2d Dist. 2005) 12

Rotzoll v. Overhead Door Corp.,
289 Ill. App. 3d 410 (4th Dist. 1997) 12

B. The capable-of-repetition-yet-evading review exception does not apply 13

Holly v. Montes,
231 Ill. 2d 153 (2008) 13

Ill. Sup. Ct. R. 341(h)(7), (i) 13

Ballard RN Ctr., Inc. v. Kohll's Pharmacy & Homecare, Inc.,
2015 IL 118644 13

In re J.T.,
221 Ill. 2d 338 (2006) 14

Behl v. Duffin,
406 Ill. App. 3d 1084 (4th Dist. 2010) 14

III. Bright did not bring a facial challenge, so the circuit court erred in declaring section 8(n) unconstitutional as to all individuals charged with felonies 14

People v. Harris,
2018 IL 121932 14

735 ILCS 5/2-604.2(c) (2024) 15

City of Chi. v. Chi. Bd. of Educ.,
277 Ill. App. 3d 250 (1st Dist. 1995) 15

Piasa Armory, LLC v. Raoul,
2025 IL 130539 15

IV. Suspending Bright's FOID card while he faced felony charges did not violate the Second Amendment 16

A. The Second Amendment's plain text does not protect firearm possession while an individual faces felony charges 16

N.Y. State Rifle & Pistol Ass'n v. Bruen,
597 U.S. 1 (2022) 16-17

United States v. Gay,
98 F.4th 843 (7th Cir. 2024) 17

Caulkins v. Pritzker,
2023 IL 129453 17

People v. Welch,
2025 IL App (1st) 231116 17

Gerstein v. Pugh,
420 U.S. 103 (1975) 17, 18

People v. Horne,
2023 IL App (2d) 230382 18

B. Prohibiting those facing felony charges from possessing firearms comports with the nation's historical tradition 18

United States v. Rahimi,
602 U.S. 680 (2024) 19, 20, 21, 22

United States v. Quiroz,
125 F.4th 713 (5th Cir. 2025) 19

United States v. Gore,
118 F.4th 808 (6th Cir. 2024) 19

District of Columbia v. Heller,
554 U.S. 570 (2008) 20

United States v. Duarte,
137 F.4th 743 (9th Cir. 2025) 20, 21

United States v. Jackson,
110 F.4th 1120 (8th Cir. 2024) 20, 21

United States v. Escobar-Temal,
161 F.4th 969 (6th Cir. 2025) 21

United States v. Simmons,
150 F.4th 126 (2d Cir. 2025) 22

CONCLUSION 23

CERTIFICATE OF COMPLIANCE

CERTIFICATE OF FILING AND SERVICE

ARGUMENT

I. This Court should vacate the circuit court's judgment because Bright's Second Amendment claim is moot and the circuit court erred in applying the public interest exception.

As Defendant-Appellant Jeffrey Yenchko ("Bureau Chief") explained in his opening brief, *see* AT Br. 14-15, Plaintiff-Appellee Malik Bright's challenge to section 8(n) of the Firearm Owners Identification Act ("FOID Act"), 430 ILCS 65/8(n) (2024), is moot because his Firearm Owners Identification ("FOID") card was reinstated after the felony charges brought against him were dismissed.[1] In his response brief, Bright concedes that this case is moot, but asks this Court to reach the merits under the public interest or capable-of-repetition-yet-evading-review exceptions to mootness. AE Br. 11-25. But as the Bureau Chief explained, *see* AT Br. 15-20, Bright failed to make the "clear showing" necessary to invoke either exception, *see In re J.T.*, 221 Ill. 2d 338, 350 (2006).

A. The circuit court erred in applying the public interest exception.

The circuit court erred in applying the public interest exception because Bright failed to clearly show that this case satisfied any of its three, narrowly construed criteria. AT Br. 15-20. Nothing in Bright's response brief supports the circuit court's conclusion, so this Court should reverse the order

[1] This reply brief cites the one-volume common law record as "C__," the one volume of impounded exhibits as "EI__," the one-volume supplemental report of proceedings as "SUP R___," the Bureau Chief's opening brief as "AT Br. ___," and Bright's response brief as "AE Br. ___."

invoking the exception and vacate the circuit court's judgment holding section 8(n) unconstitutional. *Id.* at 21.

1. This case does not present an issue of public concern.

Bright first argues that this case presented an issue of public concern because it did "not rest on any fact unique to him or the specific felony involved," so he brought, "in practical effect, a facial challenge." AE Br. 13-14. But this characterization of his claim contradicts his complaint and summary judgment briefing, which challenged the suspension of his own FOID card specifically, explicitly stated that he brought an as-applied challenge, and conceded that there were circumstances in which a person charged with a felony could have his FOID card suspended in compliance with the Second Amendment. C9-11, C226, C229, C231, C275; *see* AT Br. 17-18, 22-24. Having limited his complaint to an as-applied challenge, Bright cannot belatedly add a facial claim through later arguments at the summary-judgment stage or in this Court. *See Caulkins v. Pritzker*, 2023 IL 129453, ¶ 36 (motion for summary judgment "is confined to the issues raised in the complaint").

