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 COURT OF APPEALS OF MICHIGAN

REPLY TO RESPONDENT'S OPPOSITION

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INTRODUCTION

This case presents an ideal vehicle for this Court's review. In the Court of Claims, no Answer was ever filed, no evidence was presented, and no oral argument was held. The legal issues are apparent on the face of the ordinance, the relevant facts are undisputed below, and the challenged ordinance is facially broad. The University ordinance prohibits the exercise of a fundamental constitutional right for all citizens on all university property–a sweeping and categorical restriction that cannot withstand review.

Under *New York State Rifle & Pistol Association v. Bruen*, 597 U.S. 1 (2022), the government bears the burden of demonstrating that modern restrictions on enumerated rights are "consistent with the Nation's historical tradition of regulation."[1] The University's ordinance cannot satisfy *Bruen*'s standard. There exists no historical or traditional analogue justifying such a broad and indiscriminate restriction, and the lower courts erred in failing to subject the ordinance to the analysis required by *Bruen*. This case raises an issue of national importance regarding how broadly governments can define "sensitive places," especially on the numerous college and university campuses in the U.S. Given the fundamental constitutional implications and the absence of fact-bound complexities, this case is ripe for this Court's review.

I. The Michigan Court of Appeals Misapplied the "Sensitive Places"

The Michigan Court of Appeals misapplied dicta from *District of Columbia v. Heller* to classify all property

1. *Bruen*, 597 U.S. at 24

owned by a public university as a "school," and in doing so, treated it as categorically exempt from the historical analysis required by *Bruen*.[2,3] *Heller* acknowledged the existence of "longstanding" prohibitions in certain "sensitive places," such as schools, but it did not create a per se exemption from constitutional scrutiny. *Bruen* does not permit courts to rely on dictionary definitions or modern classifications to define "sensitive places," nor did it create a static list of places where firearm prohibitions are per se constitutional. Instead, it requires the government to demonstrate, through relevant historical analogues, that a regulation is consistent with this Nation's historical tradition of firearm regulation. The Michigan Court of Appeals failed to conduct the required historical analysis, disregarded this Court's guidance, and instead invented its own balancing test. The Michigan Supreme Court followed suit, leaving the violation in place and encouraging others to emulate it.

As the amicus curiae brief of Gun Owners of America, Inc., et al., correctly notes, the references in *Heller* and *Bruen* to "sensitive places" create only a rebuttable presumption—not a blanket exemption.[4] The Michigan Court of Appeals misconstrued this presumption, improperly concluding that any gun prohibition involving a school or government building is per se valid. The lower court created a rule that invites abuse—allowing

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2. *See*, *D.C. v. Heller*, 554 U.S. 570, 627 (2008)

3. Petitioner's Appendix B at 36a-43a, *Wade v. University of Michigan*, No. 24-773 (U.S. 2024).

4. *Gun Owners of America, et al.*, Brief for the Petitioner at 8, *Wade v. University of Michigan*, No. 24-773 (U.S. 2024).

large, mixed-use areas to be classified as "sensitive places" without historical precedent. In *Bruen*, the Court cautioned lower courts from interpreting "sensitive places" in a way that would "effectively declare the island of Manhattan" sensitive or otherwise "eviscerate the general right to publicly carry arms for self-defense."[5]

The Michigan Court of Appeals' decision rests on an overbroad, complicated, and ahistorical interpretation of "sensitive places". Their approach misapplies *Bruen*, overlooks the distinction between conditions of attendance for students and government-imposed general criminal restrictions, and disregards the fundamental principle that constitutional rights cannot be nullified by mere property ownership. Despite these errors, Respondent maintains that the Michigan Court of Appeals correctly applied *Bruen*—a position that underscores the need for this Court's review.[6]

II. Respondent's Misunderstanding and Misapplication

Respondent misframes the central issue in this case by presenting it as whether the University of Michigan qualifies as a "school" within the meaning of *Bruen*.[7] This characterization improperly narrows the scope of

5. *New York State Rifle & Pistol Association, Inc. v. Bruen*, 597 U.S. 1, 31 (2022).

