No. 24-773

IN THE
Supreme Court of the United States

JOSHUA WADE,
Petitioner,

v.

UNIVERSITY OF MICHIGAN,
Respondent.

On Petition for a Writ of Certiorari
to the Michigan Court of Appeals

BRIEF IN OPPOSITION

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QUESTION PRESENTED

In *New York State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. 1 (2022), this Court noted the existence of "longstanding laws forbidding the carrying of firearms in sensitive places such as schools and government buildings,'" and stated that it was "aware of no disputes regarding the lawfulness of such prohibitions." *Id.* at 30 (quotation marks omitted). The question presented is:

Whether Michigan's intermediate appellate court correctly held that the University of Michigan is a "school" within the meaning of *Bruen*.

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INTRODUCTION

In *District of Columbia v. Heller*, 554 U.S. 570 (2008), this Court held that the District of Columbia's "ban on handgun possession in the home violates the Second Amendment, as does its prohibition against rendering any lawful firearm in the home operable for the purpose of immediate self-defense." *Id.* at 635. The Court emphasized, however, that its decision should not "be taken to cast doubt on … laws forbidding the carrying of firearms in sensitive places such as schools and government buildings." *Id.* at 626. In *New York State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. 1 (2022), the Court acknowledged "*Heller*'s discussion of 'longstanding' 'laws forbidding the carrying of firearms in sensitive places such as schools and government buildings,'" and stated that it was "aware of no disputes regarding the lawfulness of such prohibitions." *Id.* at 30.

In this case, Michigan's intermediate appellate court concluded that the University of Michigan is a "school" within the meaning of *Heller* and *Bruen*. It therefore upheld an ordinance restricting firearm possession while on the University's property. No further review of that decision is warranted. No federal appellate court has addressed whether a university is a "school" under the Second Amendment. A single state supreme court addressed this issue before *Bruen* and reached the same conclusion as the Michigan Court of Appeals. Given the absence of lower-court authority on this issue, additional percolation is warranted.

Further, this case is an unsuitable vehicle for Supreme Court review. Petitioner argues at length that the University's ordinance is unconstitutionally vague in

violation of the Due Process Clause. But Petitioner did not advance any Due Process claim below, and so the lower courts did not address it. Petitioner also contends that the Second Amendment bars application of the ordinance because the University's boundary lines are too difficult to discern. But the factual record is too sparse for the Court to evaluate that contention. Indeed, the petition does not rely on evidence from the record, instead citing non-record evidence from the Internet. Further, petitioner frames this case in fact-bound terms, creating the risk that any decision by this Court would apply at the University of Michigan and nowhere else.

Finally, the Court should deny review because the Michigan Court of Appeals' decision is correct. The University of Michigan is a "school"—as evidenced by longstanding laws dating back to the Founding barring firearm ownership on university campuses. As such, restrictions on on-campus firearm possession are constitutional.

STATEMENT

Established in 1817, the University of Michigan is among the Nation's leading research universities. The University provides housing to almost 10,000 undergraduate students in 18 residence halls and apartment buildings. At its Ann Arbor campus alone, the University employs approximately 7,000 faculty and 14,000 staff. The University welcomes hundreds of thousands of visitors to its campus each year. Visitors can attend athletic competitions and concerts, enjoy the collections at the University's many museums, or take a stroll on the campus grounds.

Since 1850, the Michigan Constitution has recognized the University as a branch of State government, "a constitutional corporation of independent authority, which, within the scope of its functions, is coordinate with and equal to that of the [l]egislature." *Bd. of Regents of the Univ. of Mich. v. Auditor Gen.*, 132 N.W. 1037, 1040 (Mich. 1911). The Michigan Constitution confers the Regents of the University of Michigan, the University's governing board, with plenary authority over the University's management. *Federated Publ'ns, Inc. v. Bd. of Trs. of Mich. State Univ.*, 594 N.W.2d 491, 497 (Mich. 1999).