Bright also argues that the Bureau Chief "acknowledged that this challenge is, in practical effect, a facial challenge," citing comments by the Bureau Chief's counsel at oral argument on the parties' cross-motions for summary judgment. AE Br. 14-15. But those comments were made *after* the circuit court applied the public interest exception. *See* C270-71; SUP R57. Given that conclusion, the Bureau Chief appropriately argued that Bright

"necessarily present[ed] a facial challenge" because "as-applied challenges do not satisfy the public interest exception." C283. The Bureau Chief's recognition that, by invoking the public interest exception, the circuit court erroneously construed Bright's claim as a facial challenge did not concede that Bright actually raised such a challenge. Regardless, any such concession should not affect this Court's analysis of the public interest exception — after all, mootness cannot be waived, "may be raised at any time," and should be considered "*sua sponte* if . . . not raised by the parties." *In re J.B.*, 204 Ill. 2d 382, 388 (2003).

Bright also suggests that his as-applied challenge raised a question of public concern because this Court has not expressly precluded invoking the public interest exception for as-applied challenges. AE Br. 12. But Bright cites no case holding that an as-applied challenge satisfied this criterion. *See id.* As the Bureau Chief explained, *see* AT Br. 16-17, such a challenge, which depends on a "party's particular facts and circumstances," *Piasa Armory, LLC v. Raoul*, 2025 IL 130539, ¶ 13, is incompatible with the requirement that the public interest exception applies to cases having a "significant effect on the public as a whole," *Felzak v. Hruby*, 226 Ill. 2d 382, 393 (2007); *see also In re Christopher K.*, 217 Ill. 2d 348, 362 (2005) (whether statutory provision was "unconstitutionally vague as applied to defendant . . . is an issue specific to the facts of defendant's case. Therefore, it is not public in nature.").

Bright attempts to distinguish *Christopher K.* because "[t]his case is not a vagueness challenge." AE Br. 12. But in *Christopher K.*, the substance of the constitutional challenge was irrelevant to this Court's determination that the case did not present an issue of public concern. Instead, it was the fact-specific nature of an as-applied challenge that led the Court to that conclusion. *Christopher K.*, 217 Ill. 2d at 361-62. Thus, the fact that Bright brought a Second Amendment claim, rather than a vagueness claim, does not meaningfully distinguish this case from *Christopher K.*

And even if Bright had brought a facial challenge to section 8(n), he still failed to make a clear showing that resolving his challenge would have a significant effect on the public. As the Bureau Chief explained, *see* AT Br. 17-18, such a claim would only affect FOID card holders with felony charges currently pending against them. Bright offered no evidence that more than a small group of people make up that group, as was required to satisfy his burden of establishing that the public interest exception applied. *See* C219-41, C274-80.

Attempting to correct this evidentiary failure, Bright asks this Court to take judicial notice of statistics that, in Illinois, there are currently almost 2.5 million FOID card holders and, in 2023, 66,437 new felony cases were initiated. AE Br. 13-14. But these statistics do not show how many new felony cases were brought against FOID card holders, falling far short of a "clear showing" that deciding section 8(n)'s constitutionality would "significantly

affect the public as a whole." *In re Marriage of Eckersall*, 2015 IL 117922, ¶¶ 15-16. Moreover, these statistics show that, between January and October 2025, the Illinois State Police revoked 5,652 FOID cards, only an unspecified portion of which would have been suspensions under section 8(n) due to a felony charge. Ill. State Police, Statistics, FOID Processing Statistics, https://bit.ly/4a4zIrd (last visited Jan. 16, 2026); *see* AE Br. 14 n.1 (citing same statistics website); 430 ILCS 65/8(a)-(v) (2024) (listing numerous grounds for denial, suspension, or revocation of FOID card). Thus, Bright's own statistics show that section 8(n)'s provision suspending FOID cards of those charged with felonies affects a small fraction of Illinois's population. *See* U.S. Dep't of Commerce, U.S. Census Bureau, Table 1. Apportionment Population and Number of Representatives by State: 2020 Census, https://bit.ly/4aBVD99 (last visited Jan. 16, 2026) (Illinois population as of April 1, 2020, was 12,822,739).[2]

Bright also cites *Koshinski v. Trame* ("*Koshinski I*"), 2017 IL App (5th) 150398, in which the appellate court held that the public interest exception applied to a Second Amendment challenge to a different provision of the FOID Act. AE Br. 15. But in that case, the appellate court held that the plaintiff's claim raised an issue of public concern because it was a facial challenge. *See Koshinski I*, 2017 IL App (5th) 150398, ¶ 24 (emphasizing that issue was

[2] This Court can take judicial notice of census data. *Friddle v. Indus. Comm'n*, 92 Ill. 2d 39, 47 (1982).

