No. 24-

IN THE

Supreme Court of the United States

JOSHUA WADE,

Petitioner,

v.

THE UNIVERSITY OF MICHIGAN,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE MICHIGAN SUPREME COURT

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

The University of Michigan prohibits possession of firearms on "all property owned, leased, or otherwise controlled" by the University. The ordinance, Article X, imposes criminal sanctions for firearm possession, including firearms carried openly, or concealed with a valid state license. It applies equally whether the individual is a student, employee, visitor, or patient at its hospital, allowing only for lawful firearms within a vehicle transiting campus on one of its public roads, or with permission granted by the university's chief law enforcement officer, who is given unfettered discretion.

No evidentiary record has been established. All appeals have been from the trial court's grant of summary disposition to the university. This petition is brought based on violations of the U.S. Constitution's Second and Fourteenth Amendments in light of state courts' misapplication of *Bruen* and other cases. The Michigan Supreme Court let stand the Michigan Court of Appeals holding that the university need not comply with *Bruen* regarding history and tradition analysis by finding that the entire university is a "school" and therefore a "sensitive place" where the Second Amendment does not apply. This petition allows this Court to reaffirm *Bruen*'s framework, clarify the limits of "sensitive places," and preserve the Second Amendment's guarantee of self-defense in public spaces.

The question presented is:

Whether the Second and Fourteenth Amendments allow a criminal ordinance that prohibits mere possession

of firearms on an entire poorly-delineated university campus, except by permission of a single government official with unfettered discretion, which is granted only for "extraordinary circumstances."

PARTIES TO THE PROCEEDING

Petitioner is Joshua Wade. Petitioner was plaintiff in the Michigan Court of Claims, plaintiff-appellant in the Michigan Court of Appeals ("*Wade I*"), plaintiff-appellant in the Michigan Supreme Court, plaintiff-appellant in the Michigan Court of Appeal ("*Wade II*"), and plaintiff-appellant in the Michigan Supreme Court. Respondent is The University of Michigan. Respondent was the defendant in the Michigan Court of Claims, defendant-appellee in the Michigan Court of Appeals ("*Wade I*"), defendant-appellee in the Michigan Supreme Court, defendant-appellee in the Michigan Court of Appeal ("*Wade II*"), and defendant-appellee in the Michigan Supreme Court.

CORPORATE DISCLOSURE STATEMENT

Pursuant to this Court's Rule 29.6, petitioner states as follows: Petitioner Wade is an individual.

STATEMENT OF RELATED PROCEEDINGS

There are no other proceedings in state or federal trial or appellate courts, or in this Court, directly related to this case within the meaning of this Court's Rule 14.1(b)(iii).

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The opinion of the Michigan Supreme Court denying leave to appeal is reported at *Wade v. University of Michigan*, 12 N.W.3d 6 (Mich. 2024). The opinion of the Michigan Court of Appeals ("*Wade II*") is unpublished but available at *Wade v. Univ. of Michigan*, --- N.W.3d ----, No. 330555, 2023 WL 4670440 (Mich. Ct. App. July 20, 2023). The order of the Michigan Supreme Court vacating and remanding the case is reported at *Wade v. Univ. of Michigan*, 510 Mich. 1025, 1025, 981 N.W.2d 56 (2022). The opinion of the Michigan Court of Appeals affirming the Court of Claims decision ("*Wade I*") is reported at *Wade v. Univ. of Michigan*, 320 Mich. App. 1, 905 N.W.2d 439 (2017). The opinion of the Michigan Court of Claims is unpublished but available at *Wade v. University of Michigan*, No. 15000129, 2015 WL 10845344 (Mich. Ct. Cl. Nov. 13, 2015).

JURISDICTION

The Michigan Supreme Court issued its judgment on October 18, 2024. This Court has jurisdiction under 28 U.S.C. § 1257(a).

CONSTITUTIONAL, STATUTORY, AND REGULATORY PROVISIONS INVOLVED

Pertinent constitutional and statutory provisions are reproduced in the appendix. App., *infra*, 101a-112a.

STATEMENT OF THE CASE

A. Factual Background

The Michigan Constitution explicitly protects the right to keep and bear arms. Article I, § 6 provides that "[e]very person has a right to keep and bear arms for the defense of himself and the state."[1] This language is not a modern innovation; it traces its lineage directly to the Constitution of 1835, adopted two years before Michigan achieved statehood, where Article I, Section 13 guaranteed the same right.[2] Consistent with this historical recognition, open carry has been lawful in Michigan since its founding. These protections are firmly rooted in the broader context of the Second Amendment to the United States Constitution, which guarantees that "the right of the people to keep and bear Arms, shall not be infringed." U.S. Const. amend. II. In *District of Columbia v. Heller*, this Court affirmed that the Second Amendment protects an individual's right to possess and carry firearms for self-defense. 554 U.S. 570, 595 (2008). This federal guarantee, made applicable to the states through the Fourteenth Amendment in *McDonald v. City of Chicago*, 561 U.S. 742, 750 (2010), complements Michigan's constitutional provisions.

In 1995, the University of Michigan adopted *An Ordinance to Regulate Parking and Traffic and to Regulate the Use and Protection of the Buildings and Property of the Regents of the University of Michigan*, which included provisions regulating weapons on

1. Mich. Const. art. I § 6.

2. Mich. Const. of 1835, art. I, § 13

University property. In 2001, the University revised its weapons ordinance (Article X) to expand its scope significantly, prohibiting weapons anywhere on University property regardless of the possessor.[3] This revision marked a departure from prior limitations, broadening the restrictions to encompass all individuals on University-controlled grounds.[4]

During July 2014, while attending Art Fest in Ann Arbor and openly carrying a pistol, Plaintiff-Appellant Joshua Wade ("Wade") was engaged in conversation by a law enforcement officer. The officer warned Wade of the University ordinance prohibiting the possession of firearms, noting the confusing delineation of jurisdictional boundaries between the municipality and the University, and cautioned Mr. Wade against walking onto University property. On September 4, 2014, Wade contacted the Director of Public Safety for the University of Michigan, requesting a waiver to allow him to carry a firearm, pursuant to Article X. On September 24, 2014, Wade was informed that his application for a waiver to Article X was denied, reasoning that the infringement upon his constitutional rights did not constitute an "extraordinary circumstance" allowing for the granting of a waiver.[5] Despite the Regents' amendments and additions to Article X—expanding the exceptions in Section 5 during the course of this case—the article remains, in substance,

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3. Pet. App. J

4. See *University of Michigan Standard Practice Guide*, SPG 201.94 (2001); *Wade v. Univ. of Mich.*, 12 N.W.3d 6, 10 (Mich. 2024) (discussing the ordinance's evolution and expanded scope).

5. Pet. App. L

largely unchanged from when the Petitioner first filed suit.[6]

B. Procedural History

On June 9, 2015, Wade initially filed this action in the Michigan Court of Claims[7] alleging, *inter alia*, that the Regents violated the Michigan Constitution of 1963 Art 1, § 6 and the Second Amendment when the Regents passed Article X, which forbids all possession of firearms on any property owned or controlled by the Regents. Petitioner sought declaratory and injunctive relief from the ordinance.

In lieu of filing an Answer, the Regents moved for summary disposition under MCR 2.116(c)(8), arguing in relevant part, that Article X did not violate the Second Amendment because the University of Michigan is a "sensitive place" under *Heller*.[8] The Regents further argued that even if such a right existed, Article X passed intermediate scrutiny and was, therefore, not violative of an individual's fundamental constitutional right to self-defense.[9]

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6. *Compare* Appendix I, 103a-112a, with Appendix J, 113-118a.

7. The Michigan Court of Claims is is a court of statewide, limited jurisdiction to hear and determine all civil actions filed against the State of Michigan and its agencies. MCL 600.6419.

8. *Wade v. Univ. of Mich.*, Def.'s Mot. for Summ. Disposition, No. 15-000129-MZ (Mich. Ct. Cl. July 23, 2015).

9. *Wade v. Univ. of Mich.*, Def.'s Mot. for Summ. Disposition, No. 15-000129-MZ (Mich. Ct. Cl. July 23, 2015).

On November 13, 2015, the Court of Claims entered an Opinion and Order granting summary disposition in favor of the Regents.[10] The Court of Claims found Article X to be "presumptively lawful" under *Heller* because it found the University of Michigan to be a "sensitive place."[11] Specifically, the Court of Claims found the University of Michigan to be a school, youth sports camp, and health system.[12]

On January 4, 2016, Wade appealed the Lower Court Order, arguing that the Court of Appeals erred in ruling that a complete ban on firearm possession for the entirety of the Regents' owned and controlled property was constitutional because the geographic scope of Article X extended beyond sensitive areas.[13] However, on June 5, 2017, the Court of Appeals entered an Opinion affirming the Lower Court Order ("*Wade I*").[14]

Like the Court of Claims, the Court of Appeals rejected Wade's argument that Article X violates the U.S. Const amend. II because the Court of Appeals found that, under *Heller*, Article X did not regulate conduct historically recognized to be protected by the Second Amendment because the University of Michigan—due to being incorrectly defined as a "school"—is a "sensitive

10. Pet. App. H, 88a.

11. Pet. App. H, 93a

12. *Id.*.

13. *Wade v. Univ. of Mich.*, Appellant's Application and Br. on Appeal of Order Granting Def.'s Mot. for Summ. Disposition, No. 330555, at [page] (Mich. Ct. App. Jan. 4, 2016)

14. Pet. App. F

place" and "sensitive places, including schools, are categorically unprotected."[15] At that time, the Court relied only on an 1828 edition of Webster's Dictionary to conclude that the term "school" includes "universities," such that the University of Michigan is a "school" and Article X would then be presumptively lawful.[16] According to the Court of Appeals Opinion, "no further analysis [was] required."[17]

On July 18, 2017, Wade filed an Application for Leave to Appeal in the Michigan Supreme Court.[18] After a lengthy abeyance due to other Second Amendment cases pending at this Court, on November 6, 2020, the Michigan Supreme Court granted Wade's Application and ordered a briefing on Second Amendment issues.[19] In June 2022, this Court decided *New York Rifle and Pistol Association, Inc. v Bruen*.[20] On November 10, 2022, the Michigan Supreme Court, on its own motion and in the wake of *Bruen*, vacated its Order and the *Wade I* Opinion and remanded the matter back to the Court of Appeals "for consideration in light of [*Bruen*]."[21]

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15. Pet. App. F, 69a

16. *Id.*.

17. Pet. App. 70a.

18. *Wade v. Univ. of Mich.*, Appellant's Application and Br. for Leave to Appeal, No. 156150 (Mich. Sup. Ct. July 18, 2017)

19. Pet. App. D

20. 597 US 1; 142 S Ct 2111 (2022)

21. Pet. App. C: Order, Michigan Supreme Court, November 10, 2022

Wade filed a supplement brief on February 9, 2023.[22] Without any other briefing from the parties or oral arguments, the Michigan Court of Appeals, once again, upheld the lower court's ruling ("*Wade II*").[23] In its Opinion, the Court of Appeals affirmed the University's ordinance that completely bans firearms on its property.[24]

On August 31, 2023, Wade filed an Application for Leave to Appeal with the Michigan Supreme Court.[25] On October 18, 2024, the Michigan Supreme Court denied Wade's Application for Leave to Appeal, with Justice Viviano dissenting.[26] Wade now petitions this Court for a writ of certiorari.

REASONS FOR GRANTING THE PETITION

This case implicates core constitutional rights under the Second Amendment and raises issues of significant public concern, including public safety and individual liberties.

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22. *Wade v. Univ. of Mich.*, Appellant's Suppl. Br., No. 330555 (Mich. Ct. App. Feb. 9, 2023).

23. *Wade v. Univ. of Michigan*, No. 330555, 2023 WL 4670440 (Mich. Ct. App. July 20, 2023), appeal denied, 12 N.W.3d 6 (Mich. 2024)

24. Pet. App. B

25. *Wade v. Univ. of Mich.*, Appellant's Application and Br. on Appeal of Ct. of Appeals Order Affirming Def.'s Mot. for Summ. Disposition, No. 166067 (Mich. Sup. Ct Aug. 31, 2023).

26. Pet. App. A, Order, Michigan Supreme Court, October 18, 2024.

On October 18, 2024, the Michigan Supreme Court denied leave to appeal the Michigan Court of Appeals' decision in *Wade v. Univ. of Michigan* ("*Wade II*"), 2023 WL 4670440 (Mich. Ct. App. July 20, 2023), which misapplied this Court's precedent in *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*. By denying leave, the Michigan Supreme Court endorsed the Court of Appeals' deviation from the *Bruen* text-and-history framework, allowing the University of Michigan's sweeping firearm ban to violate the Second Amendment. This decision departs from this Court's jurisprudence and revives analytical methodology explicitly rejected in *Bruen*.

The decision of the Court of Appeals, upheld by the Michigan Supreme Court's denial of appeal, has significant and troubling consequences. By broadly designating the entire university campus as a "sensitive place," the court effectively nullifies the Second Amendment for thousands of individuals who live, work, or study on or near university property. This sweeping prohibition also chills the exercise of the right to bear arms for those who might pass through campus, where the boundary between university property and public space is often indistinguishable. Such a result directly contravenes *Bruen* and undermines the fact that the Second Amendment is not a "second-class right, subject to an entirely different body of rules than the other Bill of Rights guarantees."[27]

27. *McDonald v. City of Chicago*, 561 U.S. 742, 780 (2010).

I. The Michigan Courts Erred, Misapplying *Bruen*'s Methodology

The "sensitive places" identified in *Heller*,[28] and reaffirmed in *Bruen*[29]are not widespread geographic prohibitions. This Court's examples—schools, government buildings, courthouses, and polling places—share a critical commonality: discrete locations marked by specific, limited functions, inherently public purposes, and clear boundaries, typically accompanied by preexisting access restrictions such as operating hours or security protocols. In contrast, sweeping restrictions across entire swaths of geography—university campuses, urban districts, or entire neighborhoods—bear no resemblance to the narrowly circumscribed "sensitive places" this Court contemplated. A categorical ban over broad geographic areas improperly transforms the historically narrow doctrine into a tool of regulatory overreach, untethered from the text and tradition of the Second Amendment.

A. Article X's Blanket Prohibition Violates the Second Amendment

In *Bruen*, this Court explicitly rejected the two-step scrutiny framework that distorted Second Amendment jurisprudence, replacing it with a clear and historically grounded test.[30] Courts must first determine whether

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28. *District of Columbia v. Heller*, 554 U.S. 570, 626 (2008).

29. *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1, 30-31 (2022).

30. *New York State Rifle & Pistol Assn., Inc. v. Bruen*, 597 U.S. 1, 26-27 (2022).

the conduct at issue falls within the plain text of the Second Amendment.[31] If it does, the burden shifts to the government to demonstrate that the regulation is consistent with "this Nation's historical and tradition of firearm regulation."[32]

It is undisputed that Wade's conduct of lawfully carrying his firearm for self-protection falls squarely within the protections of the Second Amendment.[33] Therefore, under the proper *Bruen* analysis, it is the Regents' burden to overcome a presumption of unconstitutionality and prove that Article X is consistent with this Nation's history of firearm regulation.[34] The University Regents failed to cite any relevant authority to rebut the presumption, and instead, the Court developed a four-part test to justify the complete ban. As summarized by Justice Viviano in his lucid and sharp dissent, in which Justice Zahra joined, *Wade II* disregarded the analysis required by *Bruen* for Second Amendment disputes and, "invented a confusing four-factor test that bears almost no resemblance to the Supreme Court's test."[35] Justice Viviano succinctly explained the lower court's analysis:

> 1) Courts must first consider whether the Second Amendment presumptively protects

31. *See Bruen*, 597 U.S. at 24.

32. *See id.*

33. *See* Pet. App-23a, 36a, 43a

34. *See* Bruen, 597 U.S. at 24.

35. Pet. App. A, *Wade v. Univ. of Mich.*, 12 N.W.3d 6, 8 (Mich. 2024) (Viviano, J., dissenting).

the conduct at issue. If not, the inquiry ends, and the regulation does not violate the Second Amendment.

2) If the conduct at issue is presumptively protected, courts must then consider whether the regulation at issue involves a traditional "sensitive place." If so, then it is settled that a prohibition on arms carrying is consistent with the Second Amendment.

3) If the regulation does not involve a traditional "sensitive place," courts can use historical analogies to determine whether the regulation prohibits the carry of firearms in a new and analogous "sensitive place." If the regulation involves a new "sensitive place," then the regulation does not violate the Second Amendment.

4) If the regulation does not involve a sensitive place, then courts must consider whether the government has demonstrated that the regulation is consistent with this Nation's historical tradition of firearms regulations. This inquiry will often involve reasoning by analogy to consider whether regulations are relevantly similar under the Second Amendment. If the case involves "unprecedented societal concerns or dramatic technological changes," then a "more nuanced approach" may be required.[36]

36. *Id.*

By relying on the above-stated test, the lower Court effectively relieved the Government of its obligation to demonstrate that the regulation is consistent with historical and traditional standards. The Court in *Wade II*'s analysis was that "if the University is a school *or* government building, then Article X does not violate the Second Amendment."[37] The Michigan Court's entire analysis is limited to identifying the dictionary definition of a school.[38] *Wade II*'s superficial analysis in classifying a complex, multi-faceted university as a "school" evades the rigorous historical inquiry mandated by *Bruen*[39] and is fundamentally irreconcilable with the historical scrutiny required to ensure fundamental rights are not unduly infringed.

The *Wade II* Court erroneously dispensed with requiring the Regents to identify a historical analogue for their sweeping prohibition. Had the Court properly imposed this burden, Article X would necessarily fail, as historical analogues show that Article X is inconsistent with historic firearm regulation, whether ultimately schools are found to be locational exceptions to the Second Amendment or not.

Following the ratification of the Second Amendment in 1791 and up to the adoption of the Fourteenth Amendment in 1868, three states prohibited possession of firearms on

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37. Pet. App. B-37a (emphasis added)

38. *Wade v. Univ. of Mich.*, 12 N.W.3d 6, 10 (Mich. 2024) (Viviano, J., dissenting), *Pet. App.* A-10a ("And in applying its newly fabricated test, the Court once again offered little more than an analysis of whether universities are schools, this time relying solely on modern definitions of schools.").

39. *See New York State Rifle & Pistol Assn., Inc. v. Bruen*, 597 U.S. 1, 29 (2022).

university or college campuses.[40] The restrictions were narrowly tailored to attending students, and did not include professors, faculty, campus visitors, or the general population.[41] These were not comprehensive campus-wide bans but targeted rules addressing the behavior of those under institutional oversight. *Wade II* further failed to even consider a "*central*" consideration of the historical, analogical inquiry, which is whether "modern and historical regulations impose a comparable burden on the right of armed self-defense."[42]

By inventing a novel and unsupported four-factor test, the court improperly shifted the burden away from the Regents, effectively absolving them of their constitutional obligation to justify Article X through historical analogues. By accepting a superficial categorization of universities as "schools" without requiring the rigorous historical analysis *Bruen* demands, the lower court has effectively sanctioned an unprecedented expansion of firearms restrictions that finds no support in history or tradition. As Justice Scalia noted in *Heller*, constitutional rights are not subject to balancing tests that merely accommodate modern preferences.[43]

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40. *See United States v. Allam*, 677 F. Supp. 3d 545, 569-71 (E.D. Tex. 2023).

41. *See id.; see also* Julia Hesse & Kevin Schascheck II, The Expansive 'Sensitive Places' Doctrine: The Limited Right to 'Keep and Bear' Arms Outside the Home, 108 Cornell L. Rev. 218 app. at 61 (2023).

42. *See New York State Rifle & Pistol Assn., Inc. v. Bruen*, 597 U.S. 1, 29 (2022).

43. *Heller*, 554 U.S. at 634.

B. The University is not a "School"

The University of Michigan's authority is derived from the Michigan Constitution, which establishes it as a constitutionally autonomous body. Article VIII, § 5 of the Michigan Constitution grants the University's Board of Regents "general supervision" over the institution.[44] The University holds an unusual status as one of three "constitutional universities" in Michigan, provided for in the state constitution whose governing bodies are chosen in statewide elections. The board of regents is authorized to enact ordinances, by-laws and regulations for the government of the university.[45] However, this constitutional autonomy does not grant the University the authority to contravene state law or Constitutional rights.[46] A State cannot ignore Constitutional rights, even when acting as proprietor of State-owned property.[47] Michigan law defines a "school" for the purpose of firearm regulation in MCL 750.237a(6)(b) as a public, private, denominational, or parochial school offering developmental kindergarten, kindergarten, or any grade from 1 through 12. The Michigan Legislature also defined school property as "a building, playing field, or property used for school purposes to impart instruction to children or used for functions and events sponsored

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44. Mich. Const. Art. VIII § 5, Pet. App I-101a

45. Mich. Comp. Laws § 390.5 (1964)

46. *See Regents of Univ. of Mich. v. Michigan*, 395 Mich. 52, 65-66 (1975) (noting that while the University enjoys significant autonomy, it is still subject to constitutional and statutory limits).

47. *See Bridgeville Rifle & Pistol Club, Ltd. v. Small*, 176 A.3d 632, 653 (Del. 2017).

by a school, *except a building used primarily for adult education or college extension courses.*"[48] The statutory language is clear and unambiguous, limiting the definition of "school" to institutions primarily serving minors in K-12 education and explicitly excluding property associated with higher education.

In contrast, the University of Michigan is a constitutionally established public institution of higher learning, serving primarily adult students in undergraduate, graduate, and professional programs. Its varied property, including public streets, sidewalks, and housing, is not exclusively or predominantly used for "school purposes," and is geographically integrated with the city of Ann Arbor, making it difficult to determine its boundaries.

Restrictions at educational institutions during the Founding and Reconstruction eras applied narrowly to K-12 schoolhouses or to specific groups, such as students, and did not encompass the general public or all university property.[49] The historical record reveals that sensitive place restrictions were limited in scope and targeted specific risks. Furthermore, legal scholars have recently recognized that universities, functioning as "miniature cities" with multifaceted roles, resist straightforward classification within a "sensitive places" framework and underscore the historical distinctions between the regulation of primary schools and that of

48. Mich. Comp. Laws § 750.237a (emphasis added).

49. *Wade v. Univ. of Mich.*, Appellant's Application and Br. on Appeal of Ct. of Appeals Order Affirming Def.'s Mot. for Summ. Disposition, No. 166067 p. 37-41 (Mich. Sup. Ct Aug. 31, 2023).

universities.[50] The Court of Appeals' reliance on broad modern definitions—equating universities with K-12 schools—ignores this history and expands it far beyond its original intent. "[T]he State cannot justify a sensitive location prohibition merely by designating a population as "vulnerable" and enacting a law purporting to protect them."[51]

Based on history and tradition, the university is clearly not a "school." By defining its property as a "sensitive place" and banning firearms across all areas it controls, the University has attempted to circumvent the legislature's clear definition of "school" in MCL 750.237a(6)(b). By enacting Article X, the University's Board of Regents has created a regulation that directly conflicts with state constitutional protections and exceeds its authority under Article VIII, § 5. This overreach undermines the uniform application of Michigan law and violates fundamental United States and state constitutional protections.

C. Overbroad Application of "Sensitive Places"

The *Bruen* Court emphasized that the scope of "sensitive places" is sharply limited, grounded in specific historical contexts such as government buildings or primary schools where unique risks were present.[52]

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50. *See* Jared A. Tuck, *The Constitutional Right to Carry Firearms on Campus*, 63 Wm. & Mary L. Rev. 1047 (2022); *see also* Joseph Blocher et al., *A Map is Not the Territory: The Theory and Future of Sensitive Places Doctrine*, 98 NYU L. Rev. Online 438 (2023).

51. *Antonyuk v. James*, 120 F.4th 941, 1012 (2d Cir. 2024).

52. *See New York State Rifle & Pistol Assn., Inc. v. Bruen,* 597 U.S. 1, 30 (2022).