University campuses, where thousands of young people reside in close proximity, present unique public safety concerns. As the Michigan Court of Claims put it in the proceedings below, "[w]ith this demographic comes, all too frequently, alcohol consumption, impaired judgment and conduct." Pet. App. 93a. As such, university leaders have long recognized the need to restrict firearms possession on campus. As far back as 1848, the University enacted a firearms prohibition: "No student is allowed to have in his possession any fire-arms." The University of Michigan, *Report of Proceedings of the Board of Regents (1846-1848)*, at 33, https://babel.hathitrust.org/cgi/pt?id=mdp.39015071495470&view=1up&seq=49.

In 2001, the Regents exercised their authority under the Michigan Constitution and adopted an amended ordinance ("Article X") prohibiting individuals from possessing firearms on property owned, leased, or controlled by the University. Pet. App. 107a. Following additional amendments in 2020, Article X includes

numerous exceptions designed to balance the need for campus safety with legitimate justifications for carrying firearms on University property. Pet. App. 108a-112a. For example, Article X does not apply to persons who drive on University-owned streets with firearms in their vehicles. Pet. App. 110a. Additionally, it does not apply to persons seeking (or assisting others seeking) emergency medical treatment, provided that they notify staff of their weapons, provide valid credentials, and secure their weapons. Pet. App. 109a-110a. Other exceptions apply to University employees, law enforcement officers, retired or active peace officers, members of the military participating in ceremonies, persons using firearms for educational or training purposes, and recreational hunters, among others. Pet. App. 108a-112a.

Petitioner Joshua Wade is a private citizen with no relationship to the University. He is neither a student nor a staff member. Nonetheless, in 2014, petitioner sought a waiver from Article X, on the ground that he "spend[s] a lot of time outdoors and in downtown Ann Arbor" and "believe[s] it is [his] constitutional right to carry a weapon on University property." Pet. App. 130a-131a. The University's Chief of Police denied the waiver. Pet. App. 131a.

Petitioner sued the University, alleging violations of the Second Amendment and state law. The Michigan Court of Claims granted the University's motion for summary disposition. Pet. App. 88a-100a. The Michigan Court of Appeals affirmed. It pointed to language in *District of Columbia v. Heller*, 554 U.S. 570 (2008), stating that firearms could be restricted in "schools,"

and found that the University was a "school." Pet. App. 66a-70a. The court also rejected petitioner's state-law claim, Pet. App. 70a-78a, with one judge dissenting on that issue. Pet. App. 79a-87a.

Petitioner filed an application for leave to appeal in the Michigan Supreme Court. After a lengthy delay pending the disposition of other cases in the Michigan Supreme Court and this Court, the court ultimately vacated the Michigan Court of Appeals' decision and remanded for further consideration in light of *New York State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. 1 (2022). Pet. App. 45a-46a. Justice Viviano wrote a concurrence addressing the issues to be considered on remand. Pet. App. 46a-53a.

The Michigan Court of Appeals again affirmed. The court undertook a close analysis of *Bruen*. Pet. App. 29a-36a. It recognized that *Bruen* eschewed balancing tests in favor of a history-based analysis, under which the government cannot restrict firearms possession unless it "demonstrate[s] that the regulation is consistent with this Nation's historical tradition of firearm regulation." Pet. App. 30a. As the court further recognized, *Bruen* held that the government failed to "demonstrate a tradition of broadly prohibiting the public carry of commonly used firearms for self-defense." Pet. App. 34a. At the same time, *Bruen* reaffirmed the government's authority to regulate firearms in "sensitive places such as schools and government buildings." Pet. App. 33a.

Faithfully applying *Bruen*'s historical framework, the Michigan Court of Appeals analyzed whether the University was a "sensitive place" under the original

public meaning of the Second Amendment. The court pointed to dictionaries dating back to 1828 and 1773 characterizing a university as a "school." Pet. App. 37a-38a. The court rejected petitioner's argument that the University was not a "school" within the meaning of Black's Law Dictionary and a Michigan statute, finding that the Founding-era meaning of "school" controls—not the meaning in modern-day legal dictionaries or state statutes. Pet. App. 39a-40a.

Petitioner applied for leave to appeal to the Michigan Supreme Court. That application was denied, with Justice Viviano dissenting. Pet. App. 1a-14a. This petition followed.