6. Respondent's Brief at 6, *Wade v. University of Michigan*, No. 24-773 (U.S. 2024); Respondent's Brief at 1, "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." (emphasis added).

7. Respondent's Brief at i.

review, diverting attention away from the fundamental constitutional question: how broadly a state or local government may define "sensitive places" to restrict the exercise of Second Amendment rights. Thus, according to Respondent's view, *Bruen*'s reference to the dicta from *District of Columbia v. Heller*, 554 U.S. 570, 627 (2008), establishes a categorical exemption for all property owned by an educational institution, allowing the government to broadly restrict fundamental rights without analyzing whether a specific location's function justifies such a designation.

This case is not simply about whether the University of Michigan can be classified as a "school." Rather, the issue is whether the university may impose a sweeping prohibition on firearm possession across all property it owns, including areas that are functionally indistinguishable from ordinary public spaces. The distinction is critical. *Bruen* did not merely ask whether certain locations, such as schools, could qualify as "sensitive places;" it emphasized the necessity of identifying historical tradition justifying such restrictions. A university campus may contain classrooms and dormitories that bear similarities to traditional school environments, but it also encompasses streets, sidewalks, and other public areas where firearm prohibitions are not historically supported, along with farms, and wilderness areas.

Respondent attempts to defend the prohibition by citing historical precedent, noting that the University of Michigan banned firearms in 1848,[8] and cites additional

8. Respondent's Brief at 3.

universities with historical firearm restrictions.[9] However, Respondent's points fail on two fundamental aspects. First, sporadic references to university bylaws do not establish a historical tradition of broad government-imposed restrictions with criminal consequences. Second, these historical firearm restrictions applied exclusively to students as contractual conditions of enrollment—not as broad prohibitions on the general public.[10]

The historical record provides no support for prohibiting citizens from carrying firearms while traversing university-owned property, including public roads, sidewalks, and areas unrelated to educational activities. Respondent further relies on the pre-*Bruen*, *DiGiacinto v. Rector & Visitors of George Mason University*.[11] Notably, Respondent omits a critical distinction: *DiGiacinto* upheld a regulation that "[did] not impose a total ban of weapons on campus."[12] This case, by contrast, involves a general prohibition, making *DiGiacinto* inapposite.

Respondent's reliance on *DiGiacinto* is directly at odds with its own position. Respondent endorses the Michigan

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9. Respondent's Brief at 13.

10. Respondent's Brief at 14. "No student is allowed to have in his possession any fire- arms, nor in any other way to violate the rules and regulations which the Faculty may adopt and make known, for the preservation of the morals of the youth of the college." The University of Michigan, *Report of Proceedings of the Board of Regents (1846-1848), supra*, at 33.

11. 704 S.E.2d 365 (Va. 2011)

12. *DiGiacinto*, 704 S.E.2d at 370.

Court of Appeals' assertion that distinguishing between sensitive and non-sensitive areas on a university campus is "untenable,"[13] yet simultaneously relies on *DiGiacinto*—a case that explicitly made such a distinction.[14]

III. Due Process

This case has been pending for approximately a decade. The law has evolved since the initial grant of summary disposition, and at some stages, briefing was limited to specific issues. Respondent contends that Petitioner forfeited his Due Process claim by failing to raise it in the lower courts.[15] This assertion is both inaccurate and misleading. First, Respondent mischaracterizes Petitioner's petition and minimizes the significant constitutional violation at issue. Second, it has been unchallenged and uncontroverted at every stage of this litigation that the boundaries of the campus are indistinct, and the lower courts, familiar with the geography, have taken judicial notice of this fact. Third, the record demonstrates that the Due Process claim was raised and considered in the lower courts. In fact, the Michigan Supreme Court ordered briefing to address this issue:

> "The parties shall address: (1) whether the two-part analysis applied by the Court of

13. Respondent's Brief at 15.

14. FN 12. *Ibid. ("The regulation does not impose a total ban of weapons on campus." DiGiacinto v. Rector & Visitors of George Mason Univ., 704 S.E.2d 365, 370 (2011)* (emphasis added)).