These examples of sensitive places share an important commonality: they are discrete locations marked by specific, limited functions, inherently public purposes, and clear boundaries, typically accompanied by preexisting access restrictions such as operating hours or security measures. These attributes confine the regulatory scope to particularized areas where heightened control has historically been deemed necessary. Sensitive places are not locational but depend on the people and the activities that take place there.[53]

However, this designation is not a blank check for governments to strip law-abiding citizens of their constitutional rights. *Bruen* demands historical analogues to support such restrictions. The majority of university students are adults, lacking the "peculiar vulnerability of children."[54] Even if one area is deemed sensitive, such as a classroom, other property, such as open spaces or thoroughfares, are unlikely to have the same purpose or characteristics that justify the sensitive designation. The lower Court ignored this mandate. Instead, the Court relied on a policy-driven interpretation of "school" to encompass a sprawling, multifaceted university campus that includes public streets, businesses, hospitals, sidewalks, parks, and other spaces indistinguishable from the city of Ann Arbor, without ever even considering whether the history and tradition of firearms regulation supports the banning of all firearms in schools.

A location's classification as "sensitive" must be based on its own characteristics and merits, not simply because

53. *See Allam*, 677 F. Supp. 3d at 557.

54. *Bellotti v. Baird*, 443 U.S. 622, 635 (1979).

it is attached to or associated with another facility. The Michigan Courts have failed to show that the sidewalks and open areas are sensitive places. The Michigan Courts have failed to show how Article X is "relevantly similar"[55] to historical analogues or tradition.

However, the Michigan Court of Appeals mischaracterized *Heller*'s acknowledgment of "sensitive places" by conflating a sprawling university campus with narrowly defined areas such as courthouses or polling places. A proper inquiry into the history and tradition of relevantly similar historical laws does not end with the designation of a college or university as a sensitive place, marking all property associated with the particular institution as similarly sensitive and shielding the law from further judicial review. A proper inquiry examines who the law applied to and the context of the people and activities involved in the location.[56]

As mentioned *supra*, the restrictions on possessing firearms in educational institutions during the ratification of the Second or Fourteenth Amendments targeted specific groups, such as students, and did not extend to the general public.[57] Additionally, Universities at the time were far smaller and more isolated than the vast,

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55. *See U.S. v. Rahimi*, 602 U.S. 680, 692 (2024).

56. *See U.S. v. Allam*, 677 F. Supp. 3d 545, 557 (E.D. Tex. 2023).

57. *Wade v. Univ. of Mich.*, Appellant's Application and Br. on Appeal of Ct. of Appeals Order Affirming Def.'s Mot. for Summ. Disposition, No. 166067 p. 37-41 (Mich. Sup. Ct Aug. 31, 2023).

integrated campuses of today.[58] Further, the Michigan Courts conflated the university with K-12 schools. To treat the University of Michigan as analogous to a one-room schoolhouse is to ignore both history and reality. The Michigan Courts failed to undertake this analysis of the contextual nature of the university.

The lower Court cited *DiGiacinto v. Rector & Visitors of George Mason Univ.*,[59] committing two critical errors: *DiGiacinto* rests squarely on the discredited two-step framework that balanced Second Amendment rights against governmental interests—a methodology explicitly abandoned by *Bruen*, which reaffirmed that courts must adhere to the Nation's historical tradition of firearm regulation.[60] Second, as discussed infra, the prohibition upheld in *DiGiacinto* was narrowly confined to specific buildings—academic facilities and event spaces—not a sprawling, campus-wide ban.[61] The Court of Appeals ignored this distinction, treating *DiGiacinto* as if it sanctioned precisely the kind of sweeping prohibition *Bruen* rejected.

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58. *See* Jared A. Tuck, *The Constitutional Right to Carry Firearms on Campus*, 63 Wm. & Mary L. Rev. 1047 (2022); *see also* Joseph Blocher et al., *A Map is Not the Territory: The Theory and Future of Sensitive Places Doctrine*, 98 NYU L. Rev. Online 438 (2023).

59. 704 S.E.2d 365 (Va. 2011).

60. *See Bruen*, 597 U.S. at 19.

61. *See* DiGiacinto, 704 S.E.2d at 136 ("The regulation does not impose a total ban of weapons on campus. Rather, the regulation is tailored, restricting weapons only in those places where people congregate and are most vulnerable—inside campus buildings and at campus events.").

The lower Court's analyses are relics of a discarded jurisprudence that subordinated the Second Amendment to policy preferences under the guise of balancing tests. In the post-*Bruen* legal era, where historical tradition and not interest balancing governs, such precedents hold no persuasive value and should carry no weight in determining the constitutionality of modern firearm restrictions.

Universities mirror municipalities in both scope and diversity, serving as hubs of public interaction and activity. They include residential areas, commercial spaces, public parks, and transit routes, creating an environment akin to a small city. While universities maintain regulatory authority over their grounds, this authority cannot override the constitutional protections guaranteed to all who find themselves within these quasi-public spaces.

This Court has previously held that, under certain circumstances, fundamental constitutional rights can override even private property rights.[62] Just as the private ownership of the company town of Chickasaw, Alabama, did not extinguish the First Amendment rights of its residents[63], neither should the regulatory control of a university nullify the Second Amendment rights of those who live, work, or merely pass through its expansive campus. Universities, much like the company town in *Marsh*, encompass living, working, and social environments where individuals engage in a wide array of activities.[64] These campuses are not isolated enclaves

62. *Marsh v. Alabama*, 326 U.S. 501, 502 (1946).

63. *Id.* at 502.

64. *Id.*

but function as integral parts of the broader community, blending seamlessly into the surrounding municipality. Students, faculty, and staff live and work on campus, alongside non-university-affiliated individuals who may live, work, or pass through areas like Ann Arbor. Many of these individuals may traverse campus property without even realizing they have left the city itself, as university boundaries often lack clear demarcation, are accessible to the public, and lack any distinct educational functions or school-specific services.

Relevant laws from the time of the Second and Fourteenth Amendments, which applied to individuals outside the student body, generally prohibited the discharge of firearms rather than mere possession. A restriction on firing or discharging firearms would, therefore, be less restrictive and more consistent with our historical and traditional practices. As scholars Kopel and Greenlee stated in their article cited by *Bruen*, the dicta in *Heller* regarding sensitive places has a "a weak foundation in history and tradition."[65] Even post-*Bruen* anti-Second Amendment scholarship similarly fails to identify broad, sweeping bans on firearm possession at universities during any relevant historical periods.[66] The authors identify various laws regarding non-students, but they were enacted after the Fourteenth Amendment and bar possession of guns *inside* "school-rooms" or pertain

65. David B. Kopel & Joseph G.S. Greenlee, T*he "Sensitive Places" Doctrine: Locational Limits on the Right to Bear Arms*, 13 Charleston L. Rev. 205, 294 (2018).

66. *See*, *e.g.* Julia Hesse & Kevin Schascheck II, *The Expansive 'Sensitive Places' Doctrine: The Limited Right To 'Keep And Bear' Arms Outside The Home*, 108 Cornell L. Rev. 218 (2023).

to firing a weapon.[67] Similarly, this Court in *Heller* and *McDonald* "used the preposition 'in' when referring to schools as opposed to using 'around' or 'near.'"[68]

To declare a university campus in its entirety as a sensitive place without distinction would extend the concept of a sensitive place beyond its historical and logical bounds, rendering the Second Amendment's protections effectively hollow in vast swaths of public life. Thus, while targeted restrictions in specific areas, or as conditions of employment or enrollment, may possibly withstand historical scrutiny, a blanket designation of an entire campus as a "sensitive place" cannot. Self-defense is not a privilege of geography but a fundamental right safeguarded by the Second Amendment.

II. Inconsistent Application of *Bruen* Undermines the Second Amendment

Inconsistent application of *Bruen* across jurisdictions undermines the uniformity and predictability of Second Amendment protections, creating a fragmented legal landscape where fundamental individual constitutional rights vary based on location. The erroneous holding in *Wade II* has already been cited elsewhere.[69] Allowing

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67. *See id.*

68. *See United States v. Allam*, 677 F. Supp. 3d 545, 561 (E.D. Tex. 2023).

69. *See State v. Giannone*, 228 Conn. App. 11, 32, 323 A.3d 360, 377 (2024), citing *Wade v. University of Michigan*, Docket No. 330555, ___ Mich.App. ___, ___, ___ N.W.3d ___, 2023 WL 4670440, *8 (Mich. App. July 20, 2023); *State v. Radomski*, 386 N.C. 557, 561, 904 S.E.2d 542, 544 (2024), dissenting opinion citing *Wade*

jurisdictions to apply the *Bruen* framework inconsistently, particularly in defining sensitive places and using flawed reasoning, erodes this principle and risks turning the Second Amendment into a geographically contingent right. Such disparities not only sow confusion but also undermine the foundational principle that constitutional rights must be uniformly applied nationwide. This Court's intervention is essential to ensure that the *Bruen* standard is applied consistently and faithfully to safeguard the Second Amendment.

For instance, while one court may classify a university campus as a sensitive place based on policy preferences, another may require a rigorous historical analysis and reach the opposite conclusion, as seen in the divergent rulings of *Koons v. Platkin*,[70] and *Wolford v. Lopez*.[71] The Ninth Circuit's decision in *Wolford* underscores that the classification of certain areas as "sensitive places" necessitates a discerning and historically grounded analysis, taking into account the specific characteristics of the location in question.[72] Such a precedent resists the

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v. Univ. of Mich., No. 330555, slip op. at 13, ___ Mich.App. ___, ___, ___ N.W.3d ___, 2023 WL 4670440 (Mich. Ct. App. July 20, 2023) (The plaintiff 's suggestion is "untenable" because it would mean partitioning certain areas of the University from others, and doing the same for other sensitive places like courthouses); Ivan ANTONYUK, et al., Petitioners, v. Steven G. JAMES, in his Official Capacity as Superintendent of New York State Police, et al., Respondents., 2024 WL 2157483, at *19 (Although courts have varied somewhat in their precise descriptions of the weight to be given to incorporation-era history . . .).

70. *Koons v. Platkin*, 673 F. Supp. 3d 515, 639-42 (D.N.J. 2023)

71. *Wolford v. Lopez*, 116 F.4th 959, 982-85 (9th Cir. 2024)

72. *See Wolford v. Lopez*, 116 F.4th 959, 981 (9th Cir. 2024).

broad-brush approach of declaring an entire university campus—a microcosm of society, complete with housing, commerce, and public fora—as inherently "sensitive." Without conceding the legality or advisability of any gun ban, certainly a university's open spaces or streets do not bear the same relevant characteristics as a classroom or lecture hall.

In *Regents of the University of Colorado v. Students for Concealed Carry on Campus*,[73] the Colorado Supreme Court addressed whether the University of Colorado's policy prohibiting concealed firearms on campus violated the Colorado Concealed Carry Act (CCA). The CCA establishes statewide standards for issuing permits to carry concealed handguns and limits the authority of local governments to regulate concealed carry. The University argued that its Board of Regents, as a constitutionally established governing body, was not a "local government" under the CCA and thus retained the authority to enforce its campus-wide firearms ban. The plaintiffs, Students for Concealed Carry on Campus, contended that the University's policy conflicted with the CCA's intent to create uniform concealed carry laws across the state. The court held that the University's policy was preempted by the CCA, emphasizing the legislature's intent to establish uniform statewide regulations concerning concealed carry and concluding that the University's ban was inconsistent with that legislative purpose.[74]

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73. *Regents of the University of Colorado v. Students for Concealed Carry on Campus, LLC*, 271 P.3d 496 (Colo. 2012)

74. *Regents of Univ. of Colorado v. Students of Concealed Carry on Campus, LLC*, 2012 CO 17, ¶ 20, 271 P.3d 496, 500.

This result from the Michigan Supreme Court is a direct affront to *Bruen*, which held that the entire island of Manhattan could not be declared a sensitive place.[75] While the University of Michigan campus is much smaller, it is a small city serving all of the same functions of any city.

The Constitution demands deference to principle, not convenience. If courts allow universities to expand the definition of "sensitive places" without constraint, they will sanction the degradation of a fundamental right under the guise of local policy, a result irreconcilable with the Constitution's text and history. This process leads to the same issues as the previous means-testing struck down in *Bruen*, which unduly gives judges the power to assess whether individual rights can be subjugated based on their personal views.[76] Judicial abdication in the face of such overreach would not merely permit erosion of rights but encourage it, leading to an unpredictable patchwork of firearm regulations that undermines the Second Amendment's core guarantee.[77]

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

New York State Rifle & Pistol Ass'n, Inc. v. Bruen, 597 U.S. 1, 3, 142 S. Ct. 2111, 2118-19 (2022).

76. *See New York State Rifle & Pistol Assn., Inc. v. Bruen*, 597 U.S. 1, 23 (2022) ("We then concluded: 'A constitutional guarantee subject to future judges' assessments of its usefulness is no constitutional guarantee at all.'").

77. *See McDonald v. City of Chicago*, 561 U.S. 742, 778 (2010) ("The Framers and ratifiers of the Fourteenth Amendment counted the right to keep and bear arms among those fundamental rights necessary to our system of ordered liberty.").

III. Due Process Violations

Under the Due Process Clause of the Fourteenth Amendment, laws must provide clear standards to ensure that individuals have fair notice of prohibited conduct and to prevent arbitrary enforcement. Vague laws offend several important values. First, such laws may trap the innocent by failing to provide fair warning. Second, they delegate basic policy decisions to officials for ad hoc and subjective enforcement, increasing the risk of arbitrary or discriminatory application. Third, when vague laws impact fundamental rights, they operate to inhibit the exercise of those rights.[78] These concerns are directly relevant to the University of Michigan's firearms ban ordinance, which suffers from multiple due process and constitutional deficiencies.

The ordinance imposes a categorical firearms ban across all property "owned, leased, or otherwise controlled by the Regents of the University of Michigan" but fails to provide clear boundaries alerting individuals to where it applies. Given the sprawling nature of the University's campus—which constitutes approximately one-tenth of the city and intermingles with public streets and sidewalks[79]—individuals cannot reliably determine whether they are on or off University property. The configuration of the campus is too broad and nebulous to give notice as to exactly which places are intended to be "gun-free zones." This lack of clarity chills lawful conduct and subjects even those individuals who may happen to know of the law's

78. *See Grayned v. City of Rockford*, 408 U.S. 104, 108-09 (1972).

79. https://govrel.umich.edu/community-relations/factsandfigures/

existence to arbitrary enforcement, violating due process requirements. A Michigan resident who has taken great pains to comply with state law may step over a literally invisible line and find himself subject to prosecution by a state with a firearms preemption statute meant to create consistency throughout the state.[80]

This court has invalidated similar laws where vague provisions created risks of arbitrary enforcement. In *City of Lakewood v. Plain Dealer Publishing Co.*, the Court struck down a licensing scheme that gave officials "unbridled discretion," emphasizing that such discretion posed a significant threat to constitutional freedoms.[81] The University's ordinance suffers from this same flaw by enabling administrators to arbitrarily enforce firearm restrictions, effectively preventing otherwise lawful Second Amendment activity.[82]

In addition to vagueness, the ordinance lacks procedural safeguards against arbitrary or discriminatory enforcement. This Court has consistently underscored that due process "is protection of the individual against arbitrary action of government."[83] The University's policy

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80. MCL 123.1102 (A local unit of government shall not impose special taxation on, enact or enforce any ordinance or regulation pertaining to, or regulate in any other manner the ownership, registration, purchase, sale, transfer, transportation, or possession of pistols, other firearms, or pneumatic guns, ammunition for pistols or other firearms, or components of pistols or other firearms, except as otherwise provided by federal law or a law of this state.)

81. 486 U.S. 750, 757-58 (1988).

82. *See* Pet. App. L.

83. *Wolff v. McDonnell*, 418 U.S. 539, 558 (1974).

provides no objective criteria or meaningful mechanisms for granting exemptions to the prohibition of firearms, leaving decisions entirely to the discretion of unelected administrators. Without clear standards or review mechanisms, individuals are subject to inconsistent or unfair policy application. This absence of procedural protections is particularly concerning where the denial of a fundamental constitutional right is at stake.

The ordinance directly infringes on Second Amendment rights as articulated in *Bruen*, where this Court invalidated New York's "may-issue" licensing regime for requiring applicants to demonstrate a "special need" for self-defense.[84] The Court held that this requirement violated the Fourteenth Amendment by preventing law-abiding citizens with ordinary self-defense needs from exercising their Second Amendment rights.[85] Justice Thomas, writing for the majority, explained that the licensing scheme "violates the Fourteenth Amendment in that it prevents law-abiding citizens with ordinary self-defense needs from exercising their right to keep and bear arms."[86] Similarly, Justice Kavanaugh, joined by Chief Justice Roberts, criticized the regime for granting open-ended discretion to officials, noting that such discretion was "constitutionally problematic because it grants open-ended discretion to licensing officials and authorizes licenses only for those applicants who can show some special need apart from self-defense."[87]

84. 142 S. Ct. 2111, 2131 (2022).

85. *Id.*

86. *Id.*

87. *Id.* at 2161 (Kavanaugh, J., concurring).

The *Wade II* court's assertion that partitioning areas of the University campus is "untenable" further highlights the tension between administrative convenience and constitutional safeguards. This reasoning mirrors objections raised by critics of landmark cases such as *Miranda,*[88] and *Gideon*,[89] who argued that enforcing constitutional rights would impose undue burdens on government actors. This Court, however, has consistently rejected these arguments, affirming that fundamental rights cannot be subordinated to administrative efficiency. Similarly, in *Bruen*, the Court required that restrictions on Second Amendment rights align with the nation's historical tradition of regulation, even if such analysis complicates enforcement.[90] By dismissing the need for rigorous constitutional scrutiny and prioritizing practical concerns, the *Wade II* court improperly elevated administrative simplicity over constitutional protections.

IV. Co-Equal Fundamental Constitutional Rights

The Second Amendment, like the First, enshrines a fundamental right central to preserving individual liberty and must be afforded equal deference in constitutional analysis. The Second Amendment is not to be treated as a second-class right, subject to an inferior tier of judicial scrutiny, or relegated to the margins of constitutional protection.[91]

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88. *Miranda v. Arizona*, 384 U.S. 436 (1966)

89. *Gideon v. Wainwright*, 372 U.S. 335 (1963)

90. *Bruen* 142 S. Ct. at 2130.

91. *See District of Columbia v. Heller*, 554 U.S. 570, 634 (2008).

This Court has consistently recognized the importance of robust analysis when fundamental rights are at stake, whether protecting the freedom of speech or the right to bear arms. Just as the First Amendment shields expression, the Second Amendment guards the right to self-defense. As mentioned, *supra*, in *Marsh v. Alabama*, this Court struck down restrictions on First Amendment activities in a company town, recognizing that completely private ownership of public spaces could not override constitutional protections.[92] Similarly, state-imposed restrictions that transform vast public or quasi-public spaces—such as a university campus—into constitutional voids violate the principle that fundamental rights apply wherever government authority is exercised.

The framework developed in First Amendment jurisprudence provides valuable guidance for assessing government overreach and is instructive in safeguarding Second Amendment protections. In *McCullen v. Coakley*,[93]this Court struck down a Massachusetts law that created fixed buffer zones around abortion clinics, holding that such sweeping restrictions impermissibly burdened speech in traditional public forums. The law, while ostensibly content-neutral, could not survive scrutiny because it imposed burdens on fundamental rights disproportionate to the governmental interest asserted. Similarly, expansive firearm restrictions, such as overly broad sensitive place designations, must fail.

As this Court has long recognized, constitutional rights are not subject to a sliding scale of importance.

92. 326 U.S. 501 (1946)

93. *McCullen v. Coakley*, 573 U.S. 464 (2014)

Just as the First Amendment cannot be confined to "free speech zones,"[94] the Second Amendment cannot be nullified by artificially expanding the definition of "sensitive places" to encompass vast areas where law-abiding citizens reside, work, and travel. To permit such an extension is to render the Second Amendment a second-class right, a result this Court has squarely rejected. The First and Second Amendments are equally integral to the preservation of liberty, and both demand vigilant protection

V. The Question Presented is Exceptionally Important.

In this case, the Michigan courts have ignored the binding precedent of this court, and their error has found favor in some quarters with the *Wade II* opinion being cited in various jurisdictions as noted *supra*. Furthermore, this case presents a convergence of legal issues—issues that, fortunately, this Court has previously addressed. The resolution lies in applying this Court's well-established principles under the Due Process Clause, both substantive and procedural, alongside the history and tradition analysis of the Second Amendment articulated in *New York State Rifle & Pistol Ass'n v. Bruen*, 142 S. Ct. 2111 (2022). While these doctrines have not yet been synthesized in a single case, they collectively provide the guidance necessary to resolve the constitutional questions presented here. This case invites the Court to bring those threads together and reaffirm the robust protections guaranteed by the Second and Fourteenth Amendments.

The unrestrained ability of courts to define and redefine "sensitive places" imperils the coherence of

94. *See, e.g.*, *McCullen v. Coakley*, 573 U.S. 464, 477-78 (2014).

Second Amendment protections. Article X and the Michigan Courts classify the entirety of the university as a "sensitive place" where the Second Amendment does not apply. This Court's guidance is urgently needed to clarify whether this newly-fashioned, lower-court created, "sensitive places doctrine" is an unholy sanctuary, shielding States from scrutiny when they promulgate unconstitutional laws depriving citizens of fundamental rights. This Court's guidance will help ensure that the right to bear arms is not rendered a nullity over broad swaths of the nation.

CONCLUSION

For the foregoing reasons, the Court should grant certiorari.

Respectfully submitted,

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MICHIGAN SUPREME COURT
LANSING, MICHIGAN

October 18, 2024, Decided

SC: 166067
COA: 330555
Ct of Claims: 15-000129-MZ

JOSHUA WADE,

Plaintiff-Appellant,

v.

UNIVERSITY OF MICHIGAN,

Defendant-Appellee.

ORDER

On order of the Court, the application for leave to appeal the July 20, 2023 judgment of the Court of Appeals is considered, and it is DENIED, because we are not persuaded that the questions presented should be reviewed by this Court.

Appendix A

VIVIANO, J. (*dissenting*).

The University of Michigan (the University) enacted a broad campuswide ban of firearms that applies regardless of whether a person has a permit to carry a concealed weapon. The ban's scope raises serious questions concerning the Second Amendment of the United States Constitution. The United States Supreme Court recently determined that, when considering the constitutionality of a firearm restriction, courts must analyze the restriction by looking at America's historical tradition of firearm regulations. *New York State Rifle & Pistol Ass'n, Inc v Bruen*, 597 U.S. 1, 17; 142 S. Ct. 2111; 213 L. Ed. 2d 387 (2022). In this case, the Court of Appeals failed to perform the Second Amendment analysis required by the Supreme Court. Instead, the Court of Appeals misinterpreted Second Amendment caselaw and created its own complex, multifactor test that is not grounded in the text of the Second Amendment or the Supreme Court's caselaw interpreting it. By denying leave to appeal, the majority simply looks the other way. As a result, plaintiff's colorable claims that the University violated his Second Amendment right to keep and bear arms have never been properly analyzed by any court. I would grant plaintiff's application for leave to appeal in order to perform the correct legal analysis and to provide clarity following *Bruen*.

I. FACTS AND PROCEDURAL HISTORY

In 2001, the University adopted Article X, which bans the possession of firearms on its campus or "any property owned, leased or otherwise controlled" by the University.

That prohibition applies to all persons regardless of whether they possess a concealed-carry permit. Plaintiff unsuccessfully applied for a waiver under Article X.[1] The record indicates that plaintiff does not work, reside, or study at the University and has a concealed-carry permit. Plaintiff challenged Article X's ban on firearms as a violation of the Second Amendment. The University moved for summary disposition under MCR 2.116(C)(8), and the Court of Claims granted the University's motion.