REASONS FOR DENYING THE WRIT

The Court should deny certiorari. The Michigan Court of Appeals' ruling does not conflict with the decision of any federal appellate court or state supreme court. Further, petitioner did not raise any Due Process claim below and did not adequately develop his argument that the University's boundary lines are too ambiguous for the University to be considered a "school." Finally, the Michigan Court of Appeals faithfully applied *Bruen* and correctly found the University to be a "school" based on Founding-era sources.

I. The Decision Below Does Not Conflict with the Decision of Any Other Court.

The Michigan Court of Appeals' decision is consistent with the pre-*Bruen* case of *DiGiacinto v. Rector & Visitors of George Mason University*, 704 S.E.2d 365 (Va. 2011), the sole state supreme court decision to

address a Second Amendment challenge to an on-campus firearm restriction. In that case, the Virginia Supreme Court held that George Mason University was a "school" and hence a "sensitive place" within the meaning of *Heller*. *See id.* at 370 ("The fact that GMU is a school and that its buildings are owned by the government indicates that GMU is a 'sensitive place.'").

Petitioner does not cite any other case addressing a Second Amendment challenge to a university firearm restriction. Petitioner asserts that there has been "[i]nconsistent application of *Bruen*" in the lower courts, Pet. 22, but the cases cited by petitioner (Pet. 22-24 & nn.69-74) are neither inconsistent nor relevant to this case. *Koons v. Platkin*, 673 F. Supp. 3d 515 (D.N.J. 2023), *appeal docketed*, No. 23-1900 (3d Cir. May 17, 2023), and *Wolford v. Lopez*, 116 F.4th 959 (9th Cir. 2024), addressed firearms restrictions at locations other than universities; both courts upheld some firearms restrictions and invalidated others. *Regents of the Univ. of Colo. v. Students for Concealed Carry on Campus, LLC*, 271 P.3d 496 (Colo. 2012), addressed whether the University's Board of Regents has authority under Colorado law to regulate firearm possession on campus. The court's opinion focused solely on state law and did not mention the Second Amendment. The cases cited in petitioner's footnotes (Pet. 22-23 nn.68-69) are also irrelevant.[1]

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[1] *See United States v. Allam*, 677 F. Supp. 3d 545, 549 n.6, 579 (E.D. Tex. 2023) (upholding constitutionality of statute restricting firearms possession within 1,000 feet of elementary and high school); *State v. Giannone*, 323 A.3d 360, 403 (Conn. App. Ct. 2024) (addressing constitutionality of bans on silencers and large capacity

Given the absence of lower-court case law on this issue, and *Bruen*'s recency, the Court would benefit from additional percolation. Supreme Court review at the present time is premature.

II. This Case Is a Poor Candidate for Supreme Court Review.

Even if the Court were inclined to decide the constitutionality of firearms restrictions at universities, this case would be an inappropriate vehicle.

To begin, petitioner forfeited any Due Process claim. Petitioner contends (Pet. 26-29) that Article X violates the Due Process Clause because "individuals cannot reliably determine whether they are on or off University property." Pet. 26. He also includes that argument in the Question Presented, which asks whether Article X violates the "Second and Fourteenth Amendment." Pet. i. However, petitioner did not previously raise, and the lower courts did not consider, any Due Process claim. "[T]his Court has almost unfailingly refused to consider any federal-law challenge to a state-court decision unless the federal claim was either addressed by or properly presented to the state court that rendered the decision we have been asked to review." *Howell v. Mississippi*, 543 U.S. 440, 443 (2005) (per curiam) (internal quotation marks and citations omitted).

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magazines); *State v. Radomski*, 904 S.E.2d 542, 557-63 (N.C. 2024) (Riggs, J., dissenting from denial of discretionary review) (addressing ban on possessing firearms in hospital parking lot); Brief in Opposition at 19, *Antonyuk v. James*, No. 23-910 (U.S. May 9, 2024), 2024 WL 2157483 (brief—not case—addressing unrelated licensing issue).