"whether the legislature enacted legislation violating our constitution," was "not case-specific," and would "broadly determine the rights of firearms licensees who are subject to *ex parte* orders of protection"); *see also Koshinski v. Yenchko* ("*Koshinski II*"), 2025 IL App (5th) 230009-U, ¶ 19, *pet. leave to appeal pending*, No. 132326 (explaining that, in *Koshinski I*, it "concluded that the plaintiff's *facial challenge* . . . met the requirements of the public interest exception" (emphasis added)). Indeed, in a later appeal in the same case, the appellate court noted that the plaintiff had "abandon[ed]" his facial challenge on remand, leaving only an "as-applied challenge." *Koshinski II*, 2025 IL App (5th) 230009-U, ¶¶ 19, 21. And that as-applied challenge did not meet "the first criterion of the public interest exception" because it was "case-specific and dependent on the particular facts and circumstances for which the *ex parte* order of protection was issued" and, if successful, would result in injunctive relief applicable "only to the plaintiff." *Id.* at ¶ 21.

Here, as in *Koshinski II*, Bright's as-applied challenge was case-specific and dependent on the specific felony charge he faced. *See* C9-11. And he sought injunctive relief limited to him, not a declaration that section 8(n) was unconstitutional on its face or a statewide injunction prohibiting its enforcement. C11; *see* AT Br. 22-24. Nor did *Koshinski I* hold that *any* facial challenge raises an issue of public concern; indeed, such a holding would contradict this Court's precedent. *See*, *e.g.*, *In re Marriage of Donald B.*, 2014 IL 115463, ¶¶ 1, 34 (facial challenge implicating "very limited group" did not

satisfy first criterion of public interest exception). Thus, Bright failed to clearly show that this case presented an issue of public concern, and this Court should vacate the circuit court's judgment on that basis alone. *Commonwealth Edison Co. v. Ill. Com. Comm'n*, 2016 IL 118129, ¶ 13 (if "any one" of the public interest exception's criteria "is not established, the exception may not be invoked").

2. There is no need to provide an authoritative determination on section 8(n)'s constitutionality.

Even if this case presented an issue of public concern, Bright has not clearly shown that an authoritative determination of section 8(n)'s constitutionality is necessary to guide public officers. As the Bureau Chief explained, *see* AT Br. 18, this criterion required Bright to show that "the law is in disarray or conflicting precedent exists." *Commonwealth Edison*, 2016 IL 118129, ¶ 16. Bright cannot satisfy that criterion because whether the Second Amendment permits the General Assembly to temporarily suspend the FOID cards of those charged with felonies is an issue of first impression in this Court. AT Br. 18.

Bright acknowledges that this Court has not addressed this issue and that "no actual conflict exists" on this issue in Illinois courts. AE Br. 17-18. Instead, he asserts that "the absence of conflicting precedents do[es] not bar" the application of the public interest exception. *Id.* at 17.

But as this Court recently emphasized, "issues of first impression generally do not satisfy the public interest exception." *People v. Seymore*, 2025

IL 131564, ¶ 34; *see also Commonwealth Edison*, 2016 IL 118129, ¶ 17 (concluding that "second criterion . . . of the public interest exception" was not met "[b]ecause . . . appeal involve[d] an issue of first impression," so "there [was] no conflicting precedent . . . , and the law [was] not in disarray"). Nor does this case resemble one of the rare circumstances in which this Court has reviewed an issue of first impression under the public interest exception. Those cases have involved issues that either: (1) impact a party's physical health or liberty;[3] or (2) involve a party's participation in the political process.[4]

Here, Bright's claim did not implicate his physical health or liberty, or his participation in political activity. Although he asserts that the temporary suspension of his FOID card "implicate[d] fundamental constitutional rights," AE Br. 18, "the presence of a constitutional defect in a statutory requirement

---

[3] *See*, *e.g.*, *Seymore*, 2025 IL 131564, ¶ 34 (pretrial detainee's eligibility for good-time credit); *In re Rita P.*, 2014 IL 115798, ¶¶ 1, 4, 36-40 (involuntary administration of psychotropic medication); *In re Shelby R.*, 2013 IL 114994, ¶ 22 (whether juvenile may be detained for underage drinking); *People ex rel. Wallace v. Labrenz*, 411 Ill. 618, 620-23 (1952) (whether circuit court could appoint guardian for child whose parents would not consent to medical treatment).