The Court of Appeals affirmed in a split decision, finding the regulation to be constitutional. *Wade v Univ of Mich*, 320 Mich App 1, 22 905 N.W.2d 439 (2017) (*Wade I*), vacated 510 Mich 1025, 981 N.W.2d 56 (2022). Plaintiff applied for leave to appeal in this Court, and we held this case in abeyance for two cases pending in this Court.[2] *Wade v Univ of Mich*, 904 NW2d 422 (Mich, 2017). After these cases were decided, this Court again held this case in abeyance pending the outcome of *New York State Rifle & Pistol Ass'n, Inc v City of New York*, 590 U.S. 336; 140 S. Ct. 1525; 206 L. Ed. 2d 798 (2020). *Wade v Univ of Mich*, 926 NW2d 806 (Mich, 2019). After the Supreme Court decided *New York State Rifle*, we granted leave to

1. Article X, § (4)(1)(f) exempts a person from Article X's prohibitions "when the Director of the University's Department of Public Safety has waived the prohibition based on extraordinary circumstances."

2. These two cases were *Mich Gun Owners, Inc v Ann Arbor Pub Sch* (Docket No. 155196) and *Mich Open Carry, Inc v Clio Area Sch Dist* (Docket No. 155204). Both cases were decided in *Mich Gun Owners, Inc v Ann Arbor Pub Sch*, 502 Mich 695, 918 N.W.2d 756 (2018).

hear this case. *Wade v Univ of Mich*, 506 Mich 951, 950 N.W.2d 55 (2020). But before argument, the Supreme Court decided *Bruen*, 597 U.S. at 17, which rejected the framework employed by the Court of Appeals in its initial decision. We remanded to the Court of Appeals for reconsideration in light of the Supreme Court's decision in *Bruen*. *Wade v Univ of Mich*, 510 Mich 1025, 981 N.W.2d 56 (2022). I concurred and recommended that the Court of Appeals consider (1) whether there were any analogous firearm regulations on university and college campuses in the relevant historical period and (2) whether large modern college campuses, like the University's, are "so dispersed and multifaceted that a total campus ban would now cover areas that historically would not have had any restrictions[.]" *Id.* at 1028 (VIVIANO, J., concurring). On remand, the Court of Appeals again affirmed the Court of Claims, holding that Article X is constitutional. *Wade v Univ of Mich (On Remand)*, ___ Mich App ___, ___, 2023 Mich. App. LEXIS 5143 (July 20, 2023) (Docket No. 330555) (*Wade II*); slip op at 14.

II. *BRUEN* AND THE SECOND AMENDMENT

The Supreme Court's decisions in *Dist of Columbia v Heller*, 554 U.S. 570; 128 S. Ct. 2783; 171 L. Ed. 2d 637 (2008), and *McDonald v Chicago*, 561 U.S. 742; 130 S. Ct. 3020; 177 L. Ed. 2d 894 (2010), established an individual right to firearms for self-defense and struck down laws prohibiting the possession and use of firearms in the home. Following the *Heller* and *McDonald* decisions, many courts, including our Court of Appeals, developed a two-step framework for analyzing Second Amendment disputes

that combines history with means-end scrutiny. *Bruen*, 597 U.S. at 17; *Wade*, 320 Mich App at 13. "History" refers to the method of examining the Second Amendment's text "as informed by history." *Bruen*, 597 U.S. at 19. "[M]eans-end scrutiny" examines whether a firearms regulation is "'substantially related to the achievement of an important government interest.'" *Id.* (citation omitted). In *Bruen*, the Supreme Court rejected the framework's means-end scrutiny analysis, stating that courts may conclude that a person's conduct "falls outside the Second Amendment's 'unqualified command'" only if the firearm regulation is consistent with America's historical tradition of firearm regulation. *Id.*, quoting *Konigsberg v State Bar of Cal*, 366 U.S. 36, 50; 81 S. Ct. 997; 6 L. Ed. 2d 105 n 10 (1961). This requires the government to "affirmatively prove that its firearms regulation is part of the historical tradition that delimits the outer bounds of the right to keep and bear arms." *Id.* at 19. As part of this analysis, courts may consider, if applicable, whether the disputed laws prohibit the carrying of firearms in "sensitive places," which are locations where firearm regulations historically have been recognized as consistent with the Second Amendment. See *id.* at 30.

Therefore, when analyzing claims under the Second Amendment, courts must "ascertain whether the new law is 'relevantly similar' to laws that our tradition is understood to permit, 'apply[ing] faithfully the balance struck by the founding generation to modern circumstances.'" *United States v Rahimi*, 602 U.S. 1, 7, 144 S. Ct. 1889, 219 L. Ed. 2d 351, 363 (2024), quoting *Bruen*, 597 U.S. at 29 & n 7 (alteration in *Rahimi*). "Why and how the regulation

burdens the right are central to this inquiry." *Rahimi*, 602 U.S. at 7, citing *Bruen*, 597 U.S. at 29. For example, if modern firearms laws resemble laws in existence at the time of the founding and were imposed for reasons similar to those underlying founding-era laws, this would indicate that the contemporary laws are constitutional. *Rahimi*, 602 U.S. at 7. A contemporary firearm restriction does not need to be a "dead ringer" or "historical twin" to a founding-era regulation. *Id.* at 8, quoting *Bruen*, 597 U.S. at 30 (quotation marks omitted). However, even if a law regulates firearms for a permissible reason, it may not be constitutional "if it does so to an extent beyond what was done at the founding." *Rahimi*, 602 U.S. at 7.

III. THE COURT OF APPEALS MISINTERPRETED THE CASELAW

In *Wade II*, the Court of Appeals disregarded the analysis required by the United States Supreme Court for Second Amendment disputes and invented a confusing four-factor test that bears almost no resemblance to the Supreme Court's test. On remand, the Court of Appeals set forth the following factors for resolving Second Amendment challenges:

> 1) Courts must first consider whether the Second Amendment presumptively protects the conduct at issue. If not, the inquiry ends and the regulation does not violate the Second Amendment.

> 2) If the conduct at issue is presumptively protected, courts must then consider whether the regulation at issue involves a traditional "sensitive place." If so, then it is settled that a prohibition on arms carrying is consistent with the Second Amendment.
>
> 3) If the regulation does not involve a traditional "sensitive place," courts can use historical analogies to determine whether the regulation prohibits the carry of firearms in *a new and analogous* "sensitive place." If the regulation involves a new "sensitive place," then the regulation does not violate the Second Amendment.
>
> 4) If the regulation does not involve a sensitive place, then courts must consider whether the government has demonstrated that the regulation is consistent with this Nation's historical tradition of firearms regulations. This inquiry will often involve reasoning by analogy to consider whether regulations are relevantly similar under the Second Amendment. If the case involves "unprecedented societal concerns or dramatic technological changes," then a "more nuanced approach" may be required. [*Wade II*, __ Mich App at __; 2023 Mich. App. LEXIS 5143 at *20 (citations omitted).]

The first factor accurately reflects the principle that the Second Amendment presumptively protects a citizen's

right to keep and bear arms. See *Bruen*, 597 U.S. at 19, 32. On the basis of this factor, the Court of Appeals concluded that plaintiff is a "law-abiding, adult citizen" who enjoys Second Amendment protection. *Wade II*, __ Mich App at __; 2023 Mich. App. LEXIS 5143 at *19. Although the first factor accords with *Bruen*, the remaining factors do not accord with the analysis required by the Supreme Court.

Concerning the second factor, the Court of Appeals concluded that the University is a school and a sensitive place and that Article X is constitutional because regulations forbidding the carrying of firearms in sensitive places are consistent with the Second Amendment. *Wade II*, ___ Mich App at ___; 2023 Mich. App. LEXIS 5143 at *29. The Court of Appeals also stated that courts may only employ historical analogies when a firearm regulation does not have a direct historical precedent. See *id.* at __; 2023 Mich. App. LEXIS 5143, slip op at 5, 10.

These conclusions represent a stilted misreading of the Supreme Court's precedent. To begin, the Supreme Court has articulated nothing like the multifactor test concocted by the Court of Appeals. Particularly troubling is the Court of Appeals' treatment of "sensitive places." In *Heller*, the Supreme Court stated in dicta that its holding did not call into question "longstanding" laws that forbid "the carrying of firearms in *sensitive places* such as *schools* and government buildings . . . ." *Heller*, 554 U.S. at 626 (emphasis added). In *Bruen*, the Supreme Court expressly declined to "comprehensively define 'sensitive places,'" although, interestingly, it rejected an approach that would extend the concept across large areas, such

as the island of Manhattan. *Bruen*, 597 U.S. at 30-31. Arguably, the Court of Appeals' conclusion that the entire campus of the University of Michigan—spanning one-tenth of Ann Arbor—does what *Bruen* rejected and extends sensitive places across large swaths of territory.

The Court of Appeals' analytical problems run deeper still. The core error is the wooden application of the Supreme Court's discussion of sensitive places. In *Wade I*, the Court of Appeals' holding rested largely on the proposition that universities were presently and historically understood to be "schools." *Wade I*, 320 Mich App at 14. Consequently, without more, the Court concluded that they were sensitive places. *Id.* As I noted, however, it did not appear that the Supreme Court intended to uphold any and all gun regulations in a location as long as the place could somehow be understood as a "school." *Wade*, 510 Mich at 1026 (VIVIANO, J., concurring). Nor did it appear that the Court meant to include universities within the ambit of sensitive places. *Id.*

In any event, *Bruen* makes it clear that sensitive places are those locations where firearms have been historically regulated. This conclusion reflects *Bruen*'s general text-and-history approach to Second Amendment rights, under which courts must "examine any historical analogues of the modern regulation to determine how these types of regulations were viewed." *Id.* As noted above, in so holding, the Court rejected a pragmatic balancing that considered a court's perception of the need for a certain regulation. *Bruen*, 597 U.S. at 17. Instead, the required analysis is historical, with due consideration

for the historical rationales of regulations burdening the right to bear firearms. *Rahimi*, 602 U.S. at 4. The Court did not exempt sensitive places from this historical approach. Rather, in *Bruen*, it described sensitive places as those locations where "'longstanding' 'laws forbidding the carrying of firearms'" existed. *Bruen*, 597 U.S. at 30 (citation omitted). Put differently, a sensitive place is one in which firearms have historically been forbidden. In determining whether a location is a sensitive place, the ultimate inquiry would therefore necessarily entail a historical analysis of whether the location is the type of place in which firearms have been banned. Or, as the Supreme Court noted, the location might be relevantly analogous to such a location. *Id.* At bottom, however, the question is a historical one. And as the Supreme Court has never dealt with a sensitive place, let alone indicated that a university qualifies as such, there can be no shortcuts to the historical work needed to answer the question.

Yet the Court of Appeals tried to take a shortcut here. As can be seen from its multifactor test, the Court suggested that any historical analysis is unnecessary if a location is a sensitive place. *Wade II*, Mich App at ; 2023 Mich. App. LEXIS 5143 at *13. This completely ignores that sensitive places are those locations with historical regulations. And in applying its newly fabricated test, the Court once again offered little more than an analysis of whether universities are schools, this time relying solely on modern definitions of schools. *Id.*

By denying leave and letting this flawed analysis stand, the majority today leaves an important question—

the near total ban of firearms on a large section of Ann Arbor—lacking proper consideration by the courts of this state. Under a proper analysis, there is significant reason to question whether the Court of Appeals reached the correct outcome, i.e., that a total prohibition on firearms is permissible under the Second Amendment. As I noted before, my own review of historical gun restrictions on campuses and the secondary literature on the topic has not uncovered any tradition of *complete* firearm bans, only partial and targeted prohibitions, e.g., regulations on the discharge of firearms on campus. *Wade*, 510 Mich at 1026-1027.[3]

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3. Most courts that have recently addressed these regulations have recognized that they do not support a total prohibition of firearms on university campuses. See *United States v Metcalf*, opinion and order of the United States District Court for the District of Montana, issued Jan 31, 2024 (Case No. CR 23-103-BLG-SPW), 2024 U.S. Dist. LEXIS 17275, *18 ("The Court is unconvinced by evidence of these early university bans because they were not regulations on carrying weapons in "sensitive places." Rather, they banned certain persons—students—from carrying weapons. The University of Georgia restriction banned students from carrying weapons anywhere. Neither the University of Virginia ban nor the University of North Carolina ban applied to faculty members or to members of the community, so they, too, only banned certain persons from carrying weapons."); *United States v Allam*, 677 F Supp 3d 545, 572 (ED Tex, 2023) ("In any event, although these enactments occurred close to our Nation's founding, the prohibitions applied to students only, and, thus, the university campus 'was not a place where arms were forbidden to responsible adults,' much less within 1,000 feet of campus. Kopel & Greenlee, [*The "Sensitive Places" Doctrine: Locational Limits on the Right to Bear Arms*, 13 Charleston L Rev 205, 252 (2018)]. Moreover, three university regulations that applied only to students cannot be said to be representative of our

Nation's tradition of firearms regulation."). The Court of Appeals relied on, among other things, two recent out-of-state federal cases for the proposition that a university is a college campus. *United States v Power*, unpublished memorandum opinion of the United States District Court for the District of Maryland, issued January 9, 2023 (Case No. 20-po-331-GLS), 2023 U.S. Dist. LEXIS 4226; *United States v Robertson*, unpublished memorandum opinion of the United States District Court for the District of Maryland, issued January 9, 2023 (Case No. 22-po-867-GLS), 2023 U.S. Dist. LEXIS 4998. These courts were less thorough in their analysis, however. Neither case addressed college or university campuses; instead, both examined a nonschool government location. While the court in both cases did analogize the location to universities, the court addressed only three historical regulations, none of which totally prohibited firearms on campus. *Power*, 2023 U.S. Dist. LEXIS 4226, unpub op at 12; *Robertson*, 2023 U.S. Dist. LEXIS 4998, unpub op at 12. In a third case cited by the Court of Appeals, the decision upheld a prohibition on carrying concealed weapons, not a total ban; in doing so, the court cited various additional historical examples of limited prohibitions on student possession of firearms and the carrying of firearms in school *rooms*, not across entire campuses. *Antonyuk v Hochul*, 635 F Supp 3d 111, 142 & n 33 (ND NY, 2022). Tellingly, too, all these decisions at least attempted to do the historical analysis that the Court of Appeals said was unnecessary here.

Even worse, the Court of Appeals relied on an article cited by *Bruen*, stating that "the authors presume that *Heller*'s reference to 'schools' included universities." *Wade II*, ___ Mich App at ___; 2023 Mich. App. LEXIS 5143 at *24, citing *The "Sensitive Places" Doctrine*, 13 Charleston L Rev at 251-252. But the Court of Appeals completely misrepresented the thrust of the article, which carefully goes through founding-era regulations of firearms on campuses and concludes:

> None of the above laws provides support for *Heller*'s designation of "schools" as sensitive places

The limited nature of these historical regulations is particularly important after the Supreme Court's most recent decision on the Second Amendment, *Rahimi*. There, the Court noted that "[w]hy and how the regulation burdens the right are central to [the historical] inquiry." *Rahimi*, 602 U.S. at 7. "Even when a law regulates arms-bearing for a permissible reason, . . . it may not be compatible with the right if it does so to an extent beyond what was done at the founding." *Id.* The University's prohibition here arguably goes far beyond the narrower restrictions at the founding. Moreover, even if these limited regulations could be thought to bear some resemblance to the University's campuswide ban here, it should be questioned whether, given the vast extent of the University's campus and its varied uses (far exceeding

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> where arms carrying may be banned. Students at the two New Jersey schools were allowed to carry on campus, although they were deprived of nearby handgun ranges. Students in Mississippi could carry arms as long as they did so openly. The riotous students at the University of Virginia were wholly disarmed, but the faculty and staff remained as well-armed as ever. Whatever one thinks about the collective punishment of the U. Va. students, the campus was not a place where arms were forbidden to responsible adults. [*Id.* at 252.]

In other words, as noted above, the article stands for the proposition that historical regulations on campuses do not support the regulation upheld by the Court of Appeals here. Even to the extent the article assumes that universities are schools, the authors were writing before *Bruen*, which indicated that sensitive places are not mere abstract categories of locations but places of the sort where historical regulations existed.

what founding-era campuses encompassed), the historical regulations are truly analogous to the prohibition at issue. *Wade*, 510 Mich at 1027-1028 (VIVIANO, J., concurring).

It seems doubtful that after establishing a text-and-tradition approach to the Second Amendment, the Supreme Court would uphold total bans on firearms in locations that historically never had such prohibitions. Indeed, such a regulation would not be supported by text or tradition, so what reasoning could support it? A rationale grounded in the pragmatic balancing of interests was rejected in *Bruen*, as discussed above. I therefore struggle to see how the Court of Appeals' framework here, which eschews text and tradition altogether, can be justified under the Supreme Court's precedent.

IV. CONCLUSION

For these reasons, I conclude that the Court of Appeals' application of *Bruen* was flawed. I would grant leave to appeal to consider this significant case.

ZAHRA, J., joins the statement of VIVIANO, J.

BERNSTEIN, J., did not participate.

APPENDIX B — ON REMAND OPINION, STATE OF MICHIGAN COURT OF APPEALS, *WADE V. UNIVERSITY OF MICHIGAN*, NO. 330555 (JULY 20, 2023)

STATE OF MICHIGAN
COURT OF APPEALS

No. 33055
Court of Claims
LC No. 15-000129-MZ

JOSHUA WADE,

Plaintiff-Appellant,

v.

UNIVERSITY OF MICHIGAN,

Defendant-Appellee.

Filed July 20, 2023

ON REMAND

Before: CAVANAGH, P.J., and SAWYER and SERVITTO, JJ.

PER CURIAM.

This matter is on remand from the Michigan Supreme Court for consideration in light of *NY State Rifle & Pistol Ass'n, Inc v Bruen*, __ U.S. __, 142 S Ct 2111, 213 L Ed

2d 387 (2022) (*Bruen*).[1] As explained in this Court's prior opinion, plaintiff, Joshua Wade, appeals as of right the order granting summary disposition in favor of defendant, University of Michigan (University), "and dismissing plaintiff's complaint seeking declaratory and injunctive relief from a University ordinance that prohibits firearms on any University property." *Wade v Univ of Mich*, 320 Mich App 1, 5, 905 N.W.2d 439 (2017), vacated and remanded __ Mich. __, 981 N.W.2d 56 (2022). We continue to affirm.

I. BACKGROUND

A. THE ORDINANCE

The ordinance at issue is titled "An Ordinance to Regulate Parking and Traffic and to Regulate the Use and Protection of the Buildings and Property of the Regents of the University of Michigan." When plaintiff's lawsuit was filed in 2015, Article X, titled "Weapons," provided:

> **Section 1. Scope of Article X**
>
> Article X applies to all property owned, leased or otherwise controlled by the Regents of the University of MIchigan [sic] and applies regardless of whether the Individual has a concealed weapons permit or is otherwise authorized by law to possess, discharge, or use any device referenced below.

1. *Wade v Univ. of Mich.*, __ Mich. __, 981 N.W.2d 56 (2022).

Appendix B

Section 2. Possession of Firearms, Dangerous Weapons and Knives

Except as otherwise provided in Section 4, no person shall, while on any property owned, leased, or otherwise controlled by the Regents of the University of Michigan: (1) possess any firearm or any other dangerous weapon as defined in or interpreted under Michigan law or (2) wear on his or her person or carry in his or her clothing any knife, sword or machete having a blade longer than four (4) inches, or, in the case of knife with a mechanism to lock the blade in place when open, longer than three (3) inches.

Section 3. Discharge or Use of Firearms, Dangerous Weapons and Knives

Except as otherwise provided in Section 4, no person shall discharge or otherwise use any device listed in the preceding section on any property owned, leased, or otherwise controlled by the Regents of the University of Michigan.

Section 4. *Exceptions*

(1) Except to the extent regulated under Subparagraph (2), the prohibitions in this Article X do not apply:

(a) to University employees who are authorized to possess and/or use such a device . . . ;

(b) to non-University law enforcement officers of legally established law enforcement agencies . . . ;

(c) when someone possess [sic] or uses such a device as part of a military or similar uniform or costume In [sic] connection with a public ceremony . . . ;

(d) when someone possesses or uses such a device in connection with a regularly scheduled educational, recreational or training program authorized by the University;

(e) when someone possess [sic] or uses such a device for recreational hunting on property . . . ; or

(f) when the Director of the University's Department of Public Safety has waived the prohibition based on extraordinary circumstances. Any such waiver must be in writing and must define its scope and duration.

(2) The Director of the Department of Public Safety may impose restrictions upon individuals who are otherwise authorized to possess or use such a device pursuant to

> Subsection (1) when the Director determines that such restrictions are appropriate under the circumstances.
>
> **Section 5. Violation Penalty**
>
> A person who violates this Article X is guilty of a misdemeanor, and upon conviction, punishable by imprisonment for not less than ten (10) days and no more than sixty (60) days, or by a fine of not more than fifty dollars ($50.00) or both. [*Wade*, 320 Mich App at 6-7, 905 N.W.2d 439.[2]]

B. PROCEDURAL HISTORY

After plaintiff's request for a waiver under § (4)(1)(f) of Article X was denied, he filed this two-count action in the Court of Claims alleging that Article X violated the Second Amendment and was preempted by MCL 123.1102 (prohibiting local units of government from establishing their own limitations on the purchase, sale, or possession of firearms). *Wade*, 320 Mich App at 7-8, 905 N.W.2d 439. The University moved for summary disposition under MCR 2.116(C)(8), arguing that the Second Amendment does not reach "sensitive places," such as schools. And even if the Second Amendment applied, the University argued, Article X was constitutional because it was substantially

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2. The University notes that Article X has been revised, but the later revisions do not materially change the ordinance for purposes of plaintiff's claim.

related to important governmental interests; Article X did not violate the Michigan Constitution; and MCL 123.1102 did not apply to the University. *Id.* at 8, 905 N.W.2d 439. The Court of Claims agreed and granted the University's motion, finding that the University is a school, and thus, a sensitive place; therefore, the Second Amendment did not apply. The Court of Claims also concluded that MCL 123.1102 did not apply to the University. *Id.* at 9-10, 905 N.W.2d 439.

This Court affirmed, concluding that during the historically relevant period universities were understood to be schools, and schools are sensitive places to which Second Amendment protections do not extend; thus, Article X did not burden conduct protected by the Second Amendment and plaintiff failed to state a cognizable Second Amendment claim. *Wade*, 320 Mich App at 15, 905 N.W.2d 439. This Court also concluded that MCL 123.1102 is not applicable to the University, and thus, does not preempt Article X. *Id.* at 15-22, 905 N.W.2d 439. Accordingly, the Court of Claims properly granted summary disposition under MCR 2.116(C)(8). *Id.* at 22, 905 N.W.2d 439. In a dissenting opinion, Judge SAWYER opined that it was not necessary to reach the constitutional issue and that this case could be resolved on the basis of preemption. *Id.* at 22, 905 N.W.2d 439 (SAWYER, J., dissenting). Judge SAWYER would have concluded that the Legislature preempted the regulation of the field of firearm possession and the University exceeded its authority by enacting Article X. *Id.* at 25-28, 905 N.W.2d 439.

C. MICHIGAN SUPREME COURT REMAND ORDER

On July 18, 2017, plaintiff applied for leave to appeal. Our Supreme Court twice held the application in abeyance—on December 20, 2017 and May 22, 2019. On November 6, 2020, our Supreme Court granted the application, specifically directing the parties to brief three issues related to the Second Amendment. On November 10, 2022, our Supreme Court entered an order vacating its November 6, 2020 order, vacating this Court's opinion, and remanding for consideration in light of *Bruen*.[3]

Justice VIVIANO issued a concurring statement in which he offered his thoughts about how *Bruen* might apply to this case. *Wade*, __ Mich. at __, 981 N.W.2d at 56 (VIVIANO, J., concurring). He opined that, in *Bruen*, the United States Supreme Court rejected the two-part inquiry applied by this Court in its prior opinion and instead replaced it with a test that required courts to examine any historical analogues of the modern regulation. *Id.* at __, 981 N.W.2d at 57. Justice VIVIANO set forth two historical investigations that he believed would need to be done to determine whether Article X is constitutional. First, this Court should consider "whether there were any analogous

3. Because our Supreme Court only remanded for consideration in light of *Bruen*, which relates to the Second Amendment issue, the preemption issue is not before this Court on remand. The preemption issue was resolved in *Mich. Gun Owners, Inc. v Ann Arbor Pub. Sch.*, 502 Mich. 695, 700-701, 918 N.W.2d 756 (2018), in which the Court held that the Legislature had not preempted school districts' regulation of firearms.

firearm regulations on university and college campuses in the relevant historical period." *Id.* Second, this Court should consider whether large modern campuses, like the University's, are "so dispersed and multifaceted that a total campus ban would now cover areas that historically would not have had any restrictions[.]" *Id.* at __; 981 N.W.2d at 58. Justice VIVIANO offered in response to those inquiries that he found no campus-wide ban generally prohibiting open or concealed carry during the colonial period and that "large, modern university campuses differ from their historical antecedents." *Id.* at __; 981 N.W.2d at 57-59.