Petitioner's forfeiture of the Due Process claim renders this case an unsuitable vehicle to consider his Second Amendment claim. In this Court, petitioner's Second Amendment argument rests heavily on his contention that the University's property boundaries are difficult to discern—a contention similar to the theory underlying his forfeited Due Process claim. *E.g.*, Pet. 15 (arguing that the University's "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"). To be clear, petitioner does not contend that there is any actual ambiguity in the location of the University's boundary lines, which are publicly recorded. Instead, petitioner's theory is that a lay person, unfamiliar with Ann Arbor's property records, would not know the locations of the boundary lines offhand.

But because petitioner did not pursue any Due Process claim below, the record is bereft of evidence needed to evaluate petitioner's theory. Petitioner did not submit evidence regarding whether he had any difficulty discerning the scope of the University's footprint. Nor did he submit evidence regarding whether this would be a challenging task for third parties.

Indeed, petitioner did not submit evidence regarding what the University's footprint even *is*. When petitioner states that the University's campus "constitutes approximately one-tenth of the city and intermingles with public streets and sidewalks," Pet. 26, petitioner does not cite any record evidence, but instead

cites a website stating that the "University of Michigan takes up 9.2% of land within the city of Ann Arbor." *Community Facts and Figures*, University of Michigan: Government Relations, https://govrel.umich.edu/community-relations/factsandfigures/ (last visited Mar. 5, 2025) (cited at Pet. 26 n.79). That website does not include any maps or other information needed to substantiate petitioner's claim that the property lines at issue are too difficult for a lay observer to discern.

Even setting aside these preservation issues, petitioner frames this case in a manner that renders it a poor candidate for Supreme Court review. First, petitioner focuses his petition heavily on the particular facts of this case: he contends that because the University's campus is large and sprawling, it is not a "school" for Second Amendment purposes. *E.g.*, Pet. 15 ("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.").

Second, petitioner relies heavily on the argument that the University of Michigan is not a "school" under state law. Pet. 15 (arguing that Michigan law "limit[s] the definition of 'school' to institutions primarily serving minors in K-12 education and explicitly excluding property associated with higher education"); Pet. 16 ("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)."). Petitioner made a similar state-law argument below. Pet. App. 39a.

Because petitioner's argument is heavily fact-bound and intertwined with state law, any decision in this case would likely apply only to the University of Michigan and would not provide significant guidance for lower courts. If the Court wishes to clarify what constitutes a "sensitive place" under *Heller* and *Bruen*, it should await a case with wider applicability.

III. The Michigan Court of Appeals' Decision is Correct.

The Michigan Court of Appeals faithfully applied *Heller* and *Bruen* and correctly concluded that the University of Michigan is a sensitive place.

Guided by *Bruen*, the Michigan Court of Appeals explained that because petitioner's "conduct is presumptively protected by the Second Amendment," the University "has the burden to show" that Article X "involves a traditional 'sensitive place.'" Pet. App. 36a. *Bruen* makes clear that governments may restrict firearm possession in "sensitive places such as schools." 597 U.S. at 30. Hence, consistent with *Bruen*'s history-based approach, the court undertook to determine whether the University of Michigan would have been considered a "school" at the time of the Founding.

The court pointed to a 1773 dictionary that defined a "university" as a type of school. Pet. App. 38a. The court rejected petitioner's arguments about the definition of "school" in Michigan state law and Black's Law Dictionary, correctly explaining that *Bruen* requires an analysis of Founding-era sources. Pet. App. 40a.

Petitioner states that the Michigan Court of Appeals "invent[ed] a novel and unsupported four-factor test." Pet. 13. To the contrary, the Michigan Court of Appeals followed *Bruen* to the letter. The court stated: "The following framework for resolving Second Amendment challenges can be gleaned from *Bruen*," and then cited four legal propositions that it pulled directly from *Bruen*. Pet. App. 34a-35a. Petitioner does not contend that any of those legal propositions is inaccurate—nor could he, given that they simply repeat what *Bruen* said.[2] In any event, the Michigan Court of Appeals' synthesis of *Bruen* is dicta. The Michigan Court of Appeals rested its holding on the fact that the University is a "school," which *Bruen* unambiguously states is a "sensitive place" for purposes of the Second Amendment. 597 U.S. at 30.