[4] *See*, *e.g.*, *Jackson v. Bd. of Election Com'rs of City of Chi.*, 2012 IL 111928, ¶ 44 (candidate's disqualification from ballot based on unpaid property taxes); *Sandholm v. Kuecker*, 2012 IL 111443, ¶¶ 33, 63 (availability of attorney fees under statute designed to block lawsuits "aimed at preventing citizens from exercising their political rights or punishing those who have done so" (cleaned up)); *Wisnasky-Bettorf v. Pierce*, 2012 IL 111253, ¶¶ 1, 11-13 (political candidate's removal from ballot); *Goodman v. Ward*, 241 Ill. 2d 398, 404-05 (2011) (interpretation of residency requirement for candidate for circuit judge); *Cinkus v. Vill. of Stickney Mun. Officers Electoral Bd.*, 228 Ill. 2d 200, 208 (2008) (whether municipal debt could disqualify individual from election to public office).

does not automatically mean that the public interest exception . . . applies." *Eisenberg v. Indus. Comm'n of Ill.*, 337 Ill. App. 3d 373, 380 (1st Dist. 2003); *e.g.*, *Donald B.*, 2014 IL 115463, ¶¶ 14, 34-36. Accordingly, this Court should apply the general rule that no authoritative guidance is necessary on this issue of first impression.

Bright next argues that authoritative guidance is necessary because "[t]he same issue" was before this Court in *Davis v. Yenchko*, 2024 IL 129751. AE Br. 18-19. But the plaintiffs in *Davis* lacked standing to bring their claim, so the merits of this issue were not before the Court. *See Davis*, 2024 IL 129751, ¶ 27 (expressing "no opinion on the merits of the parties' other arguments"). And even if this issue had arisen in an earlier case, that would be insufficient to establish that authoritative guidance is necessary. *See*, *e.g.*, *Christopher K.*, 217 Ill. 2d at 363 (authoritative determination of issue unnecessary because "appellate court ha[d] thus far uniformly rejected" minor's argument); *In re India B.*, 202 Ill. 2d 522, 543 (2002) (authoritative guidance unnecessary where appellate court decisions on issue were "decided on [their] own peculiar . . . facts, and the precedent is not irreconcilably conflicting").

Bright also incorrectly asserts that federal courts have issued "conflicting" decisions on similar issues. AE Br. 19. He cites *Range v. Att'y Gen.*, 124 F.4th 218, 228-32 (3d. Cir. 2024) (*en banc*), for the proposition that the Third Circuit "found the federal prohibition of firearm possession by

certain persons to be unconstitutional, even as applied to people actually convicted of felonies." AE Br. 19.[5] But *Range* was an as-applied Second Amendment challenge brought by a plaintiff who was convicted of food stamp fraud in 1995, which, at the time, was "a . . . misdemeanor" under Pennsylvania law. 124 F.4th at 223. Because Pennsylvania law authorized a sentence of up to five years' imprisonment for that offense, however, federal law permanently prohibited him from possessing firearms, even though the plaintiff served no prison time and committed only "minor traffic and parking infractions and a summary offense for fishing without a license" in the ensuing years. *Id.*

Range's unique facts and "narrow" holding, *see id.* at 232, do not clearly show that this Court's guidance is necessary in this case. After all, the issue in *Range* — whether the federal government could impose a lifetime ban on firearm possession by an individual convicted of a decades-old, nonviolent misdemeanor — has no bearing on whether section 8(n)'s temporary prohibition on firearm possession by those facing felony charges satisfies the Second Amendment. And as the Bureau Chief highlighted in his opening brief, *see* AT Br. 18, 28-29, federal courts of appeal have uniformly held that, consistent with the Second Amendment, individuals facing felony charges may

[5] Bright cites an earlier opinion in the same case, *Range v. Att'y Gen.*, 69 F.4th 96 (3d Cir. 2023) (*en banc*), *see* AE Br. 19, but the United States Supreme Court vacated that opinion and remanded for reconsideration in light of *United States v. Rahimi*, 602 U.S. 680 (2024). *Garland v. Range*, 144 S. Ct. 2706, 2706-07 (2024).

be temporarily prohibited from receiving firearms while those charges are pending. *See*, *e.g.*, *United States v. Quiroz*, 125 F.4th 713, 718-25 (5th Cir. 2025) *cert. denied* ___ S. Ct. ___, 2025 WL 2823956 (2025); *United States v. Gore*, 118 F.4th 808, 814-17 (6th Cir. 2024); *United States v. Perez-Garcia*, 96 F.4th 1166, 1181-86 (9th Cir. 2024) *cert. denied* 145 S. Ct. 2707 (2025). Given that persuasive federal authority, this Court need not provide further guidance on this issue. *See*, *e.g.*, *People v. Hatcher*, 2024 IL App (1st) 220455, ¶ 55 & n.5 (citing lower federal court decisions in resolving Second Amendment claim); *Awkerman v. Ill. State Police*, 2023 IL App (2d) 220434, ¶ 52 (same).