D. SUPPLEMENTAL BRIEFS ON REMAND

On remand, this Court granted the parties' joint motion to file supplemental briefs. *Wade v Univ of Mich*, unpublished order of the Court of Appeals, entered January 12, 2023 (Docket No. 330555).

1. PLAINTIFF'S SUPPLEMENTAL BRIEF ON REMAND

In his supplemental brief, plaintiff argues that, under the *Bruen* framework, his proposed conduct was to openly carry a lawfully-owned pistol on University property, which is presumptively protected by the Second Amendment. Next, he argues that the University could not fulfill its burden to establish that Article X is consistent with this Nation's tradition of firearm regulation because history shows that, in all relevant periods, firearm regulations analogous to Article X were

inconsistent with the Second Amendment. The Court in *Bruen* expressed its preference for the interpretation of the Second Amendment following its adoption in 1791, and to a slightly lesser degree, following the adoption of the Fourteenth Amendment in 1868.

With regard to the "sensitive places" analysis, plaintiff argues that the Michigan Legislature has distinguished between schools and universities, and a large university has more in common with a city than a school; therefore, the University cannot be considered a "school" for purposes of identifying it as a "sensitive place." Plaintiff argues that the "sensitive places" dicta in *Dist of Columbia v Heller*, 554 U.S. 570, 128 S Ct 2783, 171 L Ed 2d 637 (2008), was not intended to encompass public universities. According to plaintiff, while some parts of the University's campus may be "sensitive areas," the entire campus is not.

Plaintiff contends that colleges in the colonial period often prohibited students from hunting, but did not totally prohibit firearms possession, and the regulations were limited to students. Plaintiff further argues that college campuses have changed in the past 200 years and the University is more than a campus and more analogous to a local municipality. Even when riots occurred on campus in the 1800s, the University never restricted firearm ownership. The geographic scope of the University's campus causes Article X to extend far beyond sensitive places. Finally, plaintiff argues that while the University's presumed justification for Article X is public safety, it is highly debatable whether gun regulations enhance safety.

Appendix B

2. THE UNIVERSITY'S SUPPLEMENTAL BRIEF ON REMAND

In its supplemental brief, the University argues that *Bruen* affirmed and strengthened the "sensitive places" doctrine. Article X is valid because the inapplicability of the Second Amendment to schools and government buildings is settled. The University qualified as a "school" under Founding and Reconstruction era definitions, as other courts have similarly concluded. The way that the Michigan Legislature used the term "school" in 2001 is not relevant, nor is what Justice SCALIA intended in *Heller*.

The University also argues that historical analysis shows a longstanding tradition of firearm prohibitions at colleges and universities. It is unnecessary to resolve whether this Court should rely on the right to bear arms in 1791 or 1868 because, using either time period, the result is the same. If this Court chooses to decide which timeframe governs, then 1868 is the proper focus because it is when the Fourteenth Amendment was ratified and only the Fourteenth Amendment creates a federal right to bear arms applicable to the states. Several federal courts have held that 1868 is the proper timeframe to use to evaluate state and local laws.

According to the University, while plaintiff argues that historical firearm policies were not comprehensive bans like Article X, plaintiff's argument ignores the fact that many general state laws forbid the possession of firearms in educational institutions broadly. Thus, there is a longstanding tradition of forbidding firearms within

educational institutions. Plaintiff also relies heavily on Justice VIVIANO's concurrence, but the question posed by Justice VIVIANO is not the correct inquiry and his suggested analysis is inconsistent with *Bruen*. *Bruen* only endorsed the use of analogies when there is no direct historical precedent, but there is in this case. Further, under *Bruen*, it is not necessary to find a "twin" or "dead ringer." *Bruen* expressly stated that the inapplicability of the Second Amendment to sensitive places is settled. Finally, Justice VIVIANO's concurrence rests on the incorrect premise that colleges and universities are inherently larger and more complex institutions than K-12 schools. All sensitive places abut other property and that proximity alone cannot render a firearm prohibition invalid.

Finally, the University argues that *Bruen* acknowledged that a strict historical approach will not work because the regulation in question seeks to address an issue or development that was not present earlier in our history. The Court identified two potential metrics to be used—how the compared regulations burden a citizen's right and why they do so. Mass shootings in schools were unknown to the Founders or at the time of Reconstruction. Technological changes have also increased the lethal capacity of firearms. Two obvious analogies would be other government buildings and K-12 schools. Laws have traditionally banned firearms in those places. For schools, the reason is the presence of children, who are uniquely vulnerable. Colleges also have a large population of minors, and young adults are also uniquely vulnerable. In addition, the presence of firearms on University property works against the University's important goals

of preparing students for citizenship and enhancing the free flow of information and ideas.

3. PLAINTIFF'S SUPPLEMENTAL REPLY BRIEF ON REMAND

In reply, plaintiff argues that the University must prove that the historical analogue of the place affected by the firearm prohibition is a "sensitive place." Article X extends far beyond the University's buildings that may constitute a "school" or "government building." The relevant analogue is firearm regulations affecting an entire community. City-wide regulations are unconstitutional. The University's property does not merely abut other properties, but is intertwined with the city of Ann Arbor. The lack of a similar historical regulation is relevant evidence that the challenged regulation is inconsistent with the Second Amendment, and the "societal problems" addressed by Article X have existed since the 18th and 19th centuries. The correct period to consider is 1791 because the Fourteenth Amendment did not create any new rights. *Bruen*'s "nuanced" approach does not permit the University to justify Article X on the basis of present-day rationale. Mass shootings, including at schools, are not new and the first known campus shooting occurred in 1840. Guns increase public safety and the University's concerns about violence, suicide, alcohol abuse, and risky behavior do not apply to plaintiff. Similarly, concerns regarding the free flow of information and ideas do not apply at the places of plaintiff's proposed conduct.

4. AMICI CURIAE BRIEFS ON REMAND

Several amici curiae have filed briefs on remand. Briefs in support of the University include those from The Michigan Attorney General; Brady, Team Enough, and American Association of University Professors (Brady); and Giffords Law Center to Prevent Gun Violence, The Campaign to Keep Guns Off Campus, and Four Students Demand Action Chapters in Michigan (Giffords). Briefs in support of plaintiff include those from Gun Owners of America, Inc. and Gun Owners Foundation (GOA).

II. ANALYSIS

Plaintiff contends that Article X violates the Second Amendment under *Bruen*. We disagree.

A. STANDARD OF REVIEW

We review de novo a trial court's decision on a motion for summary brought under MCR 2.116(C)(8) to determine whether the opposing party failed to state a claim upon which relief can be granted. *Charter Twp. of Pittsfield v Washtenaw Co. Treasurer*, 338 Mich App 440, 448, 980 N.W.2d 119 (2021). This Court also reviews de novo questions of constitutional law. *Ass'n of Home Help Care Agencies v Dep't of Health & Human Servs.*, 334 Mich App 674, 684-685, 965 N.W.2d 707 (2020).

B. APPLICABLE LAW

The Second Amendment provides: "A well regulated Militia, being necessary to the security of a free State,

the right of the people to keep and bear Arms, shall not be infringed." U.S. Const., Am. II. In *Heller*, 554 U.S. at 635, 128 S.Ct. 2783, the Court struck down as unconstitutional the District of Columbia's complete ban on possession of handguns in the home and the requirement than any lawful firearm be disassembled or bound by a trigger lock at all times. Before addressing the ban, the Court noted:

> Although we do not undertake an exhaustive historical analysis today of the full scope of the Second Amendment, nothing in our opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons and the mentally ill, or laws forbidding the carrying of firearms in sensitive places such as schools and government buildings, or laws imposing conditions and qualifications on the commercial sale of arms. [*Id.* at 626-627, 128 S Ct 2783.]

Two years later, in *McDonald v City of Chicago, Ill*, 561 U.S. 742, 750, 130 S Ct 3020, 177 L Ed 2d 894 (2010), the Court held that the Second Amendment right was fully applicable to the states. The Supreme Court reiterated what it had stated in *Heller* regarding "sensitive places":

> We made it clear in *Heller* that our holding did not cast doubt on such longstanding regulatory measures as "prohibitions on the possession of firearms by felons and the mentally ill," "laws forbidding the carrying of firearms in sensitive places such as schools and government

> buildings, or laws imposing conditions and qualifications on the commercial sale of arms." [*Id.* at 786, 130 S Ct 3020 (citation omitted).]

Following these decisions, lower courts applied a two-part test to Second Amendment challenges. As this Court explained in its prior opinion:

> The threshold inquiry is whether the challenged regulation "regulates conduct that falls within the scope of the Second Amendment right as historically understood." If the regulated conduct has historically been outside the scope of Second Amendment protection, the activity is not protected and no further analysis is required. If, however, the challenged conduct falls within the scope of the Second Amendment, an intermediate level of constitutional scrutiny is applicable and requires the showing of "a reasonable fit between the asserted interest or objective and the burden placed on an individual's Second Amendment right." [*Wade*, 320 Mich App at 13, 905 N.W.2d 439 (citations omitted).]

In *Bruen*, __ US at __; 142 S Ct at 2122, the United States Supreme Court held "that the Second and Fourteenth Amendments protect an individual's right to carry a handgun for self-defense outside the home." The Court struck down New York's licensing regime for the carry of handguns publicly for self-defense. *Id.* at __; 142 S Ct at 2122. Before considering the New York law, the

Court addressed the proper framework for analyzing Second Amendment challenges. *Id.* at __; 142 S Ct at 2125-2126. The Court declined to adopt the two-part approach adopted by courts following *Heller* and *McDonald*. *Id.* at __; 142 S Ct at 2126. Rather, the Court held:

> [W]hen the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct. To justify its regulation, the government may not simply posit that the regulation promotes an important interest. Rather, the government must demonstrate that the regulation is consistent with this Nation's historical tradition of firearm regulation. Only if a firearm regulation is consistent with this Nation's historical tradition may a court conclude that the individual's conduct falls outside the Second Amendment's "unqualified command." [*Id.* at __; 142 S Ct at 2126 (citation omitted).]

The Court explained that this test "requires courts to assess whether modern firearms regulations are consistent with the Second Amendment's text and historical understanding." *Id.* at __; 142 S Ct at 2131. The Court stated:

> In some cases, that inquiry will be fairly straightforward. For instance, when a challenged regulation addresses a general societal problem that has persisted since the 18th century, the lack of a distinctly similar

> historical regulation addressing that problem is relevant evidence that the challenged regulation is inconsistent with the Second Amendment. Likewise, if earlier generations addressed the societal problem, but did so through materially different means, that also could be evidence that a modern regulation is unconstitutional. And if some jurisdictions actually attempted to enact analogous regulations during this timeframe, but those proposals were rejected on constitutional grounds, that rejection surely would provide some probative evidence of unconstitutionality. [*Id.* at __; 142 S Ct at 2131.]

The Court further noted:

> While the historical analogies here and in *Heller* are relatively simple to draw, other cases implicating unprecedented societal concerns or dramatic technological changes may require a more nuanced approach. The regulatory challenges posed by firearms today are not always the same as those that preoccupied the Founders in 1791 or the Reconstruction generation in 1868. Fortunately, the Founders created a Constitution—and a Second Amendment—"intended to endure for ages to come, and consequently, to be adapted to the various crises of human affairs." Although its meaning is fixed according to the understandings of those who ratified it, the Constitution can, and must, apply to

> circumstances beyond those the Founders specifically anticipated. [*Id.* at __; 142 S Ct at 2132 (citations omitted).]

In determining whether a historical analogue exists, the Court stated that *Heller* and *McDonald* pointed toward at least two metrics to be used to determine whether regulations are relevantly similar—"how and why the regulations burden a law-abiding citizen's right to armed self-defense." *Bruen*, __ US at __; 142 S Ct at 2132-2133. When engaging in this analogical inquiry, the central considerations are "whether modern and historical regulations impose a comparable burden on the right of armed self-defense and whether that burden is comparably justified . . . ." *Id.* at __; 142 S Ct at 2133. The Court further explained:

> To be clear, analogical reasoning under the Second Amendment is neither a regulatory straightjacket nor a regulatory blank check. On the one hand, courts should not "uphold every modern law that remotely resembles a historical analogue," because doing so "risk[s] endorsing outliers that our ancestors would never have accepted." On the other hand, analogical reasoning requires only that the government identify a well-established and representative historical *analogue*, not a historical *twin*. So even if a modern-day regulation is not a dead ringer for historical precursors, it still may be analogous enough to pass constitutional muster. [*Id.* at __; 142 S Ct at 2133 (citation omitted).]

Appendix B

As in *McDonald*, the Court reiterated the "sensitive places" doctrine from *Heller*:

> Consider, for example, *Heller*'s discussion of "longstanding" "laws forbidding the carrying of firearms in sensitive places such as schools and government buildings." Although the historical record yields relatively few 18th-and 19th-century "sensitive places" where weapons were altogether prohibited—e.g., legislative assemblies, polling places, and courthouses—we are also aware of no disputes regarding the lawfulness of such prohibitions. See D. Kopel & J. Greenlee, *The "Sensitive Places" Doctrine*, 13 Charleston L Rev 205, 229-236, 244-247 (2018); see also Brief for Independent Institute as *Amicus Curiae* 11-17. We therefore can assume it settled that these locations were "sensitive places" where arms carrying could be prohibited consistent with the Second Amendment. And courts can use analogies to those historical regulations of "sensitive places" to determine that modern regulations prohibiting the carry of firearms in *new* and analogous sensitive places are constitutionally permissible. [*Bruen*, __ US at __; 142 S Ct at 2133 (first citation omitted).]

In analyzing the New York law, the *Bruen* Court first concluded that the proposed conduct of the petitioners—two ordinary, law-abiding, adult citizens—to carry handguns publicly for self-defense was presumptively

protected by the Second Amendment. *Bruen*, __ US at __; 142 S Ct at 2134-2135. Before considering the historical sources, the Court noted the dispute regarding whether it was proper to consider laws from 1791, when the Second Amendment was adopted, or from 1868, when the Fourteenth Amendment was adopted. *Id.* at __; 142 S Ct at 2136. The Court did not resolve the issue, concluding that the result was the same using either time period. *Id.* at __; 142 S Ct at 2138. The Court, however, suggested that it believed 1791 was the proper time period because "individual rights enumerated in the Bill of Rights and applicable against the States through the Fourteenth Amendment have the same scope as against the Federal Government[,]" and the scope of the protection applicable to the Federal Government depends on public understanding when the Bill of Rights was adopted. *Id.* at __; 142 S Ct at 2137. After considering the historical evidence presented by the respondent, the Court concluded that it did not demonstrate a tradition of broadly prohibiting the public carry of commonly used firearms for self-defense. *Id.* at __; 142 S Ct at 2138-2156.

C. APPLICATION

The following framework for resolving Second Amendment challenges can be gleaned from *Bruen*:

1) Courts must first consider whether the Second Amendment presumptively protects the conduct at issue. If not, the inquiry ends and the regulation does not violate the Second Amendment. *Bruen*, __ US at __; 142 S Ct at 2134-2135.

2) If the conduct at issue is presumptively protected, courts must then consider whether the regulation at issue involves a traditional "sensitive place." If so, then it is settled that a prohibition on arms carrying is consistent with the Second Amendment. *Id.* at __; 142 S Ct at 2133.

3) If the regulation does not involve a traditional "sensitive place," courts can use historical analogies to determine whether the regulation prohibits the carry of firearms in *a new and analogous* "sensitive place." If the regulation involves a new "sensitive place," then the regulation does not violate the Second Amendment. *Id.* at __; 142 S Ct at 2133.

4) If the regulation does not involve a sensitive place, then courts must consider whether the government has demonstrated that the regulation is consistent with this Nation's historical tradition of firearms regulations. This inquiry will often involve reasoning by analogy to consider whether regulations are relevantly similar under the Second Amendment. If the case involves "unprecedented societal concerns or dramatic technological changes," then a "more nuanced approach" may be required. *Id.* at __; 142 S Ct at 2126, 2132.

Appendix B

1. WHETHER PLAINTIFF'S CONDUCT IS PROTECTED BY THE SECOND AMENDMENT

Under *Bruen*, the first inquiry is whether the plain text of the Second Amendment covers plaintiff's conduct. If so, then the Constitution presumptively protects that conduct. Plaintiff alleges that his proposed conduct is to openly carry a lawfully-owned pistol for self-defense on University property. As in *Bruen*, plaintiff is an ordinary, law-abiding, adult citizen and, thus, is part of the "people" protected by the Second Amendment. *Bruen*, __ US at __; 142 S Ct at 2134. In addition, handguns are weapons "in common use" for self-defense. *Id.* Under *Bruen*, the Second Amendments protects carrying handguns in public for self-defense. *Id.* at __; 142 S Ct at 2134-2135. Because plaintiff's conduct is presumptively protected by the Second Amendment, the University has the burden to show that Article X, which is a regulation that prohibits all firearms on University property, involves a traditional "sensitive place."

2. WHETHER THE UNIVERSITY IS A "SCHOOL" OR "GOVERNMENT BUILDING"

In *Bruen*, __ US __; 142 S Ct at 2133, the Court stated that it was "settled" that arms carrying could be prohibited consistent with the Second Amendment in locations that are "sensitive places." The Court explained that, although the historical record showed relatively few 18th and 19th century "sensitive places," such as

legislative assemblies, polling places, and courthouses, there was no dispute regarding the lawfulness of prohibitions on carrying firearms in sensitive places such as schools and government buildings. *Id.* at __; 142 S Ct at 2133. The Court's statements indicate that, even though 18th and 19th century "sensitive places" were limited to legislative assemblies, polling places, and courthouses, laws prohibiting firearms in schools and other government buildings are nonetheless consistent with the Second Amendment. See *The "Sensitive Places" Doctrine*, 13 Charleston L R at 263 ("Widespread bans on arms in government buildings or schools came in the later part of the twentieth century."). Thus, if the University is a school or government building, then Article X does not violate the Second Amendment.

In determining whether the University is a "school," this Court previously relied on a dictionary from 1828, near the time of ratification of the Fourteenth Amendment. *Wade*, 320 Mich App at 14, 905 N.W.2d 439. Given the definitions of both "university" and "school" in Webster's *An American Dictionary of the English Language* (1828), this Court concluded that universities were understood to be schools at the historically relevant period. *Id.* at 15, 905 N.W.2d 439.

In his concurrence with our Supreme Court's order remanding this matter to this Court, Justice VIVIANO suggested that the relevant historical point for this determination is 1791, when the Second Amendment was adopted. *Wade*, __ Mich at __; 981 N.W.2d at 57 n 1 (VIVIANO, J., concurring). However, considering the

definition of "school" from that time period leads to the same conclusion. Samuel Johnson's dictionary from 1773 defines "school," in part, as: "A house of discipline and instruction[,]" and "[a] place of literary education; an university."[4] It defines "university" as "[a] school, where all the arts and faculties are taught and studied."[5] Thus, considering either time period, the term "school" included universities.

Notably, the reference to "schools" being sensitive places was first made by Justice SCALIA in *Heller*. In discussing the "longstanding" tradition of laws forbidding firearms in sensitive places such as "schools and government buildings," Justice SCALIA did not define the term "school," nor did he cite or rely on any authority. *Heller*, 554 U.S. at 626, 128 S.Ct. 2783. Given that the term "school" is not found in the Second Amendment, but was first used by Justice SCALIA, it is not clear that either 1791 or 1868 are the correct time periods to determine the meaning of that term as used in *Heller*. Nonetheless, the plain meaning of "school" when Justice SCALIA used the term in 2008 similarly includes universities. *Merriam-Webster's Collegiate Dictionary* (2003) defines "school," in part, as "an organization that provides instruction," such as a "college, university." Significantly, in the law

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4. *A Dictionary of English Language* (1773), available at: <https://babel.hathitrust.org/cgi/pt?id=osu.32435030881106&view=1up&seq=622> (accessed June 28, 2023).

5. *Id.*, available at: <https://babel.hathitrust.org/cgi/pt?id=osu.32435030881106&view=1up&seq=1059> (accessed June 28, 2023).

review article cited in *Bruen* by Justice THOMAS, see *Bruen*, __ US __; 142 S Ct at 2133, the authors presume that *Heller*'s reference to "schools" included universities. See *The "Sensitive Places" Doctrine*, 13 Charleston L Rev at 251-252. Thus, at all potentially relevant time periods, the term "school" includes universities, and thus, the University is a "sensitive place."

In support of his argument that the University is not a school, plaintiff relies on the definition of "school" in *Black's Law Dictionary*, which in turn quotes the 1993 edition of Am. Jur. 2d. Plaintiff also argues that the Michigan Legislature delineated between schools and universities in MCL 28.425o (prohibiting carrying a concealed pistol on certain premises). *Black's Law Dictionary* defines "school" as "[a]n institution of learning and education, esp. for children[,]" and provides the following passages from Am. Jur. 2d:

> Although the word "school" in its broad sense includes all schools or institutions, whether of high or low degree, the word "school" frequently has been defined in constitutions and statutes as referring only to the public common schools generally established throughout the United States . . . [.] When used in a statute or other contract, "school" usually does not include universities, business colleges, or other institutions of higher education unless the intent to include such institutions is clearly indicated. [*Black's Law Dictionary* (11th ed.), quoting 68 Am Jur 2d, Schools, § 1, p. 355 (some quotation marks omitted).]

This passage supports the conclusion that "school," used broadly, includes institutions of higher education and only indicates that, *when used in a statute or contract*, the term "school" usually does not include such institutions, unless clearly indicated. Again, the term "school" was first used in *Heller* and was used broadly, without any limitations. It also appears to have been used in a colloquial sense, given that Justice SCALIA did not cite or rely on any authority. Because there is no indication that the term "school," as used in *Heller*, has a "unique legal meaning," it is also not appropriate to rely on a legal dictionary. See *Spartan Stores, Inc v Grand Rapids*, 307 Mich App 565, 575, 861 N.W.2d 347 (2014) (relying on a legal dictionary because the terms at issue had a unique legal meaning and were located in a complicated tax statute). With regard to the Michigan Legislature's delineation between schools and universities, we agree with the University that this has no relevance to the meaning of the term as used in *Heller*, *McDonald*, and *Bruen*.

Other courts have concluded that universities are schools, and thus, "sensitive places." See *DiGiacinto v Rector & Visitors of George Mason Univ*, 281 Va. 127, 136, 704 S.E.2d 365 (2011) ("The fact that [George Mason University (GMU)] is a school and that its buildings are owned by the government indicates that GMU is a 'sensitive place.' "). See also *United States v Power*, unpublished memorandum opinion of the United States District Court for the District of Maryland, issued January 9, 2023 (Case No. 20-po-331-GLS), 2023 WL 131050, and *United States v Robertson*, unpublished memorandum opinion of the United States District Court for the District

of Maryland, issued January 9, 2023 (Case No. 22-po-867-GLS), 2023 WL 131051, *12 ("[T]he Court determines that a regulation centered on a 'college campus' falls under 'schools' and within the sensitive places doctrine.").[6] In *Power* and *Robertson*, the court upheld the National Institute of Health (NIH)'s regulation banning firearms on its campus because the NIH is a sensitive place. *Id.* at *2, *8-*12. Thus, the challenged regulation did not violate the Second Amendment. The court explained that *Bruen* never said only "elementary schools" or "middle schools," and the terms "schools and government buildings are presented as broadly as possible, allowing the reader to consider all possible subtypes that fall within those two examples." *Id.* at *5. Finally, in *Antonyuk v Hochul*, __ F Supp 3d __, __ (N.D.N.Y. 2022) (No. 1:22-CV-0986 (GTS/CFH)), 2022 WL 5239895, *17, the court upheld a New York restriction on concealed carry at colleges and universities.