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[2] The Michigan Court of Appeals' framework reiterated the following four holdings from *Bruen*: (1) "When the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct," 597 U.S. at 24. (2) "The government must then justify its regulation by demonstrating that it is consistent with the Nation's historical tradition of firearm regulation," such as "'longstanding' 'laws forbidding the carrying of firearms in sensitive places such as schools and government buildings.'" *Id.* at 24, 30 (citation omitted). (3) "[C]ourts can use analogies to those historical regulations of 'sensitive places' to determine that modern regulations prohibiting the carry of firearms in new and analogous sensitive places are constitutionally permissible." *Id.* at 30. (4) "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." *Id.* at 27.

The historical record confirms that universities are "sensitive places" under the Second Amendment. As the University explained at length in the proceedings below,[3] there is extensive evidence of a longstanding national tradition of restricting firearm possession at universities. Professor Saul Cornell has explained that although Thomas Jefferson "was among the Founding Fathers' most ardent defenders of an expansive vision of the right to keep and bear arms, even he took a dim view of allowing guns at the University of Virginia, the institution he helped found." Saul Cornell, *"Infants" and Arms Bearing in the Era of the Second Amendment: Making Sense of the Historical Record*, Yale L. & Pol'y Rev. *Inter Alia* (Oct. 26, 2021), https://yalelawandpolicy.org/inter_alia/infants-and-arms-bearing-era-second-amendment-making-sense-historical-record. "The rules at the University were exceedingly strict on this point": "weapon[s]" were forbidden. *Id.* As Professor Cornell catalogued, near the time of the Second Amendment's ratification, Yale College, the University of Georgia, and the University of North Carolina also banned firearms on campus. *Id.* (collecting sources). During the early nineteenth

[3] *See* Defendant/Appellee University of Michigan's Supplemental Brief, *Wade v. University of Michigan*, COA 330555 (Mich. Ct. App. Feb. 22, 2023).

century, similar laws existed at William & Mary,[4] Rutgers,[5] and the College of New Jersey.[6]

The University's lower-court briefing[7] further explained that the longstanding tradition of on-campus firearm restrictions extended to the University of Michigan. Michigan became a state in 1837, and that same year, the University of Michigan moved to Ann Arbor. By 1848, the University had enacted a firearms prohibition: "No student is allowed to have in his possession any fire-arms." The University of Michigan, *Report of Proceedings of the Board of Regents (1846-1848)*, *supra*, at 33.

Petitioner contends that the University of Michigan is unique because of its large size and purportedly unclear boundary lines. Pet. 20-21. As explained above, however, the factual record is inadequate for the Court to evaluate that contention.

Further, petitioner does not identify any administrable rule that would allow the Court to

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[4] *See Laws & Regulations of the College of William & Mary* 19 (1830), https://books.google.com/books/about/Laws_and_Regulations_of_the_College_of_W.html?id=ZKUaAAAAYAAJ ("Students are strictly forbidden to keep, or to have about their person, any dirk, sword, or pistol").

[5] *The Statutes of Rutgers College* 10 (1825), https://babel.hathitrust.org/cgi/pt?id=hvd.hn5a36&view=lup&seq=16 (making the "possession of fire arms, gun-power, or any other weapon of violence" a "misdemeanor").

[6] *See Laws of the College of New Jersey* 26 (1832), https://babel.hathitrust.org/cgi/pt?id=loc.ark:/13960/t7mp5s13h&view=lup&seq=26 ("No student shall ... keep a dog, or gun, or fire-arms and ammunition of any kind ....").

[7] Supplemental Brief, *supra* n.3.

distinguish between small universities and big universities for Second Amendment purposes. And to the extent petitioner's theory is that some portions of campus are "sensitive places" but not others, the Michigan Court of Appeals rightly rejected that theory as "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." Pet. App. 42a. In short, the Michigan Court of Appeals did not err in adhering to the longstanding national tradition of restricting firearm possession at schools, including universities.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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