3. Bright offered no evidence that this issue is likely to recur.

Bright also failed to satisfy the public interest exception's third criterion because he offered no evidence that the fact-specific issue of whether section 8(n) violated the Second Amendment as applied to his now-dismissed felony charges "would have any impact on future litigation." *In re Alfred H.H.*, 233 Ill. 2d 345, 358 (2009); *see* AT Br. 19. In response, Bright again mischaracterizes his claim, asserting that a "substantive ruling would determine the lawfulness of FOID card revocations . . . as to every FOID card holder in this state who is, or may be in the future, accused of a felony." AE Br. 20. But as explained, *see* AT Br. 16-17, 21-24, Bright sought as-applied relief only for himself, not every FOID card holder facing felony charges, *see* C11.

Finally, Bright asserts that this issue is likely to recur because he was "charged with another felony" while this case was pending, AE Br. 21, but he fails to cite the record to support that assertion, thus forfeiting it. *See* Ill. Sup. Ct. R. 341(h)(7), (i) (appellee's brief must include "citation of . . . the pages of the record relied on"); *Ballard RN Ctr., Inc. v. Kohll's Pharmacy & Homecare, Inc.*, 2015 IL 118644, ¶ 48 (appellee forfeited argument due to noncompliance with Rule 341(h)(7), including omitting "citation[s] to the record"). Forfeiture aside, Bright offered no evidence that he was charged with a felony after he initiated this action in the circuit court — he merely said that he was in his summary judgment briefing. *See* C219, C225. Those unsworn assertions could not defeat the Bureau Chief's motion for summary judgment, which was supported with evidence that Bright's only felony charge arose out of a February 2023 arrest. C210-16; *see In re Marriage of Colangelo,* 355 Ill. App. 3d 383, 393 (2d Dist. 2005) ("unsworn assertions" should "not be considered in ruling on a motion for summary judgment"); *Rotzoll v. Overhead Door Corp.*, 289 Ill. App. 3d 410, 418 (4th Dist. 1997) ("unsworn, unverified statements [submitted in response to motion for summary judgment] cannot . . . be considered"). Bright, therefore, has failed to make a clear showing that the public interest exception's criteria apply.[6]

[6] Additionally, Bright's criminal history records filed in support of the Bureau Chief's motion to dismiss reflect no felony charges other than those arising out of his February 2023 arrest. *See*, *e.g.*, EI26, EI28-29, EI33, EI38, EI40, EI49, EI62-63.

B. The capable-of-repetition-yet-evading review exception does not apply.

As the Bureau Chief explained, *see* AT Br. 20, the capable-of-repetition-yet-evading-review exception also does not apply because any suggestion that Bright's FOID card may again be suspended based on future felony charges rests on speculation. *See*, *e.g.*, *Holly v. Montes*, 231 Ill. 2d 153, 157 (2008) (exception inapplicable because it rested on "purely speculative" notion that individual might be subjected to electronic home confinement again). In his response brief, Bright asserts that this issue was likely to recur because "[t]he record . . . reflects that, after this case was filed and after the initial felony charge was dismissed, [he] was charged with a different felony traffic offense." AE Br. 22.

Again, Bright fails to cite the record, *see id.*, forfeiting this assertion. *See* Ill. Sup. Ct. R. 341(h)(7), (i); *Ballard RN Ctr.*, 2015 IL 118644, ¶ 48. And forfeiture aside, Bright offered no evidence that he was charged with a felony after he initiated this action. *See supra* p. 12.

Bright also argues that this issue is likely to recur because the Bureau Chief did not state "that [he] would refrain from invalidating [Bright's] FOID card *if* [Bright] were charged with a felony . . . in the future *and* [the Bureau Chief] became aware of it." AE Br. 22 (emphases added). This assertion only highlights the speculation inherent in Bright's argument — this issue will recur only *if* Bright is charged with another felony *and* the Illinois State Police learns of the charge before it is dismissed or otherwise resolved. The fact that

this series of events could occur is not a "clear showing" that they are reasonably likely. *J.T.*, 221 Ill. 2d at 350; *see also Behl v. Duffin*, 406 Ill. App. 3d 1084, 1090 (4th Dist. 2010) (assertion that plaintiff "'could'" be subject to same action did "not create a reasonable expectation [that she] will be in the same situation again").

III. Bright did not bring a facial challenge, so the circuit court erred in declaring section 8(n) unconstitutional as to all individuals charged with felonies.

Although Bright brought an as-applied challenge to the suspension of his FOID card and sought injunctive relief that would apply only to him, the circuit court erroneously expanded Bright's claim, declaring section 8(n) unconstitutional and enjoining its enforcement as to *anyone* charged with a felony in Illinois. AT Br. 21-24. Accordingly, if this Court reaches the merits, it should, at the least, narrow the circuit court's judgment to Bright. *Id.*

For his part, Bright confusingly states that he "technically" brought "an as-applied challenge" that bore "the hallmarks of a facial challenge because the statute produces an unconstitutional result in every application." AE Br. 26-27. Such a hybrid constitutional challenge does not exist — indeed, the characteristics of facial and as-applied challenges are "not interchangeable." *People v. Harris*, 2018 IL 121932, ¶ 52.