The University also argues that its buildings are "government buildings," and thus, "sensitive places." Plaintiff argues in reply that, even if some of the University's buildings are "government buildings," Article X extends far beyond the walls of those buildings. We agree that concluding the University's buildings are "government buildings" does not fully address the issue presented because Article X applies to all University property. Thus, the definition of "school" is determinative.

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6. These decisions provide a detailed analysis of the paragraph in *Bruen* describing sensitive places.

Relatedly, plaintiff suggests that while "some specific parts" of the University's campus may be considered "sensitive areas," the entire campus is not a "sensitive area." Plaintiff's suggestion is untenable because it would require that certain "areas" of the University be partitioned off from other areas of the University, and other "sensitive places" like courthouses would likewise have to be partitioned. More importantly, plaintiff provides no support for partitioning "sensitive areas" and no such support can be found in *Heller* or *Bruen*, which used the term "schools" and "government buildings" broadly.

Finally, GOA, as amicus in support of plaintiff, argues that the "sensitive places" doctrine is a mere presumption, which can be rebutted absent a historical analogue. In *Heller*, 554 U.S. at 627 n 26, 128 S.Ct. 2783, the Court stated in a footnote following its reference to "sensitive places" the following: "We identify these presumptively lawful regulatory measures only as examples; our list does not purport to be exhaustive." Thus, it is true that the Court in *Heller* referred to such regulations as only *presumptively* lawful. However, in *Bruen*, the Court clearly and unequivocally pronounced that it could assume that it was "*settled* that these locations were 'sensitive places' where arms carrying *could be prohibited* consistent with the Second Amendment." *Bruen*, __ US at __; 142 S Ct at 2133 (emphasis added). Accordingly, there is no support for the assertion that the finding of a "sensitive place" results in a mere presumption that may be rebutted.

III. CONCLUSION

Following the analytical framework set forth in *Bruen*, we first conclude that plaintiff's conduct is presumptively protected by the Second Amendment. Second, we conclude that the University is a school, and thus, a sensitive place. Therefore, Article X is constitutionally permissible because laws forbidding the carrying of firearms in sensitive places are consistent with the Second Amendment. See *Bruen*, __ US at __; 142 S Ct at 2133. In other words, Article X does not violate the Second Amendment. Accordingly, the trial court properly granted the University's motion for summary disposition.

We acknowledge that the parties, as well as the amici, present numerous policy arguments both in support of and against Article X. In brief, the University argues that, in addition to public safety concerns, the presence of firearms works against its important goals of protecting First Amendment freedoms and the free flow of information. The Michigan Attorney General argues that: courts should not interfere with state and local decisions; university students believe learning is hampered if firearms are permitted on campus; and the University would be an outlier among colleges and universities if its ordinance were struck down. Brady argues that Article X protects speech and the free exchange of ideas and furthers the University's core educational goals. Giffords similarly argue that guns on campuses chill speech, impede learning, and pose unique safety risks. Further, there is no evidence that the presence of guns would decrease mass shootings. Plaintiff, however, argues that guns increase public safety.

He further argues that the concerns regarding violence, suicide, and alcohol abuse may relate to students, but not to him, and the free flow of information is not a concern at the places of his proposed conduct. GOA similarly argues that Article X is far too broad, potentially affecting more than 88,000 people and effectively operating as a city-wide ban, which is impermissible. Clearly, the efficacy of gun bans as a public safety measure is a matter of debate. However, because the University is a school, and thus a sensitive place, it is up to the policy-maker—the University in this case—to determine how to address that public safety concern.

Affirmed.

/s/ Mark J. Cavanagh

/s/ Debora A. Servitto

Sawyer, J., not participating, having retired from the Court of Appeals effective December 31, 2022.

APPENDIX C — ORDER, VACATING MICHIGAN COURT OF APPEALS JUNE 6, 2017 JUDGMENT, MICHIGAN SUPREME COURT, *WADE V. UNIVERSITY OF MICHIGAN*, NO. 156150 (NOVEMBER 10, 2022)

MICHIGAN SUPREME COURT
LANSING, MICHIGAN

SC: 156150
COA: 330555
Ct of Claims: 15-000129-MZ

JOSHUA WADE,

Plaintiff-Appellant,

v.

UNIVERSITY OF MICHIGAN,

Defendant-Appellee.

November 10, 2022, Decided

ORDER

By order of November 6, 2020, the application for leave to appeal the June 6, 2017 judgment of the Court of Appeals was granted. On order of the Court, and on the Court's own motion, we VACATE our order dated November 6, 2020, VACATE the June 6, 2017 judgment of the Court of Appeals, and REMAND this case to that court for consideration in light of *New York State Rifle &*

Pistol Ass'n, Inc, et al v Bruen, 142 S Ct 2111; 213 L. Ed. 2d 387 (2022).

We do not retain jurisdiction.

VIVIANO, J. (*concurring*).

The Court today remands to the Court of Appeals an important case concerning the constitutionality of the University of Michigan's prohibition of firearms on campus. The United States Supreme Court recently elucidated the structure of the required analysis in *New York State Rifle & Pistol Ass'n, Inc v Bruen*, 597 U.S. __; 142 S. Ct. 2111, 213 L. Ed. 2d 387 (2022). I write to offer a few thoughts about how that analysis might apply here.

Presently, the University of Michigan bans firearms on campus unless, among a few other exceptions, the University's Director of Public Safety waives the prohibition for an individual "based on extraordinary circumstances." Plaintiff has challenged that ban on firearms as a violation of his Second Amendment right to bear arms. In rejecting his contentions, the Court of Appeals applied a two-part test: (1) "The threshold inquiry is whether the challenged regulation 'regulates conduct that falls within the scope of the Second Amendment right as historically understood,'" (2) and then, if the conduct is within the Second Amendment's scope, the court employs intermediate scrutiny to see whether there is "'a reasonable fit between the asserted interest or objective and the burden placed on an individual's Second Amendment right.'" *Wade v Univ of Mich*, 320 Mich App 1, 13; 905 N.W.2d 439 (2017) (citations omitted).

Appendix C

To support its threshold analysis, the Court of Appeals relied on the statement in *Dist of Columbia v Heller*, 554 U.S. 570, 626-627; 128 S. Ct. 2783; 171 L. Ed. 2d 637 (2008), that the Second Amendment did not disturb "longstanding prohibitions on . . . laws forbidding the carrying of firearms in sensitive places such as schools and government buildings . . . ." In the present case, the Court of Appeals' entire "historical analysis" was to examine one dictionary from 1828 to determine whether universities were considered "school[s]" in 1868. *Wade*, 320 Mich App at 14.[1] Even if one concludes that the Court of Appeals reached the correct result, this paltry review of the main question is inadequate. Moreover, it is not at all apparent that *Heller*'s brief discussion of sensitive places was intended to establish a rule that all entities historically known as "schools" could permissibly ban firearms, meaning the only question that would remain for future cases is whether the entity at issue was considered a "school." Nor is it even clear that the Court meant to include universities and colleges in its reference to "schools," let alone to say that such locations can completely ban firearms. See Note, *Guns on Campus: Continuing Controversy*, 38 J C & U L 663, 667-668 (2012) (noting that *Heller* did not address guns on university campuses or define "schools" to include higher education).

1. The Court focused on 1868, when the Fourteenth Amendment was ratified, but as the Supreme Court in *Bruen* observed, there is some debate as to whether the relevant historical point is 1868 or instead 1791, when the Second Amendment was ratified. *Bruen*, 597 U.S. at ; 142 S Ct at 2138.

In its recent decision on this topic, the Supreme Court rejected the two-part inquiry applied by the Court of Appeals and instead replaced it with an examination of "whether modern firearms regulations are consistent with the Second Amendment's text and historical understanding." *Bruen*, 597 U.S. at ____; 142 S Ct at 2131. This test requires courts to examine any historical analogues of the modern regulation to determine how these types of regulations were viewed. *Id.* If there are no such analogues on the societal problem at issue, that historical silence "is relevant evidence that the challenged regulation is inconsistent with the Second Amendment." *Id.* "Likewise," the Court continued, "if earlier generations addressed the societal problem, but did so through materially different means, that also could be evidence that a modern regulation is unconstitutional." *Id.* Further, if regulations like the one at issue had been proposed and "rejected on constitutional grounds, that rejection surely would provide some probative evidence of unconstitutionality." *Id.* At base, the analysis requires "reasoning by analogy," which means the court must determine "whether a historical regulation is a proper analogue for a distinctly modern firearm regulation" by assessing "whether the two regulations are 'relevantly similar.'" *Id.* at ___; 142 S Ct at 2132 (citation omitted). In this assessment, two metrics are useful: "how and why the regulations burden a law-abiding citizen's right to armed self-defense." *Id.* at ___; 142 S Ct at 2133. But the modern regulation need not be "a dead ringer for historical precursors . . . ." *Id.*

In the present case, I believe there are at least two historical investigations needed to determine whether the University of Michigan's firearm regulation is constitutional. First, the Court of Appeals should consider whether there were any analogous firearm regulations on university and college campuses in the relevant historical period. In my own initial review of historical laws concerning campus carry, I have come across a few that contain partial restrictions of guns on campus.[2] The secondary literature notes the prevalence of gun restrictions on campus in the colonial and early republic

2. See 1878 Miss Laws, ch 46, § 4 ("[A]ny student of any university, college or school, who shall carry concealed, in whole or in part, any weapon of the kind or description in the first section of this Act described, or any teacher, instructor, or professor who shall, knowingly, suffer or permit any such weapon to be carried by any student or pupil, shall be deemed guilty of a misdemeanor, and, on conviction, be fined not exceeding three hundred dollars, and if the fine and costs are not paid, condemned to hard labor under the direction of the board of supervisors or of the court."); 1879 Mo RS, ch 24, § 1276 (prohibiting the discharge of a firearm "in the immediate vicinity of . . . [a] building used for school or college purposes"); 2 1883 Wis Sess Laws 841, ch 184, tit 12, § 162 (amending the city charter of Neenah to prohibit individuals within a "school house" or any "building" within the city from firing a gun); see also 1890 Okla Territorial Statutes, ch 25, art 47, § 7 ("It shall be unlawful for any person, except a peace officer, to carry into any church or religious assembly, any school room or other place where persons are assembled for public worship, for amusement, or for educational or scientific purposes, or into any circus, show or public exhibition of any kind, or into any ball room, or to any social party or social gathering, or to any election, or to any place where intoxicating liquors are sold, or to any political convention, or to any other public assembly, any of the weapons designated in sections one and two of this article.").

periods, but like the laws just mentioned, none seems to have been a campuswide ban generally prohibiting open or concealed carry.[3]

In addition to more thoroughly researching historical restrictions in this context, the parties and the Court of Appeals should assess whether the more limited regulations noted above are nonetheless historically analogous to the modern regulation at issue here. Do they burden the right to self-defense in the same manner and for the same purposes? *Bruen*, 597 U.S. at ___; 142 S Ct at 2134. And of course, any relevant historical discussion of these regulations, or the broader right of college-aged adults to bear firearms, should be examined. See, e.g., *Firearms Policy Coalition, Inc v McCraw*, ___ F Supp 3d ___, 2022 U.S. Dist. LEXIS 152834 (ND Tex, 2022) (Case No 4:21-cv-1245-P) (examining the text and history of the Second Amendment and holding unconstitutional a prohibition on 18- to 20-year-olds from carrying a handgun outside the home for self-defense).

I believe a second historical inquiry is required in this case. Even if certain restrictions were historically

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3. See Kopel & Greenlee, *The "Sensitive Places" Doctrine: Locational Limits on the Right to Bear Arms*, 13 Charleston L Rev 205, 249-252 (2018) (noting nineteenth-century campus firearms restrictions and arguing that none of them supported the designation of campuses as sensitive places where arms could be banned); see also Rostron, *The Second Amendment on Campus*, 14 Geo J L & Pub Pol'y 245, 255-257 (2016); Brady, *"Campus-Carry" Laws on Public College Campuses: Can Social Science Research Inform State Legislative Decision-Making*?, 350 Ed Law Rep 1, 6 (2018).

permitted on college campuses, another important question arises: are large modern campuses like the University of Michigan's so dispersed and multifaceted that a total campus ban would now cover areas that historically would not have had any restrictions? In other words, are historical campuses the best analogy for the modern campus? It appears that campuses have always contained expansive outdoor settings. See Olin, *The Campus: An American Landscape*, 8 SiteLINES: A Journal of Place 3, 3 (Spring 2013) (noting that early American colleges were "simply a set of Georgian buildings placed in the open" and "set off by relatively level or gently sloping areas of turf and trees"). And some early schools, like the College of Philadelphia (1754), might have had a more modern feel, with "buildings scattered amid ordinary city blocks[.]" *Id.* at 4.

Nonetheless, it seems apparent that large, modern university campuses differ from their historical antecedents. Many are involved in urban planning with mixed-use projects that include shops and nonstudent residences. See, e.g., *id.* at 8-9 (discussing the University of Pennsylvania's experience in the late 1990s and early 2000s and noting that many other universities have employed similar models); Matthew Dalbey et al, *Communities of Opportunity: Smart Growth Strategies for Colleges and Universities*, National Association of College and University Business Officers (2007), pp 1-3 (noting that in 2006 $14.4 billion of construction on campuses occurred and advocating for mixed-use developments of shops, offices, housing, and schools). The University of Michigan itself occupies nearly one-

tenth of Ann Arbor. Many areas on campus, such as roadways, open areas, shopping districts, or restaurants, might not fit the "sensitive place" model suggested by *Heller*—they may instead be more historically analogous to other locations that did not have gun restrictions. And because the campus is so entwined with the surrounding community, the ban might also burden carrying rights on locations outside campus, as many individuals will regularly go from campus to off-campus environments, even in a single trip; because they cannot bring a gun on campus, they will not feasibly be able to bring the gun to the off-campus locations either.[4]

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4. See, e.g., Note, *Rethinking the Nevada Campus Protection Act: Future Challenges & Reaching a Legislative Compromise*, 15 Nev L J 389, 421-422 (2014) ("Current laws and university policies that prohibit any degree of campus carry leave [carrying a concealed firearm] permit holders defenseless anywhere between college campuses and home. The professor that stops for groceries after work; the student that stops for gas across the street from campus; these are the real and unfortunately less documented dangers of 'no permission to campus carry' states."); *id.* at 425 ("The line that separates some universities from public property is fuzzy, and attempting to classify universities as a 'sensitive place' poses a significant problem. Universities are typically intermingled with other services and public property."); *Guns on Campus*, 38 J C & U L at 675 ("Additionally, some colleges and universities do not have the clearly defined perimeters that high schools, middle schools, and elementary schools usually have. Some colleges and universities span across city-scapes and mix with metropolitan areas. The physical layout of some colleges and universities can easily create confusion for individuals trying to determine if they are on campus or off campus at any given point. For example, public roads often run through college campuses. Could a public road be considered a sensitive school area subject to a reasonable regulation, or would

I believe that these considerations are necessary in the present case when applying the governing framework from *Bruen*. Because they require careful analysis of historical materials, I agree that a remand is appropriate.

BERNSTEIN, J., did not participate.

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the street merely be part of the public landscape where the same regulation would be unreasonable?").

APPENDIX D — GRANTING LEAVE TO APPEAL ORDER, MICHIGAN SUPREME COURT, *WADE V. UNIVERSITY OF MICHIGAN*, NO. 156150 (NOVEMBER 6, 2020)

MICHIGAN SUPREME COURT
LANSING, MICHIGAN

SC: 156150
COA: 330555
Ct of Claims: 15-000129-MZ

JOSHUA WADE,

Plaintiff-Appellant,

v.

UNIVERSITY OF MICHIGAN,

Defendant-Appellee.

November 6, 2020

ORDER

By order of May 22, 2019, the application for leave to appeal the June 6, 2017 judgment of the Court of Appeals was held in abeyance pending the decision in *New York State Rifle & Pistol Ass'n, Inc v City of New York*, 590 US ___ (2020) (Docket No. 18-280). On order of the Court, the case having been decided on May 29, 2020, the application is again considered, and it is GRANTED. The parties shall address: (1) whether the two-part analysis applied by the

Court of Appeals is consistent with *District of Columbia v Heller*, 554 US 570 (2008), and *McDonald v Chicago*, 561 US 742 (2010), cf. *Rogers v Grewal*, 140 S Ct 1865, 1867 (2020) (Thomas, J., dissenting); (2) if so, whether intermediate or strict judicial scrutiny applies in this case; and (3) whether the University of Michigan's firearm policy is violative of the Second Amendment, considering among other factors whether this policy reflects historical or traditional firearm restrictions within a university setting and whether it is relevant to consider this policy in light of the University's geographic breadth within the city of Ann Arbor.

Persons or groups interested in the determination of the issues presented in this case may move the Court for permission to file briefs amicus curiae.

BERNSTEIN, J., not participating.

APPENDIX E — ABEYANCE ORDER, MICHIGAN SUPREME COURT, *WADE V. UNIVERSITY OF MICHIGAN*, NO. 156150 (MAY 22, 2019)

MICHIGAN SUPREME COURT
LANSING, MICHIGAN

SC: 156150
COA: 330555
Court of Claims:: 15-000129-MZ

JOSHUA WADE,

Plaintiff-Appellant,

v.

UNIVERSITY OF MICHIGAN,

Defendant-Appellee.

May 22, 2019

ORDER

By order of December 20, 2017, the application for leave to appeal the June 6, 2017 judgment of the Court of Appeals was held in abeyance pending the decisions in *Michigan Gun Owners, Inc v Ann Arbor Public Schools* (Docket No. 155196) and *Michigan Open Carry, Inc v Clio Area School District* (Docket No. 155204). On order of the Court, the cases having been decided on July 27, 2018, 502 Mich 695 (2018), the application is again considered and, it appearing to this Court that the case of *New York State*

Appendix E

Rifle & Pistol Ass'n, Inc v City of New York, cert gtd 586 US ___ (2019) (Docket No. 18-280) is pending before the United States Supreme Court, and that the decision in that case may resolve an issue raised in the present application for leave to appeal, we ORDER that the application be held in ABEYANCE pending the decision in that case.

BERNSTEIN, J., did not participate.

APPENDIX F — OPINION, STATE OF MICHIGAN COURT OF APPEALS, *WADE V. UNIVERSITY OF MICHIGAN*, NO. 330555 (JUNE 6, 2017)

STATE OF MICHIGAN
COURT OF APPEALS

No. 33055
Court of Claims
LC No. 15-000129-MZ

Advanced Sheets Version

JOSHUA WADE,

Plaintiff-Appellant,

v.

UNIVERSITY OF MICHIGAN,

Defendant-Appellee.

Filed June 6, 2017

Before: CAVANAGH, P.J., and SAWYER and SERVITTO, JJ.

CAVANAGH, P.J.

Plaintiff, Joshua Wade, appeals as of right an order granting summary disposition in favor of defendant, University of Michigan (University), and dismissing plaintiff's complaint seeking declaratory and injunctive relief from a University ordinance that prohibits firearms on any University property. We affirm.

Appendix F

In February 2001, the University revised the weapons provision, Article X, of its "Ordinance to Regulate Parking and Traffic and to Regulate the Use and Protection of the Buildings and Property of the Regents of the University of Michigan" and made all properties owned, leased, or controlled by the University weapons-free. Article X, titled "Weapons," provides:

Section 1. Scope of Article X

Article X applies to all property owned, leased or otherwise controlled by the Regents of the University of MIchigan [sic] and applies regardless of whether the Individual has a concealed weapons permit or is otherwise authorized by law to possess, discharge, or use any device referenced below.

Section 2. Possession of Firearms, Dangerous Weapons and Knives

Except as otherwise provided in Section 4, no person shall, while on any property owned, leased, or otherwise controlled by the Regents of the University of Michigan:

(1) possess any firearm or any other dangerous weapon as defined in or interpreted under Michigan law or

(2) wear on his or her person or carry in his or her clothing any knife, sword or machete

having a blade longer than four (4) inches, or, in the case of knife with a mechanism to lock the blade in place when open, longer than three (3) inches.

Section 3. Discharge or Use of Firearms, Dangerous Weapons and Knives

Except as otherwise provided in Section 4, no person shall discharge or otherwise use any device listed in the preceding section on any property owned, leased, or otherwise controlled by the Regents of the University of Michigan.

Section 4. *Exceptions*

(1) Except to the extent regulated under Subparagraph (2), the prohibitions in this Article X do not apply:

(a) to University employees who are authorized to possess and/or use such a device . . . ;

(b) to non-University law enforcement officers of legally established law enforcement agencies . . . ;

(c) when someone possess [sic] or uses such a device as part of a military or similar uniform or costume In [sic] connection with a public ceremony . . . ;

(d) when someone possesses or uses such a device in connection with a regularly scheduled educational, recreational or training program authorized by the University;

(e) when someone possess [sic] or uses such a device for recreational hunting on property . . . ; or

(f) when the Director of the University's Department of Public Safety has waived the prohibition based on extraordinary circumstances. Any such waiver must be in writing and must define its scope and duration.

(2) The Director of the Department of Public Safety may impose restrictions upon individuals who are otherwise authorized to possess or use such a device pursuant to Subsection (1) when the Director determines that such restrictions are appropriate under the circumstances.

Section 5. Violation Penalty

A person who violates this Article X is guilty of a misdemeanor, and upon conviction, punishable by imprisonment for not less than ten (10) days and no more than sixty (60) days, or by a fine of not more than fifty dollars ($50.00) or both.

Subsequently, plaintiff sought a waiver of the prohibition as set forth in § 4(1)(f) of Article X. After his request was denied, plaintiff filed this action. In Count I, plaintiff alleged that the ban on firearms violates his federal and state constitutional rights to keep and bear arms as set forth in the Second Amendment of the United States Constitution and Article 1, § 6, of the Michigan Constitution. In Count II, plaintiff alleged that Article X is invalid because MCL 123.1102, which prohibits local units of government from establishing their own limitations on the purchase, sale, or possession of firearms, preempts the ordinance. Plaintiff requested the Court of Claims to declare that Article X is unconstitutional and preempted by MCL 123.1102, and that defendant was enjoined from its enforcement.

The University responded to plaintiff's complaint with a motion for summary disposition under MCR 2.116(C)(8). The University argued that the Second Amendment does not reach "sensitive places," which includes schools like the University property.[1] But even if the Second Amendment applied, Article X did not violate it because the ordinance was substantially related to important governmental interests, including maintaining a safe educational environment for its students, faculty, staff, and visitors as well as fostering an environment in which ideas—even controversial ideas—can be freely and openly exchanged without fear of reprisal. The University further argued that Article X did not violate the Michigan

1. See *Dist of Columbia v Heller*, 554 US 570, 626-627; 128 S Ct 2783; 171 L Ed 2d 637 (2008).

Constitution because Article X is a reasonable exercise of the University's authority under Article 8, § 5, of the Michigan Constitution to control its property, maintain safety on that property, and to cultivate a learning environment. Moreover, MCL 123.1102 did not apply to the University because the University is not a "local unit of government"; rather, it is a constitutional corporation that is coordinate with and equal to the Legislature. Therefore, the University has the exclusive authority to manage and control its property, including the day-to-day operations of the institution with regard to the issue of firearm possession on its property. Accordingly, the University argued, plaintiff's complaint failed to state a claim upon which relief could be granted and should be dismissed.