Bright also contends that, despite his claim's narrowness, the circuit court could declare section 8(n) unconstitutional as to anyone charged with a felony because section 2-604.2(c) of the Code of Civil Procedure provides that

"the remedies requested from the court do not limit the remedies available." 735 ILCS 5/2-604.2(c) (2024). Although section 2-604.2(c) allows courts to award prevailing plaintiffs full relief regardless of their prayers for relief, it does not give courts license to "*sua sponte* interject issues into a controversy that have not been presented to them for adjudication by the parties, and then proceed to decide those issues and grant relief to non-parties." *City of Chi. v. Chi. Bd. of Educ.*, 277 Ill. App. 3d 250, 261 (1st Dist. 1995). By only challenging the suspension of his FOID card and seeking injunctive relief as to himself, *see* C11, Bright necessarily categorized his claim as an as-applied challenge, *see Piasa Armory*, 2025 IL 130539, ¶ 13 ("A successful facial challenge voids the statute, but in a successful as-applied claim, the party may enjoin the statute's enforcement against only himself."); *see also* AT Br. 22-24. Yet the circuit court injected a facial challenge into Bright's complaint, erroneously expanding the relief available to Bright and granting him statewide declaratory and injunctive relief he did not request. *See* C345-46.

Finally, Bright argues that the Bureau Chief "waived" his argument regarding the scope of the circuit court's judgment by "conced[ing] to the trial court that it ha[d] the power to enter an injunction, such as it actually did." AE Br. 27-28. Bright misconstrues the record. In response to the circuit court's question about whether it should stay a judgment declaring section 8(n) unconstitutional but not enjoining its enforcement, *see* SUP R91, the Bureau Chief stated that he likely would not seek a stay of solely declaratory

relief, but would "likely ask the Illinois Supreme Court to stay [a] statewide injunction," SUP R92. And he highlighted recent United States Supreme Court case law holding that federal courts lack authority to enter injunctions favoring nonparties. SUP R92-94. Thus, rather than conceding that the circuit court could enter the overbroad injunction that it did, the Bureau Chief indicated that it would seek a stay of that order because it may exceed the court's authority.

IV. Suspending Bright's FOID card while he faced felony charges did not violate the Second Amendment.

As the Bureau Chief explained, whether Bright brought a facial or as-applied challenge, the Second Amendment's plain text does not apply to individuals charged with felonies and, even if it did, section 8(n)'s temporary prohibition on firearm possession is relevantly similar to a longstanding tradition of laws restricting firearm possession by those charged with serious crimes, laws restricting firearm possession by those deemed dangerous or unlikely to obey the law, and surety laws. AT Br. 24-42. Nothing in Bright's response brief undermines those arguments, so this Court should reverse the circuit court's order holding section 8(n) unconstitutional even if it concludes that a mootness exception applies.

A. The Second Amendment's plain text does not protect firearm possession while an individual faces felony charges.

Under the first step in analyzing a Second Amendment challenge under the framework set forth in *N.Y. State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. 1

(2022), Bright had to show that he was a "law-abiding . . . citizen[ ]" protected by the Second Amendment, *id.* at 26 (cleaned up); *see also United States v. Gay*, 98 F.4th 843, 846 (7th Cir. 2024) ("When describing the persons who possess rights under the Second Amendment, *Bruen* repeatedly used the phrase 'law-abiding, responsible citizens' or a variant.") (quoting *Bruen*, 597 U.S. at 26); *Caulkins*, 2023 IL 129453, ¶ 33 ("At its core, the second amendment protects the right of law-abiding citizens to keep and bear arms . . . ." (cleaned up)); *People v. Welch*, 2025 IL App (1st) 231116, ¶ 57 (noting "the United States Supreme Court's clear statements in *Bruen* that the second amendment protects only the rights of law-abiding citizens" (cleaned up)). As explained in the Bureau Chief's opening brief, Bright was not considered law-abiding while facing felony charges, and so could be disarmed without implicating the Second Amendment. AT Br. 32-33.

In response, Bright argues that he should have been considered law-abiding while the charges were pending because he was not "proven, by any burden of proof, to have committed an actual crime" and "a charge is only an allegation." AE Br. 32-33. But Bright ignores that, in addition to an allegation that he committed a felony, the circuit court found probable cause that he committed the offense. C213; EI56.

Bright attempts to downplay the probable cause finding, arguing that the court's hearing was "not a 'preliminary hearing' . . . , but rather appears to have been . . . an informal hearing" under *Gerstein v. Pugh*, 420 U.S. 103

(1975). AE Br. 34-35. Initially, the record does not reflect whether the circuit court's probable cause finding followed a preliminary hearing or whether Bright waived his right to a preliminary hearing. *See* C213; SUP R26-29. But even if a *Gerstein* hearing was held, the circuit court still found "probable cause to believe [Bright] ha[d] committed a crime," such that he could be detained. *See Gerstein*, 420 U.S. at 120.

Bright also argues that "[i]t is hard to imagine any constitutional right so completely eviscerated, even if only temporarily, based on such a low standard as a probable cause finding." AE Br. 35. Yet probable cause is sufficient to warrant a defendant's pretrial detention, depriving him of his physical liberty — and, necessarily, his Second Amendment rights — for an extended period. *See Gerstein*, 420 U.S. at 125 (probable cause necessary to justify a "significant pretrial restraint of liberty"); *People v. Horne*, 2023 IL App (2d) 230382, ¶ 21 n.2 ("A *Gerstein* hearing . . . affords a defendant arrested without a warrant a prompt judicial determination of probable cause as a prerequisite to extended restraint of liberty following arrest."). Because a finding of probable cause is sufficient to justify restrictions of other constitutional rights, there is no reason that such a finding should be held insufficient to warrant the temporary loss of Second Amendment rights.

B. Prohibiting those facing felony charges from possessing firearms comports with the nation's historical tradition.

Even if the Second Amendment's plain text protected Bright's conduct, the Bureau Chief satisfied *Bruen*'s second step because temporarily

suspending his FOID card was relevantly similar to several categories of historical laws: (1) laws authorizing the pretrial detention of defendants charged with serious offenses; (2) laws categorically prohibiting firearm possession by groups deemed dangerous or unlikely to obey the law; and (3) surety laws restricting the firearm rights of those accused of posing a threat. *See* AT Br. 28-42. In response, Bright makes minor and irrelevant distinctions between these laws and section 8(n), defying the United States Supreme Court's direction that a law "need not be a dead ringer or a historical twin" to satisfy *Bruen*'s second step. *Rahimi*, 602 U.S. at 692 (cleaned up).

First, Bright concedes that, at the founding, "many, maybe even most," criminal defendants "were completely denied bail or other pretrial release, and that such persons could not keep their weapons with then [*sic*] in jail." AE Br. 37-38; *see* AT Br. 29-30. But, Bright argues, section 8(n) differs from these laws because they did not require criminal defendants "to empty their home of arms, or to hand any such arms [in] as they went to jail." AE Br. 38.

This distinction is meaningless. "At the founding, pretrial detention was . . . a temporary restriction on the constitutional rights of those who posed a threat to society but had not been proven guilty." *Quiroz*, 125 F.4th at 719; *see Gore*, 96 F.4th at 1182 ("Based on our historical review, we agree that our society has traditionally subjected criminal defendants to temporary restrictions on their liberty — including restrictions that affect their ability to keep and bear arms . . . ."). As Bright concedes, while subject to that

restriction, a criminal defendant could not keep or bear arms. AE Br. 37-38. Likewise, section 8(n) *temporarily* prohibits an individual facing felony charges from keeping or bearing firearms while they face serious criminal charges — if, as in this case, the charges are dismissed or the defendant is acquitted, that prohibition evaporates. If anything, section 8(n) is less burdensome than historical pretrial detention laws, as it imposes no restraints on a defendant's physical liberty. *See Rahimi*, 602 U.S. at 699 ("[I]f imprisonment was permissible to respond to the use of guns to threaten the physical safety of others, then the lesser restriction of temporary disarmament . . . is also permissible").

Second, Bright argues that historical laws barring firearm possession by groups of individuals deemed dangerous or unlikely to follow the law are irrelevant because *District of Columbia v. Heller*, 554 U.S. 570 (2008), stated that such categorical prohibitions "are not to be tolerated." AE Br. 39. Bright is wrong — in *Heller*, the Court explained that "nothing in [its] opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons and the mentally ill." 554 U.S. at 626; *see id.* at 627 n.26 (stating that list of "presumptively lawful" prohibitions was not "exhaustive"). And although some of these laws were "discriminatory" and "offensive," AE Br. 39, recent decisions have relied on them to define the Second Amendment's scope, *United States v. Duarte*, 137 F.4th 743, 759-61 (9th Cir. 2025) (*en banc*); *United States v. Jackson*, 110 F.4th 1120, 1127 (8th Cir. 2024); *see* AT Br. 32-

33. Bright also is incorrect in suggesting that these laws only authorized disarmament "following a hearing" at which a person was found to be a "credible threat." AE Br. 40; *see Duarte*, 137 F.4th at 760 (categorical disarmament laws required no "'individualized determination of dangerousness as to each person in a class of prohibited persons'") (quoting *Jackson*, 110 F.4th at 1128); *see also United States v. Escobar-Temal*, 161 F.4th 969, 981 (6th Cir. 2025) ("[N]ot all group disarmaments were the direct result of violence already committed or even a tendency toward violence in a particular group."). These laws thus demonstrate that, consistent with the Second Amendment, those facing felony charges may be considered unlikely to follow the law and temporarily disarmed. *See* AT Br. 36-37.