Plaintiff responded to the University's motion for summary disposition, arguing that Article X violates the Second Amendment of the United States Constitution, which, as explained in *Dist of Columbia v Heller*, 554 US 570, 592, 595; 128 S Ct 2783; 171 L Ed 2d 637 (2008), guarantees to individuals the right to keep and bear arms for self-defense. And contrary to the University's claim, the University is not a "sensitive place" under *Heller* because it is "not a school as that word is commonly understood. It is a community where people live and work, just as any community." Further, plaintiff argued, even if Article X is not unconstitutional, the Michigan Legislature "has closed off the field of firearms regulations by any other governmental actor . . . ." That is, the ordinance is preempted by MCL 123.1102 because the same

principles of preemption apply to the University as apply to a municipality or quasi-municipal corporation. And the University is a "'lower-level government entity' than the state legislature when it comes to conflicts of legislative authority." Accordingly, plaintiff argued, the University's motion for summary disposition should be denied.

The Court of Claims agreed with the University. First, the court held that the University is a public educational institution—a school—and, thus, a "sensitive place" as contemplated by the *Heller* Court. Regulations restricting firearms in such places are presumptively legal; consequently, the University's "ordinance does not fall within the scope of the right conferred by the Second Amendment or Const 1963, Art 1, § 6." Therefore, Count I of plaintiff's complaint was dismissed for failure to state a claim. Second, the court held that MCL 123.1102 plainly applies only to a "local unit of government," which is defined by MCL 123.1101(b) as "a city, village, township, or county." Because the University is not a "local unit of government," the prohibitions set forth in MCL 123.1102 do not apply to it. However, even if the University was considered a "local unit of government," the court held, MCL 123.1102 specifically provides that such governmental units may enact regulations "as otherwise provided by federal law or a law of this state." Because the Michigan Constitution, pursuant to Article 8, § 5, grants the University "general supervision of its institution," the University had the right to promulgate firearm regulations for the safety of its students, staff, and faculty consistent with its right to educational autonomy and its mission to educate. Therefore, Count II of plaintiff's complaint was also dismissed. Accordingly, the University's motion for summary disposition was granted. This appeal followed.

Appendix F

Plaintiff argues that the Court of Claims erred when it ruled that the complete ban of firearms on University property in Article X did not violate his Second Amendment rights.[2] We disagree.

We review de novo a court's decision on a motion for summary disposition. *Kyocera Corp v Hemlock Semiconductor, LLC*, 313 Mich App 437, 445; 886 NW2d 445 (2015). A motion brought under "MCR 2.116(C)(8) tests the legal sufficiency of the claim on the pleadings alone to determine whether the plaintiff has stated a claim on which relief may be granted." *Id.* (quotation marks and citation omitted). A challenge to the constitutionality of a regulation presents a question of law that this Court also reviews de novo on appeal. *McDougall v Schanz*, 461 Mich 15, 23; 597 NW2d 148 (1999).

The Second Amendment of the United States Constitution provides, "A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed." In *Heller*, 554 US 570, the United States Supreme Court undertook, for the first time, an in-depth examination of the scope of Second Amendment rights, primarily determining whether the amendment guaranteed individual or collective rights. At issue was the District of Columbia's handgun ban, which criminalized the registration of handguns and permitted possession of such

2. Plaintiff's argument on appeal focuses solely on his rights under the Second Amendment; therefore, we consider any claim premised on the Michigan Constitution abandoned. See *Mitcham v Detroit*, 355 Mich 182, 203; 94 NW2d 388 (1959).

guns only upon the chief of police's approval of a one-year license. *Id.* at 574-575. The law also required that lawfully owned guns, such as registered long guns, be rendered inoperable while in the home. *Id.* at 575. In determining that the Second Amendment guaranteed individual rights, the *Heller* Court focused on the original meaning of the Second Amendment, relying on historical materials to discern how the public understood the amendment at the time of its ratification, *id.* at 595-600, and noting that "[c]onstitutional rights are enshrined with the scope they were understood to have when the people adopted them," *id.* at 634-635. Review of these materials led the *Heller* Court to conclude that the Second Amendment codified a preexisting right to bear arms, that the right was not limited to the militia, and that the central component of this right was self-defense, primarily in one's own home. *Id.* at 595, 599-600.

With regard to the District of Columbia's handgun ban, the *Heller* Court held that the Second Amendment precludes the "absolute prohibition of handguns held and used for self-defense in the home." *Id.* at 636. And with regard to the District's requirement that firearms in the home be kept inoperable, the *Heller* Court stated, "This makes it impossible for citizens to use them for the core lawful purpose of self-defense and is hence unconstitutional." *Id.* at 630. However, the *Heller* Court also clarified that "the right secured by the Second Amendment is not unlimited" and that individuals may not "keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose." *Id.* at 626. The *Heller* Court then identified a nonexhaustive list of "presumptively lawful regulatory measures," stating:

> Although we do not undertake an exhaustive historical analysis today of the full scope of the Second Amendment, nothing in our opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons and the mentally ill, or laws forbidding the carrying of firearms in sensitive places such as schools and government buildings, or laws imposing conditions and qualifications on the commercial sale of arms. [*Id.* at 626-627, 627 n 26.][3]

In other words, the Court recognized that the scope of the right did not, historically, extend to certain individuals or to certain places.

The United States Supreme Court considered the Second Amendment again in *McDonald v Chicago*, 561 US 742, 750; 130 S Ct 3020; 177 L Ed 2d 894 (2010), in which it considered the validity of a handgun ban, similar to that in *Heller*, in the cities of Chicago and Oak Park. The cities argued that the ban was constitutional because the Second Amendment did not apply to the states. *Id.* The *McDonald* Court disagreed, declaring that the Second Amendment applies to the states by virtue of the Fourteenth Amendment. *Id.* at 778. The *McDonald* Court reiterated that laws forbidding the carrying of firearms in sensitive places are presumptively lawful regulatory measures. *Id.* at 786. Further, in analyzing

3. Plaintiff's attempt to characterize this passage as dicta is unpersuasive. As defendant points out, this language is an explanation of what the Court held and did not hold in *Heller*.

whether the cities' handgun bans were within the scope of the Second Amendment's protected activity, the Court again considered the historical and traditional understanding of the Second Amendment at the time the Fourteenth Amendment was adopted. *Id.* at 768-778. Thus, "*McDonald* confirms that if the claim concerns a state or local law, the 'scope' question asks how the right was publicly understood when the Fourteenth Amendment was proposed and ratified." *Ezell v Chicago*, 651 F3d 684, 702 (CA 7, 2011).

The holdings in *Heller* and *McDonald* have led to the application of a two-part test with respect to Second Amendment challenges to firearm regulations. The threshold inquiry is whether the challenged regulation "regulates conduct that falls within the scope of the Second Amendment right as historically understood." *People v Wilder*, 307 Mich App 546, 556; 861 NW2d 645 (2014), quoting *People v Deroche*, 299 Mich App 301, 308-309; 829 NW2d 891 (2013) (quotation marks and citation omitted). If the regulated conduct has historically been outside the scope of Second Amendment protection, the activity is not protected and no further analysis is required. *Wilder*, 307 Mich App at 556. If, however, the challenged conduct falls within the scope of the Second Amendment, an intermediate level of constitutional scrutiny is applicable and requires the showing of "a reasonable fit between the asserted interest or objective and the burden placed on an individual's Second Amendment right." *Id.* at 556-557.

In this case, plaintiff's complaint alleged that the complete ban of firearms on University property in

Article X violates his Second Amendment rights. The relevant question in light of plaintiff's complaint and the applicable analytical framework is whether Article X regulates conduct that was historically understood to be protected by the Second Amendment at the time of the Fourteenth Amendment's ratification, i.e., 1868. See *Ezell*, 651 F3d at 702-703. While the Supreme Court in *Heller* indicated that certain "sensitive places," including schools, are categorically unprotected, we must consider whether a "university" was considered a "school" in 1868.[4] And it appears to have been so. That is, Webster's *An American Dictionary of the English Language* (1828) defines "university" as:

> An assemblage of colleges established in any place, with professors for instructing students in the sciences and other branches of learning, and where degrees are conferred. A *university* is properly a universal school, in which are taught all branches of learning, or the four faculties of theology, medicine, law and the sciences and arts. [*Webster's Dictionary 1828: Online Edition* <http://webstersdictionary1828.com/Dictionary/university> [https://perma.cc/S29K-F88X].]

Likewise, the term "school" in 1828 was defined, in part, to include "universities":

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4. The Court of Claims did not consider the historical meaning of "university" and whether it was understood as a "sensitive place."

Appendix F

> A place of education, or collection of pupils, of any kind; as the schools of the prophets. In modern usage, the word *school* comprehends every place of education, as university, college, academy, common or primary schools, dancing schools, riding schools, etc.; but ordinarily the word is applied to seminaries inferior to universities and colleges. [*Webster's Dictionary 1828: Online Edition* <http://websterdictionary1828.com/Dictionary/school> [https://perma.cc/L4U3-BUFC].]

Given that at the historically relevant period, universities were understood to be schools and, further, that *Heller* recognized that schools were sensitive places to which Second Amendment protections did not extend, we conclude as a matter of law that Article X does not burden conduct protected by the Second Amendment. Therefore, no further analysis is required. Stated differently, Article X does not infringe on Second Amendment rights. No factual development could change this result. Because plaintiff has not made a cognizable Second Amendment claim, summary disposition under MCR 2.116(C)(8) was proper.

Next, plaintiff argues that the Court of Claims erred by concluding that MCL 123.1102 did not preempt the University's ordinance that banned all firearms from University property. After reviewing this question of statutory interpretation de novo, we disagree. See *Ter Beek v City of Wyoming*, 495 Mich 1, 8; 846 NW2d 531 (2014).

Appendix F

Article 8, § 5, of the 1963 Constitution provides, in relevant part:

> The regents of the University of Michigan and their successors in office shall constitute a body corporate known as the Regents of the University of Michigan[.] . . . [The Regents] shall have general supervision of its institution and the control and direction of all expenditures from the institution's funds.

The Board of Regents of the University of Michigan has a unique legal character as a constitutional corporation possessing broad institutional powers. It has long been recognized that the University Board of Regents "is a separate entity, independent of the State as to the management and control of the university and its property, [while at the same time] a department of the State government, created by the Constitution . . . ." *Regents of Univ of Mich v Brooks*, 224 Mich 45, 48; 194 NW 602 (1923). Although the University Board of Regents has at various times been referred to as part of the executive branch that may be affected by the Legislature's plenary powers, it has also been recognized that the Board is "'the highest form of juristic person known to the law, a constitutional corporation of independent authority, which, within the scope of its functions, is co-ordinate with and equal to that of the legislature.'" *Federated Publications, Inc v Mich State Univ Bd of Trustees*, 460 Mich 75, 84 n 8; 594 NW2d 491 (1999), quoting *Regents of Univ of Mich v Auditor General*, 167 Mich 444, 450; 132 NW 1037 (1911); see also *Brooks*, 224 Mich at 48 (recognizing that the

University is a state agency within the executive branch of state government).

Given the unique character of the University Board of Regents and its exclusive authority over the management and control of its institution, we generally first consider whether the conduct being regulated is within the exclusive power of the University or whether it is properly the province of the Legislature. As this Court held in *Branum v Regents of Univ of Mich*, 5 Mich App 134, 138-139; 145 NW2d 860 (1966):

> [T]he legislature can validly exercise its police power for the welfare of the people of this State, and a constitutional corporation such as the board of regents of the University of Michigan can lawfully be affected thereby. The University of Michigan is an independent branch of the government of the State of Michigan, but it is not an island.

Thus, for example, matters involving the University's management and control of its institution or property are properly within the Board of Regents' exclusive authority, and the Legislature may not interfere; the Legislature's promulgated laws must yield to the University's authority. See, e.g., *Federated Publications, Inc*, 460 Mich at 88 (holding that Michigan's Open Meetings Act, MCL 15.261 *et seq.*, is inapplicable to the internal operations of the University in selecting a president because it infringes on the University's constitutional power to supervise the institution). Conversely, matters outside the confines of

the University's exclusive authority to manage and control its property are the province of the Legislature, and the University may be affected thereby. See, e.g., *Regents of Univ of Mich v Employment Relations Comm*, 389 Mich 96, 108-110; 204 NW2d 218 (1973) (holding that the Michigan public employment relations act, MCL 423.201 *et seq.*, applies to the University and does not infringe on its constitutional autonomy so long as the scope of public-employee bargaining under the Act does not infringe on the University's autonomy in the educational sphere); see also *W T Andrew Co, Inc v Mid-State Surety Corp*, 450 Mich 655, 662, 668; 545 NW2d 351 (1996) (holding that the public works bond statute, MCL 129.201 *et seq.*, applied to the University as a valid "exercise of the Legislature's police power to protect the interests of contractors and materialmen in the public sector" and promoted the state's general welfare).

Plaintiff contends that Article X has nothing to do with the management or control of university property or the promotion of the University's objectives, but instead "pick[s] away" at the constitutional rights of Michigan's citizens "as they walk down the street." Plaintiff cites no authority in support of this claim, and his complaint makes no allegation in this regard. That is, plaintiff did not claim that the University exceeded its constitutional authority in promulgating Article X. Instead, plaintiff's complaint makes a claim based on preemption pursuant to MCL 123.1102; thus, we turn to that matter.

Chapter 123 of the Michigan Complied Laws relates to local governmental affairs and "governs everything from

the power of municipalities to operate a system of public recreation and playgrounds to their authority to establish and maintain garbage systems and waste plants." *Capital Area Dist Library v Mich Open Carry, Inc*, 298 Mich App 220, 230; 826 NW2d 736 (2012) (*CADL*). Beginning in 1990, Chapter 123 was amended to also govern the regulation of firearms. Specifically, MCL 123.1102 provides:

> A local unit of government shall not impose special taxation on, enact or enforce any ordinance or regulation pertaining to, or regulate in any other manner the ownership, registration, purchase, sale, transfer, transportation, or possession of pistols, other firearms, or pneumatic guns, ammunition for pistols or other firearms, or components of pistols or other firearms, except as otherwise provided by federal law or a law of this state.

MCL 123.1101(b) defines "local unit of government" as "a city, village, township, or county." When a statute defines a term, that definition controls. *Haynes v Neshewat*, 477 Mich 29, 35; 729 NW2d 488 (2007). Plainly, a "university," as that term is commonly understood, is not a city, village, township, or county. The Legislature's intent is clearly expressed and, thus, must be enforced as written. *Koontz v Ameritech Servs, Inc*, 466 Mich 304, 312; 645 NW2d 34 (2002). Therefore, as the Court of Claims held, the statute is not applicable to the University and, thus, does not preempt Article X.

But, plaintiff argues, the Court of Claims erred by failing to follow caselaw holding that the Legislature

fully occupied the field of firearms regulation under MCL 123.1102. For example, plaintiff notes, in *Mich Coalition for Responsible Gun Owners v City of Ferndale*, 256 Mich App 401, 403; 662 NW2d 864 (2003), this Court considered an ordinance of the city of Ferndale that prohibited "the possession or concealment of weapons in all buildings located in Ferndale that are owned or controlled by the city." This Court held that MCL 123.1102 "stripped local units of government of all authority to regulate firearms by ordinance or otherwise . . . except as particularly provided in other provisions of the act and unless federal or state law provided otherwise." *Id.* at 413. But clearly that case involved an ordinance of the city of Ferndale that regulated firearms—a local governmental unit encompassed by the plain terms of MCL 123.1101(b); it did not involve an ordinance of a constitutional corporate body that is coequal with the Legislature and an agency of the state.

The same analysis applies to plaintiff's reliance on *CADL*, 298 Mich App 220. There, the Capital Area District Library (CADL) was jointly established by the city of Lansing and Ingham County, and its operating board enacted a weapons policy banning all weapons from the library premises. *Id.* at 224-225. This Court held that "field preemption bars CADL's regulation of firearms." *Id.* at 230. In doing so, this Court acknowledged that the library did not fit within the definition of "local unit of government." *Id.* at 231. However, because the CADL was a quasi-municipal corporation created by two local units of government, this Court concluded that the library is a lower-level governmental entity subject to the principles

of preemption with regard to the regulation of firearms. *Id*. at 231-233, 241. Plaintiff argues that the definition of a "local unit of government" should similarly be expanded to include the University. This argument ignores that the University was not created by two local units of government but finds its origins in the Constitution as a corporate body that is coequal with the Legislature and an agency of the State.[5]

Further, in *Mich Gun Owners, Inc v Ann Arbor Pub Sch*, 318 Mich App 338, 341-343; 897 NW2d 768 (2016), this Court recently rejected a similar claim that MCL 123.1102 applied to the Ann Arbor Public Schools and prevented their policies banning the possession of firearms on school property as set forth in *CADL*, 298 Mich App 220. This Court noted that MCL 123.1102 only applies to

5. We note and reject our dissenting colleague's mischaracterization of the holding in *CADL* as "binding precedent" that we have "ignore[d]" in violation of MCR 7.215(J)(1). The district library at issue in that case was considered an "inferior level of government" and a "quasi-municipal corporation" which could only exercise powers "'expressly conferred by the Legislature.'" See *CADL*, 298 Mich App at 231-233 (citation omitted). But, as discussed in our opinion, the University is not remotely similar to a district library created by two municipalities that specifically come within the ambit of MCL 123.1102. Moreover, contrary to the dissent's position, we do not consider the University's autonomy with regard to its regulation of dangerous weapons as tantamount to having the "authority to enact criminal laws." Rather, like numerous other regulations the University enacts pursuant to its constitutional mandate of "general supervision," the objective of Article X is to create a safe environment for its students in furtherance of its educational mission.

a "local unit of government," which is defined under MCL 123.1101(b) as "a city, village, township, or county." *Mich Gun Owners, Inc*, 318 Mich App at 348. And unlike the district library that was established by "two local units of government" in the *CADL* case, school districts, like the Ann Arbor Public Schools, "are not formed, organized, or operated by cities, villages, townships, or counties; school districts exist independently of those bodies." *Id.* Likewise, the University of Michigan is not formed, organized, or operated by a city, village, township, or county; the University exists independently of those bodies.

We conclude, again, that the Legislature clearly limited the reach of MCL 123.1102 to firearm regulations enacted by cities, villages, townships, and counties. MCL 123.1101(b). The University is not similarly situated to these entities; rather, it is a state-level, not a lower-level or inferior-level, governmental entity. More specifically, it is "a constitutional corporation of independent authority . . . ." *Federated Publications, Inc*, 460 Mich at 84 n 8 (quotation marks and citation omitted). Plaintiff has failed to cite to a single case holding that the Board of Regents of the University of Michigan is a "lower-level governmental entity" or an "inferior level of government" subject to state-law preemption. See *CADL*, 298 Mich App at 233. Therefore, contrary to plaintiff's argument on appeal, this case is not "an ideal target" for the preemption analysis set forth in *People v Llewellyn*, 401 Mich 314; 257 NW2d 902 (1977)—that test presupposes that a "lower-level governmental entity" has enacted or seeks to enact a regulation in an area of law that the Legislature has regulated. See *CADL*, 298 Mich App at 233. But even if

the University Board of Regents was subject to state-law preemption, in *Mich Gun Owners, Inc*, 318 Mich App at 349-354, this Court considered the *Llewellyn* factors and rejected the claim "that MCL 123.1102 impliedly preempts any school-district-generated firearm policy because the statute fully occupies the regulatory field." While in that case the regulations were promulgated by a public school district and in this case the regulations were promulgated by the University Board of Regents, the analysis of the *Llewellyn* factors would be sufficiently similar to reach the same result—the Legislature did not intend to completely preempt the field of firearm regulation.

In summary, MCL 123.1102 does not prohibit the University from regulating the possession of firearms on University property through the enactment of Article X; thus, Count II of plaintiff's complaint was properly dismissed for failure to state a cognizable claim for relief. Accordingly, the Court of Claims properly granted defendant's motion for summary disposition under MCR 2.116(C)(8) and dismissed plaintiff's entire complaint.

Affirmed. In light of the public question involved, defendant—although the prevailing party—may not tax costs. See MCR 7.219(A).

/s/ Mark J. Cavanagh

/s/ Debora A. Servitto

APPENDIX G — DISSENTING OPINION, STATE OF MICHIGAN COURT OF APPEALS, *WADE V. UNIVERSITY OF MICHIGAN*, NO. 330555 (JUNE 6, 2017)

STATE OF MICHIGAN
COURT OF APPEALS

No. 330555
Court of Claims
LC No. 15-000129-MZ

JOSHUA WADE,

Plaintiff-Appellant,

v

UNIVERSITY OF MICHIGAN,

Defendant-Appellee.

June 6, 2017, Decided

Before: CAVANAGH, P.J., and SAWYER and SERVITTO, JJ.

SAWYER, J. (*dissenting*).

I respectfully dissent.

First, I do not believe it necessary to reach the constitutional question presented in this case because I believe it can be resolved on the preemption issue.

Accordingly, I will focus solely on the preemption issue. Additionally, I wish to make clear that my opinion only relates to the specific question before the Court: the authority of defendant to regulate the possession of firearms by members of the general public who are legally carrying the firearm under the provisions of state law in areas of defendant's campus that are open to the general public. I leave for another case the questions of defendant's authority to regulate the possession of firearms by its students or employees, or in areas in which the general public are prohibited access.

I do not disagree with the majority that this case is not strictly controlled by the preemption provision in MCL 123.1102. That statute bans local units of government from enacting their own laws regulating firearms. But, as the majority points out, "local unit of government" is defined under MCL 123.1101(b) as "a city, village, township, or county." And, of course, defendant is none of those. But that does not end the analysis. Rather, in looking to this Court's decision in *Capital Area Dist Library v Mich Open Carry, Inc* (*CADL*),[1] I conclude that both the trial court and the majority misapprehend the effect of field preemption in resolving this case.

In *CADL*, this Court rejected the direct application of the preemption provisions of MCL 123.1102 because a district library was not contained within the definition of a "local unit of government" under MCL 123.1101(a).[2] The

1. 298 Mich App 220; 826 NW2d 736 (2012).

2. 298 Mich App at 231.

opinion then goes on to provide a detailed analysis of the applicability of field preemption and the application of the factors under *People v Llewellyn*.[3] I need not extensively review the issue of field preemption here; the *CADL* opinion does an admirable job of doing just that. I need only refer to its ultimate conclusion: "the pervasiveness of the Legislature's regulation of firearms, and the need for exclusive, uniform state regulation of firearm possession as compared to a patchwork of inconsistent local regulations indicate that the Legislature has completely occupied the field that CADL seeks to enter."[4] I would only add that this conclusion is strengthened with respect to colleges and universities inasmuch as the Legislature, in the concealed-pistol-license statute, has addressed the issue of concealed firearms on college campuses. Specifically, MCL 28.425o(1)(h) prohibits, with some exceptions, individuals with a concealed pistol license from carrying a concealed pistol in a college or university dormitory or classroom. This fact further reflects the Legislature's intent to preempt this field of regulation, even with respect to colleges and universities.

The majority attempts to distinguish *CADL* on the basis that *CADL* relied on the fact that a district library is created by two local units of government, as defined in MCL 123.1101(1), and defendant here was not created by two local units of government. The majority relies on this Court's decision in *Mich Gun Owners, Inc v Ann*

3. 401 Mich 314; 257 NW2d 902 (1977).

4. *CADL*, 298 Mich App at 241.

Arbor Pub Sch[5] to reject the field preemption argument. I respectfully submit that both the majority in this case and the Court in *Mich Gun Owners* ignore the binding precedent of *CADL* and violate the requirements of MCR 7.215(J)(1). As discussed earlier, this Court in *CADL* concluded that the Legislature intended to completely occupy the field of the regulation of firearm possession and prevent a patchwork of local regulations in the state. The fact that CADL was established by two local units of government establishes that it was itself a governmental agency subject to preemption.[6] It does not, however, limit the application of the field-preemption doctrine to only those governmental entities created by two local units of government.

That is, once a court reaches the conclusion that field preemption applies, then field preemption applies to all units of government that attempt to invade the Legislature's regulation of that field. Indeed, the entire concept of field preemption is that it demands "exclusive state regulation to achieve the uniformity necessary to serve the state's purpose or interest."[7] It is patently absurd to conclude that the Legislature intended to preempt an entire field of regulation, yet it only applies to some, but not all, governmental entities. That is, if certain governmental entities are allowed to impose their own regulations, then the field is not actually preempted and the Legislature's interest in establishing uniformity is defeated.