Third, as to surety laws, Bright mistakenly argues that, in *Rahimi*, the Court held that "the Second Amendment right may only be burdened once a defendant has been found to pose a credible threat to the physical safety of others." AE Br. 41. In *Rahimi*, the Court addressed the constitutionality of a federal statute prohibiting firearm possession by an individual subject to a restraining order "finding that he 'represents a credible threat to the physical safety of [an] intimate partner.'" 602 U.S. at 684-85 (quoting 18 U.S.C. § 922(g)(8)). Because historical surety laws also "applie[d] to individuals found to threaten the physical safety of another," the Court held that they were relevantly similar to that federal statute. *Id.* at 698.

Nothing in *Rahimi* suggested that the Second Amendment *only* allows for the disarmament of individuals found to pose a credible threat to another's physical safety. *See United States v. Simmons*, 150 F.4th 126, 134 (2d Cir. 2025) (even after *Rahimi*, Second Amendment does not require "particularized judicial determination as to [individual's] future dangerousness"). Even if *Rahimi* stood for that proposition, however, a judge found probable cause that Bright committed the charged offense, *see* C213, which resembles the "judicial determination" underpinning surety laws, *Rahimi*, 602 U.S. at 699; *see* AT Br. 37-38. Accordingly, his assertion that there was "no judicial determination of anything" is wrong. AE Br. 42.

In sum, these historical precursors are relevantly similar to section 8(n)'s temporary prohibition on firearm possession. This Court, therefore, should reverse the circuit court's judgment if it concludes that Bright retained his Second Amendment rights while facing a felony charge.

CONCLUSION

For these reasons, Defendant-Appellant Jeffrey Yenchko requests that this Court: (1) reverse the circuit court's March 12, 2025 order and vacate its July 7, 2025 judgment as moot; (2) alternatively, reverse the July 7, 2025 order and remand with instructions to enter summary judgment in favor of Defendant-Appellant; or (3) in the further alternative, modify the July 7, 2025 judgment so that it applies only to Bright.

Respectfully submitted,

KWAME RAOUL
Attorney General
State of Illinois

JANE ELINOR NOTZ
Solicitor General

115 South LaSalle Street
Chicago, Illinois 60603
(312) 814-3000

Attorneys for Defendant-Appellant

CARSON R. GRIFFIS
Assistant Attorney General
115 South LaSalle Street
Chicago, Illinois 60603
(312) 814-2447 (office)
(773) 505-5282 (cell)
CivilAppeals@ilag.gov (primary)
Carson.Griffis@ilag.gov (secondary)

January 16, 2026

CERTIFICATE OF COMPLIANCE

I certify that this reply brief conforms to the requirements of Rules 341(a) and (b). The length of this reply brief, excluding the pages or words contained in the Rule 341(d) cover, the Rule 341(h)(1) table of contents and statement of points and authorities, the Rule 341(c) certificate of compliance, and the certificate of service, is 5,695 words.

/s/ Carson R. Griffis
CARSON R. GRIFFIS
Assistant Attorney General
115 South LaSalle Street
Chicago, Illinois 60603
(312) 814-2447 (office)
(773) 505-5282 (cell)
CivilAppeals@ilag.gov (primary)
Carson.Griffis@ilag.gov (secondary)

CERTIFICATE OF FILING AND SERVICE

I certify that on January 16, 2026, I electronically filed the foregoing Reply Brief of Defendant-Appellant with the Clerk of the Court for the Illinois Supreme Court by using the Odyssey eFileIL system.

I further certify that the other participants in this appeal, named below, are registered Odyssey eFileIL service contacts, and thus will be served via the Odyssey eFileIL system.

Counsel for Plaintiff-Appellee Malik Cedrick Bright
Thomas Maag
tmaag@maaglaw.com
maaglawoffice@gmail.com

Counsel for Defendants Victor Jurado, Hannah Goldstein, and Gabriel Ruvalcaha
Scott Cohen
Scott.Cohen@CityofChicago.org

Under penalties as provided by law pursuant to section 1-109 of the Illinois Code of Civil Procedure, I certify that the statements set forth in this instrument are true and correct to the best of my knowledge, information, and belief.

/s/ Carson R. Griffis
CARSON R. GRIFFIS
Assistant Attorney General
115 South LaSalle Street
Chicago, Illinois 60603
(312) 814-2447 (office)
(773) 505-5282 (cell)
CivilAppeals@ilag.gov (primary)
Carson.Griffis@ilag.gov (secondary)