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5. 318 Mich App 338; 897 NW2d 768 (2016), lv app pending.

6. *CADL*, 298 Mich App at 231-232.

7. *Llewellyn*, 401 Mich at 324.

Accordingly, I conclude that our decision in *CADL* compels the conclusion that the Legislature has preempted the regulation of the field of firearm possession and that that decision applies to all units of government in Michigan subject to being preempted by state law. Thus, the question that must be decided in this case is whether the University of Michigan, because of its special constitutional status, is subject to preemption at all.[8]

The special status of the three "constitutional universities"[9] has been considered by the courts many times, including in *Federated Publications, Inc v Mich State Univ Bd of Trustees*.[10] In *Federated Publications*, the Court considered whether the Open Meetings Act[11] applied to Michigan State University's (MSU) presidential search committee or whether, because of MSU's special constitutional status, it was exempt from the legislation. The Court concluded that only the formal trustees' meeting at which the board ultimately voted on the selection of the president was subject to the Open Meetings Act.[12] The Court explained that while

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8. I note that this is a different question than whether public schools are exempt from preemption. Therefore, even if we were to conclude that the University of Michigan is not subject to preemption, *Mich Gun Owners* was nevertheless incorrectly decided because it failed to follow the binding precedent of *CADL*.

9. University of Michigan, Michigan State University, and Wayne State University. See Const 1963, art 8, § 5.

10. 460 Mich 75; 594 NW2d 491 (1999).

11. MCL 15.261 *et seq.*

12. *Federated Publications*, 460 Mich at 92.

the Constitution grants a certain degree of autonomy to the universities, the universities are not exempt from all legislative enactments:

> This Court has long recognized that Const 1963, art 8, § 5 and the analogous provisions of our previous constitutions limit the Legislature's power. "The Legislature may not interfere with the management and control of" universities. [*Regents of the Univ of Mich v Michigan*, 395 Mich 52, 65; 235 NW2d 1 (1975).] The constitution grants the governing boards authority over "the absolute management of the University, and the exclusive control of all funds received for its use." [*State Bd of Agriculture v Auditor General*, 226 Mich 417, 424; 197 NW 160 (1924).] This Court has "jealously guarded" these powers from legislative interference. *Bd of Control of Eastern Michigan Univ v Labor Mediation Bd*, 384 Mich 561, 565; 184 NW2d 921 (1971).
>
> This Court has not, however, held that universities are exempt from all regulation. In *Regents of the Univ of Michigan v Employment Relations Comm*, 389 Mich 96, 108; 204 NW2d 218 (1973), we quoted *Branum v Bd of Regents of the Univ of Michigan*, 5 Mich App 134, 138-139; 145 NW2d 860 (1966):
>
> > It is the opinion of this Court that the legislature can validly exercise

> its police power for the welfare of the people of this State, and a constitutional corporation such as the board of regents of the University of Michigan can lawfully be affected thereby. The University of Michigan is an independent branch of the government of the State of Michigan, but it is not an island. Within the confines of the operation and the allocation of funds of the University, it is supreme. Without those confines, however, there is no reason to allow the regents to use their independence to thwart the clearly established public policy of the people of Michigan.
>
> Legislative regulation that clearly infringes on the university's educational or financial autonomy must, therefore, yield to the university's constitutional power.[13]

The Court then goes on to consider its earlier decision in the *Regents*[14] case. The *Regents* case considered whether the University was subject to the public employees relations act (PERA)[15] with respect to medical employees

13. *Federated Publications*, 460 Mich at 86-87 (citation omitted).

14. 389 Mich 96; 204 N.W.2d 218

15. MCL 423.201 *et seq.*

who formed a union. The *Federated Publications* opinion[16] offered the following observation of the *Regents* case:

> Thus, although a university is subject to the public employees relations act, MCL 423.201 *et seq.*; MSA 17.455(1) *et seq.*, the regulation cannot extend into the university's sphere of educational authority:
>
> > Because of the unique nature of the University of Michigan . . . the scope of bargaining by [an association of interns, residents, and post-doctoral fellows] may be limited if the subject matter falls clearly within the educational sphere. Some conditions of employment may not be subject to collective bargaining because those particular facets of employment would interfere with the autonomy of the Regents. [*Regents*, 389 Mich at 109.][17]

The *Regents* decision itself used the example that PERA would require the University to negotiate the salaries of the unionized employees, but the University would not be required to negotiate whether interns could be required to work in the pathology department if the University determined that spending time in the pathology

16. *Federated Publications*, 460 Mich at 87-88.

17. Alterations by the *Federated Publications* Court.

department was necessary to the interns' education.[18] The former does not invade the University's educational autonomy, while the latter does.

Clearly, the decisions of our courts on this topic do not support a proposition that defendant has free reign to determine which enactments of the Legislature it chooses to follow and which it chooses to ignore. Nor do these decisions grant the University the authority to enact criminal laws. Turning to the issue at hand, I do not view applying preemption to the issue of firearm possession as invading either the University's educational or financial autonomy. That is, by recognizing the Legislature's decision to preempt the field of firearm possession and keep to itself the enactment of those regulations, there is no invasion of the University's autonomy. This is not, for example, a case of the Legislature mandating that all University students must take a course in firearm safety in order to be awarded a degree. Nor has the Legislature mandated that the University expend money on such training for students who wish it.

For these reasons, I would reverse the trial court and hold that defendant exceeded its authority by enacting the restrictions on the possession of firearms on its campus.

/s/ David H. Sawyer

18. *Regents*, 389 Mich at 109.

APPENDIX H — OPINION AND ORDER, STATE OF MICHIGAN COURT OF CLAIMS, *WADE V. UNIVERSITY OF MICHIGAN*, CASE NO. 15-000129-MZ (NOVEMBER 13, 2015)

STATE OF MICHIGAN COURT OF CLAIMS

JOSHUA WADE,

Plaintiff,

v

UNIVERSITY OF MICHIGAN,

Defendant.

OPINION AND ORDER

Case No. 15-000129-MZ

Hon. Cynthia Diane Stephens

This mater is before the Court on defendant, University of Michigan's, motion for summary disposition. At issue in this case is whether the University is permitted to enact and enforce ordinances related to the possession of firearms on the University's campus. Because this Court concludes that defendant's ordinance prohibiting the possession of firearms on University property is valid, defendant's motion for summary disposition is GRANTED.

Appendix H

In 2001, the Regents of the University of Michigan adopted Article X, a weapons ordinance that prohibits firearm possession on University property. The ordinance provides:

> Except as otherwise provided in Section 4, no person shall, while on any property owned, leased, or otherwise controlled by the Regents of the University of Michigan:
>
> (1) possess any firearm or any other dangerous weapon as defined in or interpreted under Michigan law ... [Article X, Sec. 2.]

The prohibition set forth in Article X, Section 2 applies regardless of whether the individual has a concealed weapons permit or is otherwise authorized by law to possess, discharge or use any of the enumerated weapons. The ordinance does not apply to weapons carried by law enforcement, the military or for educational purposes. Further, the ordinance permits the director of public safety to waive the prohibition "based on extraordinary circumstances." (Article X, Section 4.)

In September 2014, plaintiff, Joshua Wade, applied for and was denied a waiver. On June 9, 2015, plaintiff filed a two-count complaint in the Court of Claims seeking injunctive and declaratory relief. Plaintiff alleges that defendant's ordinance unconstitutionally abridges the right of citizens to keep and bear arms. Plaintiff also alleges that the ordinance is preempted by state statutory law, specifically, MCL 123.1102.

Appendix H

In lieu of an answer, defendant has filed a motion for summary disposition pursuant to MCR 2.116(C)(8). A motion under this court rule tests the legal sufficiency of the plaintiffs claims on the pleadings alone to determine whether the plaintiff has stated a claim on which relief may be granted. *Bailey v Schaaf,* 494 Mich 595, 603; 835 NW2d 413 (2013). Defendant maintains that plaintiff is not entitled to injunctive or declaratory relief because the University's ordinance does not violate the state or federal constitutions, is not preempted by state law, and it was enacted as a valid exercise of the powers granted to the University pursuant to Const 1963, art 8, § 5.

In Count I of his complaint, plaintiff alleges that the University's ordinance violates Const 1963, art 1, § 6 of the Michigan Constitution and the Second Amendment of the United States Constitution.[1] Plaintiff argues that the ordinance unreasonably infringes on the constitutional right to bear arms. Upon a review of both state and federal precedent, this Court finds plaintiffs arguments unpersuasive.

In 2008, the United States Supreme Court engaged in its "first in-depth examination of the Second Amendment"

1. The Second Amendment of the United States Constitution provides: "A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed." The Michigan counterpart provides: "Every person has a right to keep and bear arms for the defense of himself and the state." The Second Amendment is applicable to the states by virtue of the Fourteenth Amendment. *McDonald v City of Chicago,* 561 US 742, 750; 130 S Ct 3020; 177 L Ed 2d 894 (2010)

when it considered the case of the *District of Columbia v Heller, 554* US 570,635; 128 S Ct 2783; 171 L Ed 2d 637 (2008). In *Heller*, the Court held that the Second Amendment protects an individual's right to carry and possess a hand gun in the home for self-defense.[2] *Id.* at 635. The Court cautioned that the right secured by the Second Amendment is not unlimited, that is, it should not be read to confer a right "to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose." *Id.* at 626. Indeed, the Court specifically recognized a non-exhaustive list of "presumptively lawful regulatory measures":

> [N]othing in our opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons and the mentally ill, *or laws forbidding the carrying of firearms in sensitive places such as schools* and governmental buildings, or laws imposing conditions and qualifications on the commercial sale of arms. [*Id.* at 626-627 (emphasis added).]

Further supporting its conclusion that the Second Amendment is limited and does not confer an unfettered right to carry a firearm anytime or anywhere, the *Heller* Court noted that the laws banning "dangerous and unusual weapons" or regulating the storage of firearms to prevent accidents" do not run afoul of the Second Amendment. *Id.* at 627, 632.

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2. Notably, the Court did not decide whether the Second Amendment extends outside the home.

Appendix H

It is interesting to note that the *Heller* Court was cognizant of the rising problem of handgun violence in this Country. In response to this concern, the Court specifically acknowledged that governmental entities have "a variety of tools for combating that problem," including "forbidding the carrying of firearms in sensitive places such as schools and government buildings." *Heller,* 444 US at 626-627 and n 27, 636. Two years after its opinion in *Heller,* the Supreme Court, in *McDonald v City of Chicago,* 561 US 742, 785-786; 130 S Ct 3020; 177 L Ed 2d 894 (2010), reiterated that the right to carry a firearm is not unlimited, and that "presumptively lawful regulatory measurers" include laws forbidding the carrying of firearms in schools. *Id.* at 786.

Citing to the opinion in *Heller,* the courts in this State have similarly recognized that "there are constitutionally acceptable categorical regulations of gun possession" and that "some limits can be placed on the right to keep and bear arms." *People v Wilder,* 307 Mich App 546, 555; 861 NW2d 645 (2014); see also, *People v Deroche,* 299 Mich App 301, 307-308; 829 NW2d 891 (2013). In *Michigan Coalition for Responsible Gun Owners v City of Ferndale,* 256 Mich App 401, 405-406; 662 NW2d 864 (2003), the Court of Appeals reaffirmed that the constitutional right to bear arms as conferred by Const 1963, art I, § 6 "is not absolute, but 'may yield to a legislative enactment that represents a reasonable regulation by the state in the exercise of its police power to protect the health, safety, and welfare of Michigan Citizens.'"

Thus, based upon the most recent and relevant pronouncements from the United States Supreme Court and this state's appellate courts, regulations restricting the carrying of firearms in sensitive places, specifically schools and government buildings, are presumptively legal. That is, the scope of the right conferred by the Second Amendment does not extend to theses places. It cannot legitimately be disputed that the University of Michigan, a public educational institution, is a school with unique characteristics inherent in such a designation. Defendant represents that as of the fall of 2014, enrollment reached over 43,000 students. The University provides high-density housing for nearly 10,000 undergraduate students. Many of these undergraduates are minors. With this demographic comes, all too frequently, alcohol consumption, impaired judgment and conduct. The University employs over 21,000 faculty and staff members. Defendant also notes that numerous children visit the campus to attend 25 youth sport camps each year. Defendant also operates the University Health System. Clearly, the University of Michigan is a "sensitive place" as contemplated by the Supreme Court in *Heller* and *McDonald.* As such, the University's prohibition on the possession of firearms is "presumptively lawful." Consequently, the University's ordinance does not fall within the scope of the right conferred by the Second Amendment or Const 1963, Art 1, § 6. Therefore, plaintiff has failed to state a claim upon which relief can be granted in Count I of his complaint.

In Count II of the complaint, it is alleged that the University's ordinance has been preempted by state

law. In general, preemption is found in two situations: (1) where the ordinance directly conflicts with a state statutory scheme; or (2) where the statutory scheme completely occupies the field that the ordinance attempts to regulate. *People v Llewellyn,* 401 Mich 314, 322; 257 NW2d 902 (1977). Relying on the doctrine of field preemption, plaintiff argues that MCL 123.1102 precludes the University from adopting an ordinance creating gun-free zones. This Court disagrees. The plain language of MCL 123.1102 unequivocally defines the scope of its reach and it does not evidence intent by the Legislature to completely occupy the field of firearm regulation.

MCL 123.1102 provides:

> *A local unit of government* shall not impose special taxation on, enact or enforce any ordinance or regulation pertaining to, or regulate in any other manner the ownership, registration, purchase, sale, transfer, transportation, or possession of pistols, other firearms, or pneumatic guns, ammunition for pistols or other firearms, or components of pistols or other firearms, except as otherwise provided by federal law or a law of this state. [Emphasis added.]

MCL 123.1101(b) defines "local unit of government" as: "a city, village, township or country." Because the University of Michigan does not constitute "a city, village, township or country," it is axiomatic that the prohibitions set forth in MCL 123.1102 do not apply to the University. Clearly,

the Legislature limited the preemptive effective of MCL 123.1101 *et seq.* to firearm ordinances adopted by cities, villages, townships and counties.

Plaintiff argues that the forgoing analysis is an overly narrow reading of MCL 123.1102. He contends that "the legislature's word choice in MCL 123.1101 is of little import when the effect of the statute is to vest exclusive regulatory authority for the field of firearms possession with the state legislature." Plaintiff reasons that the definition of "local unit of government" necessarily includes "quasi-municipal" entities. However, plaintiffs analysis violates nearly every rule governing statutory construction. It is axiomatic that the primary goal of statutory interpretation is to give effect to the intent of the legislature. *Mich Ed Ass'n v Secretary of State (On Reh),* 489 Mich 194, 217; 801 NW2d 35 (2011). This determination always begins with examining the plain language of the statute itself. *Ter Beek v City of Wyoming,* 495 Mich 1, 8; 846 NW2d 531 (2014). If the statutory language is unambiguous, it is to be presumed that the Legislature intended the meaning plainly expressed, and further judicial construction is not permitted or required. *Id.* ln this case, the statute could not be more clear. The Legislature specifically defined "local unit of government" as a "city, village, township, or county." It limited the scope of preemption to firearm regulations adopted by these entities. The Legislature did not leave any room for interpretation. It did not include "quasi-municipal" entities in its definition of "local unit of government." A court interpreting a statute is not free to add words to an unambiguous statute. *Rowland v Washtenaw County Road Com'n,* 477 Mich 197, 213 n

10; 731 NW2d 41 (2007). Based on a reading of the plain language of the statute, the Legislature did not intend to limit the ability of public universities to regulate firearms possession on their campuses.

This Court further finds that plaintiffs reliance upon the opinions in *Michigan Coalition for Responsible Gun Owners v City of Ferndale,* 256 Mich App 401; 662 NW2d 864 (2003) and *Capital Area District Library v Michigan Open Carry, Inc,* 298 Mich App 220; 826 NW2d 736 (2012) is misplaced. In *Michigan Coalition,* the Court found that MCL 123.1102 preempted a City of Ferndale regulation prohibiting the possession of weapons in all building owned or controlled by the city. *Michigan Coalition,* 256 Mich App at 402-403. In doing so, the Court stated:

> With the pronouncement in § 1102, the Legislature *stripped local units of government of all authority to regulate* firearms by ordinance or otherwise with respect to the areas enumerated in the statute, [footnote omitted] except as particularly provided in other provisions of the act and unless federal or state law provided otherwise. Unlike some other statutes, § 1102 does not use language to the effect that the act "occupies the whole field of regulation," [footnote omitted] but rather expressly *removes the power of local units of government* to regulate in the field. *The effect is to occupy the field to the exclusion of local units of government.* In other words, although stated in the negative, rather than the affirmative,

> the statutory language of § 1102 demonstrates that, in effect, state law completely occupies the field of regulation that the Ferndale ordinance seeks to enter, to the exclusion of the ordinance, although subject to limited exceptions. [Citation and footnote omitted.] *With the enactment of § 1102, the Legislature made a clear policy choice to remove from local units of government the authority to dictate where firearms may be taken.* [*Michigan Coalition,* 256 Mich App at 413-414 (emphasis added).]

The *Michigan Coalition* Court simply applied the plain language of the statute and emphasized that the preemptive effect of MCL 123.1102, was limited to "local units of government."

The opinion in *Capital Area District library* (hereinafter *"CADL")* is similarly inapposite. In *CADL*, the Court considered "whether district libraries established under the District Library Establishment Act (OLEA), MCL 397.171 *et seq.*, are subject to the same restrictions regarding firearm regulation that apply to public libraries established by local units of government." *CADL,* 298 Mich App 223. Of particular note is the nature of such a library; Under the DLEA, two or more *municipalities* may enter into an agreement to create a district library. The CADL was a collaboration between the City of Lansing and Ingham County. *Id.* at 224, 228. As to the scope of the preemption, the Court first reiterated the holding in *Michigan Coalition,* that

"state law *completely occupies*[3] the field of firearm regulation to the *exclusion of local units of government.*" *Id.* at 224 (emphasis added). The Court also noted that district libraries are not expressly included within the definition of a local unit of government by MCL 123.1102. However, it deemed the CADL a quasi-municipality. The Court ultimately concluded that MCL 123.1102 preempted the CADL's attempt to ban firearm possession in the libraries because the district library constituted a "local unit of government." The Court held that "[e]xcluding a district library from the field of regulation –simply because it is established by *two* local units of government instead of one—defies the purpose of the statute and would undoubtedly lead to patchwork regulation." *Id.* at 237. Contrary to plaintiffs assertion, the Court did actually expand the definition of "local government unit." Indeed, the Court's reasoning recognizes that the regulation at issue was actually promulgated by two local units of government *as defined by* MCL 123.1101(b), i.e. a city and a county.

Even if the University were deemed to be a local unit of government, MCL 123.1102 still would not prohibit the University from promulgating its own firearm regulations. MCL 123.1102 specifically permits "local units of government" to enact regulations as "otherwise provided by federal law or a law of this state." In this case, the State Constitution grants to the University the autonomy to promulgate its own firearm regulations.

3. Emphasis in original text.

Appendix H

Our Supreme Court has noted that the Michigan Constitution confers a unique status on public universities and their government boards. *Federated Publications, Inc v Board of Trustees of Michigan State University,* 460 Mich 75, 84; 594 NW2d 491 (1999). Under Const 1963, art 8, § 5, the Regents of the University of Michigan constitute a "body corporate" vested with the "general supervision of its institution and the control and direction of all expenditures from the institution's funds." Indeed, the Court described the governing board's status as "a constitutional corporation of independent authority, which, within the scope of its functions, is co-ordinate with and equal to that of the legislature." *Id.* at 84 n 8 (citing *Bd of Regents of the Univ of Michigan v Auditor General,* 167 Mich 444, 450; 132 NW 1037 (1911)). Thus, "[t]he constitution grants the governing boards authority over 'the absolute management of the University and the exclusive control of all funds received for its use.'" *Id.* at 87. Promulgating firearm ordinances for the safety of the students, staff and faculty is, therefore, constitutionally permissible and inextricably intertwined with the operation of the University and its mission to educate. Thus, even if the University were deemed a "local unit of government," its ordinance would not run afoul of MCL 123.1102 because under the Michigan Constitution, the University has the autonomy to promulgate firearm regulations. Moreover, any legislative scheme that "clearly infringes on the university's educational or financial autonomy must, therefore, yield to the university's constitutional power." *Id.* Simply put, the Legislature may

not interfere with the management and control of public universities when they are exercising their constitutional powers to supervise the institution. *Id.* at 87, 88.

IT IS HEREBY ORDERED that defendant's motion for summary disposition is GRANTED.

This order resolves the last pending claim and closes the case.

Dated: November 13, 2015 /s/Cynthia Diane Stephens
Hon. Cynthia Diane Stephens
Court of Claims Judge

APPENDIX I — RELEVANT CONSTITUTIONAL AND STATUTORY PROVISIONS

RELEVANT CONSTITUTIONAL AND STATUTORY PROVISIONS

U.S. Const. amend. II

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

U.S. Const. amend. XIV, § 1

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

Mich. Const. art. I, § 6

Every person has a right to keep and bear arms for the defense of himself and the state.

Mich Const. art. VIII, § 5

The regents of the University of Michigan and their successors in office shall constitute a body corporate known as the Regents of the University of Michigan; the

trustees of Michigan State University and their successors in office shall constitute a body corporate known as the Board of Trustees of Michigan State University; the governors of Wayne State University and their successors in office shall constitute a body corporate known as the Board of Governors of Wayne State University. Each board shall have general supervision of its institution and the control and direction of all expenditures from the institution's funds. Each board shall, as often as necessary, elect a president of the institution under its supervision. He shall be the principal executive officer of the institution, be ex-officio a member of the board without the right to vote and preside at meetings of the board. The board of each institution shall consist of eight members who shall hold office for terms of eight years and who shall be elected as provided by law. The governor shall fill board vacancies by appointment. Each appointee shall hold office until a successor has been nominated and elected as provided by law.

Mich. Comp. Laws § 390.5 Board of regents; powers.

The regents shall have power to enact ordinances, by-laws and regulations for the government of the university; to elect a president, to fix, increase and reduce the regular number of professors and tutors, and to appoint the same, and to determine the amount of their salaries: Provided, That there shall always be at least 1 professor of homeopathy in the department of medicine.

Appendix I

Relevant Sections of An Ordinance to Regulate Parking and Traffic

and to

Regulate the Use and Protection

of the

Buildings and Property

of the

Regents of the University of Michigan

Adopted January 1995
Revised April 2001, July 2016, September 2019 and July 2020
Maintained by the Office of the Vice President and Secretary of the University of Michigan

[TABLE INTENTIONALLY OMITTED]

WHEREAS, Article VIII, Section 5 of the Michigan Constitution of 1963 provides that The Regents of The University of Michigan and their successors in office shall constitute a body corporate and vests in it the general supervision of the University; and

WHEREAS, Section 5 of Public Act 151 of 1851, as amended (Michigan Compiled Laws Annotated, Section 390.5), provides that the Regents shall have power to enact ordinances, by-laws, and regulations for the government of the University; and

Appendix I

WHEREAS, Section 3 of Public Act 151 of 1851, as amended (Michigan Compiled Laws Annotated, Section 390.3), provides that the government of the University is vested in the Regents; and WHEREAS, Section 1 of Public Act 80 of 1905, as amended (Michigan Compiled Laws Annotated, Section 19.141), provides that the Regents shall have authority to make and prescribe rules and regulations for the care, preservation, and protection of buildings and property dedicated and appropriated to the public use, over which the Regents have jurisdiction or power of control and the conduct of those coming upon University property, which may be necessary for the maintenance of good order and the protection of its property, and further provides that the Regents shall have authority to enforce such rules and regulations; and

WHEREAS, Section 1 of Public Act 291 of 1967 (Michigan Compiled Laws Annotated, Section 390.891), authorizes the Regents to enact parking, traffic, and pedestrian ordinances for the government and control of its campuses, and to provide fines for violations of the ordinances; and Section 3 of that Act permits the Regents to establish a Parking Violations Bureau as an exclusive agency to accept admissions of responsibility in cases of civil infraction violations of any parking ordinance and to collect and retain fines and costs as prescribed in the ordinance for violations; and

WHEREAS, pursuant to the above-designated authority, and in discharge of the responsibility imposed by them, The Regents of the University of

Michigan deem it necessary to adopt an ordinance and rules and regulations for the care, preservation, protection, and government of University property; for the regulation of the conduct of persons coming upon its property; for the regulation of driving and parking of motor vehicles, vehicles and bicycles upon its property; for the removal and impoundment of motor vehicles, vehicles and bicycles abandoned thereon; for the maintenance of good order; for the promotion of public health, safety, and general welfare in and upon its property; and for any other purposes as permitted under the laws of the State of Michigan.

WHEREAS, nothing herein shall be construed or interpreted to constitute an exclusive remedy for conduct that violates University policy; University ordinances; or municipal, state, federal, or other laws.

NOW, THEREFORE, THE REGENTS OF THE UNIVERSITY OF MICHIGAN HEREBY ORDAIN AS FOLLOWS:

Article I: Geographic Scope

Section 1. Geographic Scope of Ordinance

Except as otherwise provided below, this Ordinance shall apply (a) to the Ann Arbor campus of the University of Michigan, which, for the purposes of this Ordinance, is deemed to include all Ann Arbor campus property owned or leased or otherwise controlled by

the Regents of the University of Michigan and all locations to the extent permitted under Act 120 of 1990 as amended and (b) where applicable to the Dearborn and Flint campuses of the University of Michigan, which, for the purposes of this Ordinance, are deemed to include all Dearborn and Flint campus property, respectively, owned or leased or otherwise controlled by the Regents of the University of Michigan and all locations to the extent permitted under Act 120 of 1990 as amended.

Section 2. Authority

The Board of Regents of the University of Michigan delegates authority to empower peace and police officers under MCL 390.1511 with the authority to enforce state laws and Regents' Ordinance upon (a) the President and the Executive Vice President and Chief Financial Officer of the University of Michigan, or their respective designee(s) and (b) the Executive Director of the Division of Public Safety and Security.

* * *

Appendix I

Article X: Weapons

Section 1. Scope of Article X

Article X applies to all property owned, leased, or otherwise controlled by the Regents of the University of Michigan, for which the Regents of the University of Michigan have the constitutional or statutory authority to enact ordinances, and applies regardless of whether the individual has a concealed weapons permit or is otherwise authorized by law to possess, discharge, or use any device referenced below.

Section 2. Possession of Firearms, Dangerous Weapons and Knives

Except as otherwise provided in Section 5, no person shall, while on any property owned, leased, or otherwise controlled by the Regents of the University of Michigan, possess any firearm, dagger, dirk, stiletto, knife with a blade over 3 inches in length, pocket knife opened by a mechanical device, iron bar, or brass knuckles.

Section 3. Discharge or Use of Firearms, Dangerous Weapons, and Knives

Except as otherwise provided in Section 5, no person shall discharge or otherwise use any device listed in Section 2 on any property

owned, leased, or otherwise controlled by the Regents of the University of Michigan.

Section 4. Manufacture of Firearms

No person shall use University property, including University owned, leased, bailed, loaned, or otherwise possessed 3D printers, to manufacture, in whole or in part, any firearm or ammunition without the express written permission of the Executive Director of the Division of Public Safety.

Section 5. Exceptions

(a) Except to the extent regulated under Section 5(b), the prohibitions in Sections 2 and 3 of this Article X do not apply:

(1) To University employees who are authorized to possess and/or use such a device pursuant to Standard Practice Guide 201.94;

(2) To law enforcement officers of legally established law enforcement agencies who are authorized by their employer to possess such a device;

(3) To retired or active peace officers carrying a weapon in

compliance with the federal Law Enforcement Officer Safety Act (LEOSA), as amended, or retired peace officers that have served 15 years of aggregate service as a peace officer and retired in good standing and who are in possession of a law enforcement officer photo identification card issued by the agency from which he or she retired that clearly identifies the individual, agency, and status as retired in good standing, and who are otherwise fully qualified under Michigan Compiled Laws to legally carry a concealed weapon

(4) To other non-University employees who are authorized by their employer to possess or use such a device during the time the employee is engaged in work requiring such a device and such possession is requisite for the nature of such work as determined at the discretion of the Executive Director of the Division of Public Safety and Security.

(5) To individuals fully qualified under Michigan Compiled Laws to legally carry a concealed weapon who experience an emergency

need to seek medical treatment or who are assisting an individual in emergency need of medical treatment, provided that the individual carrying the weapon immediately notifies a University staff member of their armed status, provides valid credentials, and cooperates with all direction including securing the weapon(s) as instructed.

(6) To individuals fully qualified under Michigan Compiled Laws to legally carry a concealed weapon, who are operating a motor vehicle and traveling on a University-owned street, provided they do not exit their vehicle.

(7) When someone possesses or uses such a device, provided that it is unloaded, as part of a military or similar uniform or costume in connection with a public ceremony or parade or theatrical performance;

(8) When someone possesses or uses such a device, provided that it is unloaded, in connection with a regularly scheduled educational,

recreational, or training program authorized by the University;

(9) When someone possess or uses such a device for recreational hunting on property that has been designated for such activity by the University provided the possession and use is in strict compliance with applicable law; or

(10) To possession of a knife with a blade in excess of 3 inches when used solely for preparation of food, instruction or maintenance.

(11) When the Executive Director of the Division of Public Safety and Security or the Executive Director's designees, which shall include the Chiefs of Police at each University campus, unless otherwise designated by the Executive Director of the Division of Public Safety and Security, has waived the prohibition based on expressly articulated extraordinary circumstances. The waiver must be in writing and must define its scope and duration.

(b) The Executive Director of the Division of Public Safety and Security or the Executive Director's designee with respect to the Ann Arbor campus, or the respective Chancellor or the Chancellor's designee with respect to the Dearborn and Flint campuses, may impose restrictions upon individuals who are otherwise authorized to possess or use such a device pursuant to Section 5(a) when the Executive Director, Chancellor or designee determines that the restrictions are appropriate under the circumstances.

Section 6. Violation Penalty

A person who violates this Article X is guilty of a misdemeanor, and upon conviction, punishable by and upon conviction, punishable by imprisonment not to exceed ninety days, and/or a fine of not more than five hundred dollars or both.

* * *

APPENDIX J — RELEVANT SECTIONS OF AN ORDINANCE TO REGULATE PARKING AND TRAFFIC AND TO REGULATE THE USE AND PROTECTION OF THE BUILDINGS AND PROPERTY OF THE REGENTS OF THE UNIVERSITY OF MICHIGAN: ARTICLE X. APRIL 2001 VERSION

[SEAL]

Adopted January 1995
Revised April 2001
Maintained by the Office of the Vice President and Secretary of the University of Michigan

[TABLES INTENTIONALLY OMITTED]

WHEREAS, Article VIII, Section 5 of the Michigan Constitution of 1963 provides that The Regents of The University of Michigan and their successors in office shall constitute a body corporate and vests therein the general supervision of said University; and

WHEREAS, Section 5 of Public Act 151 of 1851, as amended (Michigan Compiled Laws Annotated, Section 390.5), provides that the said Regents shall have power to enact ordinances, by-laws, and regulations for the government of said University; and

WHEREAS, Section 3 of Public Act 151 of 1851, as amended (Michigan Compiled Laws Annotated, Section 390.3), provides that the government of the University is vested in said Regents; and

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WHEREAS, Section 1 of Public Act 80 of 1905, as amended (Michigan Compiled Laws Annotated, Section 19.141), provides that the said Regents shall have authority to make and prescribe rules and regulations for the care, preservation, and protection of buildings and property dedicated and appropriated to the public use, over which the said Regents have jurisdiction or power of control and the conduct of those coming upon the property thereof, which may be necessary for the maintenance of good order and the protection of said state property, and further provides that the said Regents shall have authority to enforce such rules and regulations; and

WHEREAS, Section 1 of Public Act 291 of 1967 (Michigan Compiled Laws Annotated, Section 390.891), authorizes said Regents to enact parking, traffic, and pedestrian ordinances for the government and control of its campuses, and to provide fines for violations of such ordinances; and Section 3 of that Act permits said Regents to establish a Parking Violations Bureau as an exclusive agency to accept admissions of responsibility in cases of civil infraction violations of any parking ordinance and to collect and retain fines and costs as prescribed in the ordinance for such violations; and

WHEREAS, pursuant to the above-designated authority, and in discharge of the responsibility imposed thereby, The Regents of The University of Michigan deem it necessary to adopt an ordinance and rules and regulations for the care, preservation, protection, and government of University property; for the conduct of persons coming upon said property; for the regulation

of the driving and parking of motor vehicles, vehicles and bicycles upon said property; for the removal and impoundment of motor vehicles, vehicles and bicycles abandoned thereon; for the maintenance of good order; and for the promotion of public health, safety, and general welfare in and upon said property;

NOW, THEREFORE, THE REGENTS OF THE UNIVERSITY OF MICHIGAN HEREBY ORDAIN AS FOLLOWS:

* * *

Article X: Weapons

Section 1. Scope of Article X

Article X applies to all property owned, leased or otherwise controlled by the Regents of the University of MIchigan and applies regardless of whether the Individual has a concealed weapons permit or is otherwise authorized by law to possess, discharge, or use any device referenced below.

Section 2. Possession of Firearms, Dangerous Weapons and Knives

Except as otherwise provided in Section 4, no person shall, while on any property owned, leased, or otherwise controlled by the Regents of the University of Michigan:

(1) possess any firearm or any other dangerous weapon as defined in or interpreted under Michigan law or

(2) wear on his or her person or carry in his or her clothing any knife, sword or machete having a blade longer than four (4) inches, or, in the case of a knife with a mechanism to lock the blade in place when open, longer than three (3) inches.

Section 3. Discharge or Use of Firearms, Dangerous Weapons and Knives

Except as otherwise provided in Section 4, no person shall discharge or otherwise use any device listed in the preceding section on any property owned, leased, or otherwise controlled by the Regents of the University of Michigan.

Section 4. <u>Exceptions</u>

(1) Except to the extent regulated under Subparagraph (2), the prohibitions in this Article X do not apply:

(a) to University employees who are authorized to possess and/or use such a device pursuant to Standard Practice Guide 201.94;

(b) to non-University law enforcement officers of legally established law enforcement agencies or to other non-University employees who, in either situation, are authorized by their employer to possess or use such a device during the time the employee is engaged In work requiring such a device;

(c) when someone possess or uses such a device as part of a military or similar uniform or costume In connection with a public ceremony or parade or theatrical performance;

(d) when someone possesses or uses such a device in connection with a regularly scheduled educational, recreational or training program authorized by the University;

(e) when someone possess or uses such a device for recreational hunting on property which has been designated for such activity by the University provided such possession and use is in strict compliance with applicable law; or

(f) when the Director of the University's Department of Public Safety has waived the prohibition based on extraordinary circumstances. Any such waiver must be in writing and must define its scope and duration.

(2) The Director of the Department of Public Safety may impose restrictions upon individuals who are otherwise authorized to possess or use such a device pursuant to Subsection (1) when the Director determines that such restrictions are appropriate under the circumstances.

Section 5. Violation Penalty

A person who violates this Article X is guilty of a misdemeanor, and upon conviction, punishable by imprisonment for not less than ten (10) days and no more than sixty (60) days, or by a fine of not more than fifty dollars ($50.00) or both.

* * *

APPENDIX K — UNIVERSITY OF MICHIGAN MEMORANDUM: CONCEALED WEAPONS ON CAMPUS. FEBRUARY 6, 2001

MEMORANDUM [SEAL]
Office of the Vice President
and Secretary of the University
The University of Michigan
734/763-5553 (phone); 734/763-8011 (fax)

TO: Board of Regents

FROM: Lisa A. Tedesco

DATE: February 6, 2001

RE: **Concealed Weapons on Campus**

Colleagues,

Earlier this year a new concealed weapons bill was signed into State law, and will take effect on July 1st. The purpose of this memorandum is to provide you with information on University policies and expected changes regarding policies for concealed weapons on campus.

Description of Old and New Law. The old law required that applicants for permits to carry concealed weapons demonstrate need. The law gave county gun boards broad discretion to grant or deny application for concealed weapon permits.

The new law standardizes the requirements for acquiring a concealed weapon permit and county gun boards have far less discretion to deny application for these permits.

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If an applicant satisfies minimal criteria (viz., US citizen, no criminal convictions, no record of being institutionally committed for mental illness, completion of a gun safety course) county gun boards "shall issue" a concealed weapon permit. Applicants are no longer required to demonstrate need.

In states where concealed weapon laws have been relaxed the number of persons carrying concealed weapons has doubled. At the present time, there are 31,000 weapons permits in the State of Michigan, half of which are in Macomb County.

The new law does not allow permit holders from this state or any other state to carry weapons in the following places: dormitories or classrooms of colleges, day care centers, sports arenas and stadiums, bars, lounges or dining rooms holding Michigan Liquor Control Code licenses, entertainment facilities with 2500 or more person capacity, hospitals, K-12 educational sites.

The new law does allow employers to prohibit employees from carrying a concealed weapon in the course of their employment.

Policy Review. With the new law about to take effect, we have been reviewing our policies and practices in relation to ensuring safety and security, broadly, on campus and on all properties owned, leased or otherwise controlled by the University.

At the present time, students are prohibited from carrying concealed weapons by the Student Code of Conduct,

and this will not change. The Regents Ordinance (1995) Article X concerns weapons and states "no person while on University property, may possess firearms, except as permitted by State law." Attached is a copy of the full article from the Ordinance. And, at the present time, there is no Standard Practice Guide (SPG) Policy for employees.

The deans have endorsed establishing policy that ensures no weapons on campus and the Campus Safety and Security Advisory Committee (comprised of faculty, staff and students) provided the same recommendation, passed unanimously, to the Provost and CFO. In addition, Bill Bess, Director of DPS, has had experience with campus security departments where the university policy is one of no weapons on campus, while the state law allowed concealed weapons.

To that end, an SPG has been drafted and can be enacted administratively. A draft copy is attached for your information. Also attached is a comparison of other weapons policies for employees at other Michigan universities and Big Ten schools.

Once the SPG has been promulgated, the only policy remaining in need of revision will be the Regents Ordinance, Article X. A revision would ensure that visitors to campus and other University properties would not carry concealed weapons, along with all other members of the University community.

Please let me know if you have any concerns about moving forward with an Ordinance revision.

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Thank you.

—Lisa

NB: Conversations on campus are ongoing. The Michigan Daily had some coverage today on the topic of concealed weapons and University policy, but much of their information was inaccurate. Coverage in the Ann Arbor News may follow.

The University Record, March 19, 2001

Proposed Regents Ordinance Change

From Robert A. Kasdin, executive vice president and chief financial officer:

In January 2001, the Campus Safety and Security Advisory Committee (CSSAC) passed and forwarded to Provost Cantor and me a resolution recommending that the University be weapons-free except in special circumstances approved by the Department of Public Safety.

Based on this resolution, and on a desire to minimize violence on our campus to the greatest extent possible, I have reviewed our current policies on weapons. These policies include the *Code of Student Conduct* (applicable to students) and the *Standard Practice Guide* (applicable to employees), both of which prohibit weapons except in special circumstances. I am now recommending that *An Ordinance to Regulate Parking and Traffic, and to*

Appendix K

Regulate the Use and Protection of the Buildings and Property of the Regents of the University of Michigan ("Regents Ordinance") be amended as to this issue.

With some limited exceptions, the revised Regents Ordinance would restrict weapons anywhere on University property regardless of who possesses them, ensuring a safe educational environment. The amended Regents Ordinance is similar to regulations already in effect at other state universities and has received the full support of the director of the Department of Public Safety, the administration of University Hospitals and Health Centers, and the chancellors of the Flint and Dearborn campuses.

As was the case the last time the Regents Ordinance was amended in December 1994, CSSAC is seeking input from members of the University community regarding the proposed ordinance amendments. Comments must be submitted in writing, either via e-mail to public.comments@umich.edu, fax to (734) 763-8011; or letter to CSSAC, 2014 Fleming Administration Building 1340.

Deadline for receipt of comments is March 30. If you have any questions, please call (734) 763-5553.

ARTICLE I: GEORGRAPHIC SCOPE

Section 1. Geographic Scope of Ordinance. Except as otherwise provided below, tThis Ordinance shall apply solely to the Ann Arbor campus of the University of Michigan which, for the purposes of this Ordinance, is

deemed to include all Ann Arbor campus property owned or leased by the Regents of The University of Michigan.

* * *

ARTICLE X: WEAPONS

Section 1. Scope of Article X. Article X applies to all property owned, leased or otherwise controlled by the Regents of the University of Michigan and applies regardless of whether the individual has a concealed weapons permit or is otherwise authorized by law to possess, discharge or use any device referenced below.

Section 2~~1~~. Possession of Firearms, Dangerous Weapons and Knives. Except as otherwise provided in Section 4, n~~N~~o person shall, while on any property owned, leased or otherwise controlled by the Regents of the University of Michigan: (1) possess any firearm or any other dangerous weapon as defined in or interpreted under Michigan law or (2) ~~University property, may possess firearms, except as permitted by State law. No person, while on University property, shall~~ wear on his or her person or carry in his or her ~~person or carry in his~~ clothing any knife, sword or machete having a blade longer than four (4) inches, or, in the case of a knife with a mechanism to lock the blade in place when open, longer than three (3) inches.~~, except as follows:~~

~~(1) During the time when the person is engaged in work requiring such a device.~~

~~(1) When the device is securely packaged for purposes of purchase or sale.~~

~~When the device is worn as part of a military or fraternal uniform in connection with a public ceremony, parade or theatrical performance.~~

Section 3~~2~~. Discharge or Use of Firearms, Dangerous Weapons and Knives.~~of a Weapon~~. Except as otherwise provided in Section 4, n~~N~~o person shall discharge or otherwise use any device listed in the preceding Section on any property owned, leased or otherwise controlled by the Regents of the University of Michigan.~~any weapon within the boundaries of University property, except in connection with a regularly schedule educational, recreational, or training program under adequate supervision, or in connection with the performance of lawful duties of law enforcement, or for the protection of a person or property when confronted with deadly force.~~

Section 4~~3~~ Exceptions.

(1) Except to the extent regulated under Subparagraph (2), the prohibitions in this Article do not apply:

(a) to employees who are authorized to possess and/or use such a device pursuant to Standard Practice Guide 201.94;

(b) to non-University law enforcement officers of legally established law enforcement agencies who are authorized by their employer to possess or use such a device during

the time the employee is engaged in work requiring such a device;

(c) when someone possesses or uses such a device as part of a military or similar uniform or costume in connection with a public ceremony or parade or theatrical performance;

(d) when someone possesses or uses such a device in connection with a regularly scheduled educational, recreational or training program authorized by the University;

(e) when someone possesses or uses such a device for recreational hunting on property which has been designated for such activity by the University provided such possession and use is in strict compliance with applicable law; or

(f) when the Director of the University's Department of Public Safety has waived the prohibition based on extraordinary circumstances. Any such waiver must be in writing and must define its scope and duration.

(2) The Director of the Department of Public Safety may impose restrictions upon individuals who are otherwise authorized to possess or use such a device pursuant to Subsection (1) when the Director determines that such restrictions are appropriate under the circumstances.

Section 5. Violation Penalty. A person who violates this Article X is guilty of a misdemeanor, and upon conviction, punishable by imprisonment for not less than ten (10) days

and no more than sixty (60) days, or by fine of not more than fifty dollars ($50) or both.

Amended Ordinance

ARTICLE I: GEOGRAPHIC SCOPE

Section 1. Geographic Scope of Ordinance. Except as otherwise provided below, this Ordinance shall apply solely to the Ann Arbor campus of the University of Michigan which, for the purposes of this Ordinance, is deemed to include all Ann Arbor campus property owned or leased by the Regents of The University of Michigan.

* * *

ARTICLE X: WEAPONS

Section 1. Scope of Article X. Article X applies to all property owned, leased or otherwise controlled by the Regents of the University of Michigan and applies regardless of whether the individual has a concealed weapons permit or is otherwise authorized by law to possess, discharge or use any device referenced below.

Section 2. Possession of Firearms, Dangerous Weapons and Knives. Except as otherwise provided in Section 4, no person shall, while on any property owned, leased or otherwise controlled by the Regents of the University of Michigan: (1) possess any firearm or any other dangerous weapon as defined in or interpreted under Michigan law or (2) wear on his or her person or carry in his or her clothing

any knife, sword or machete having a blade longer than four (4) inches, or, in the case of a knife with a mechanism to lock the blade in place when open, longer than three (3) inches.

Section 3. Discharge or Use of Firearms, Dangerous Weapons and Knives. Except as otherwise provided in Section 4, no person shall discharge or otherwise use any device listed in the preceding Section on any property owned, leased or otherwise controlled by the Regents of the University of Michigan.

Section 4. Exceptions.

(1) Except to the extent regulated under Subparagraph (2), the prohibitions in this Article X do not apply:

(a) to employees who are authorized to possess and/or use such a device pursuant to Standard Practice Guide 201.94;

(b) to non-University law enforcement officers of legally established law enforcement agencies who are authorized by their employer to possess or use such a device during the time the employee is engaged in work requiring such a device;

(c) when someone possesses or uses such a device as part of a military or similar uniform or costume in connection with a public ceremony or parade or theatrical performance;

(d) when someone possesses or uses such a device in connection with a regularly scheduled educational, recreational or training program authorized by the University;

(e) when someone possesses or uses such a device for recreational hunting on property which has been designated for such activity by the University provided such possession and use is in strict compliance with applicable law; or

(f) when the Director of the University's Department of Public Safety has waived the prohibition based on extraordinary circumstances. Any such waiver must be in writing and must define its scope and duration.

(2) The Director of the Department of Public Safety may impose restrictions upon individuals who are otherwise authorized to possess or use such a device pursuant to Subsection (1) when the Director determines that such restrictions are appropriate under the circumstances.

Section 5. Violation Penalty. A person who violates this Article X is guilty of a misdemeanor, and upon conviction, punishable by imprisonment for not less than ten (10) days and no more than sixty (60) days, or by fine of not more than fifty dollars ($50) or both.

APPENDIX L — UNIVERSITY OF MICHIGAN DIVISION OF PUBLIC SAFETY & SECURITY, POLICE DEPARTMENT: LETTER TO MR. WADE, DATED SEPTEMBER 25, 2014

DIVISION OF PUBLIC SAFETY & SECURITY
POLICE DEPARTMENT
UNIVERSITY OF MICHIGAN

September 25, 2014

Mr. Joshua Wade
[redacted]

RE: Request for Waiver

Dear Mr. Wade:

This letter is prepared in response to your request for an exception to the restrictions imposed in Article X of the Ordinance to Regulate Parking and Traffic, and to Regulate the Use and Protection of the Buildings and Property of the Regents of the University of Michigan.

Section 4(1)(f) allows for a waiver to be approved by the Director of the Department of Public Safety based on "extraordinary circwnstances" and that such a waiver be in writing with defined scope and circumstances.

The circumstances you described in your written request and subsequent meeting with me; that you are a legal resident of Ann Arbor, you have a concealed pistol permit, that you spend a lot of time outdoors and in downtown Ann

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Arbor, that you wish to be permitted to carry a weapon on University of Michigan property, that you have requested a waiver, and that you believe it is your constitutional right to carry a weapon on University property, do not in my view fit the definition of extraordinary circumstances as intended by the Board of Regents. The requested waiver is denied.

You understanding and cooperation is much appreciated.

Sincerely,

/s/_____
Robert D. Neumann
Chief of Police

Cc: Deputy Chief Melissa Overton
Shift Supervision
Evidence/Records
File
Communications Center

Campus Safety Services Building
1239 Kipke Dr., Ann Arbor, MI 48109-2036
734 763-3434 Fax: 734 763-2939
police.umich.edu