15. Respondent's Brief at 8-9.

> Appeals is consistent with *District of Columbia v. Heller*, 554 U.S. 570 (2008), and *McDonald v. Chicago*, 561 U.S. 742 (2010), *cf. Rogers v. Grewal*, 140 S.Ct. 1865, 1867 (2020) (Thomas, J., dissenting); (2) if so, 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.*"[16] (emphasis added).

Due process concerns were raised, regardless of whether the specific terminology was used.[17] Despite having opportunities to address it earlier, Respondent raises this argument for the first time.

Assuming *arguendo* that the Due Process issue was not preserved, this case remains an ideal vehicle for review due to the infringement of Petitioner's Second Amendment rights. Appellate review, by its nature, requires a lower court decision to review.[18] And, "[w]hile

16. Petitioner's Appendix D at 55a.

17. *Fast Food Workers Comm. & Serv. Emps. Int'l Union v. NLRB*, 456 U.S. App. D.C. 289, 300, 31 F.4th 807, 818 (2022), 456 US App DC 289, 300; 31 F.4th 807 (2022) ("Although the words "due process" are not expressly included in petitioners' recusal motion, nothing in our precedent or our sister circuits' precedent establishes a 'magic words' test, much less that the absence of those two words automatically dooms the recusal motion.")

18. *Freytag v. Commissioner*, 501 U.S. 868, 895, 111 S.Ct. 2631, 115 L.Ed.2d 764 (1991) (Scalia, J., concurring in part and

factual issues addressed in summary-judgment denials are unreviewable on appeal, the same is not true of purely legal issues"—those capable of resolution without reference to any disputed facts.[19] Furthermore, in *Lebron v. National R.R. Passenger Corp.*, this Court held that "once a federal claim is properly presented, a party may advance any argument in support of that claim and is not limited to the precise arguments made below."[20]

Yet, Respondent contends that this case is fact-specific and governed by state law, asserting that questions of whether the university qualifies as a "school" and its property as a "sensitive place" lack broader legal significance.[21] This hypertechnical argument is entirely unfounded. The issues at stake are legal in nature and do not hinge on disputed facts. It is uncontested that the University of Michigan prohibits the mere possession of firearms by all—with limited, and purely discretionary exemptions—and extends to all property owned by the University.[22] Respondent fails to directly address *Bruen*'s clear holding regarding the constitutionality of the ordinance's broad application and the discretion granted to a single official–a situation this Court expressly rejected.[23]

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concurring in judgment) (the "very word 'review' presupposes that a litigant's arguments have been raised and considered in the tribunal of first instance").

19. *Dupree v. Younger*, 598 U.S. 729, 735 (2023)

20. *Lebron v. Natl. R.R. Passenger Corp.*, 513 U.S. 374, 379 (1995) (internal citations omitted)

21. Respondent's Brief at 9-11.

22. Petitioner's Appendix I at 105a-112a.

23. *Bruen*, 597 U.S. at 11.

Respondent has long been aware of Petitioner's position regarding the interrelationship between the city of Ann Arbor and the interwoven urban university, a matter explicitly considered by the lower court.[24] The Michigan Supreme Court's remand focused on the "sensitive places" argument, emphasizing that about one-tenth of Ann Arbor is occupied by the university.[25] Justice Viviano's concurring opinion in the Order of Remand highlighted that this area, including businesses, parks, sidewalks, and public thoroughfares, does not inherently qualify as a "sensitive place" under the legal framework.[26] The Michigan Court of Appeals rejected any possible solution involving labeling specific building or areas within the campus as "untenable."[27] Therefore, the assertion that any claim made by Petitioner in his petition has been forfeited is demonstrably false.

By mischaracterizing the issues, Respondent attempts to sidestep the constitutional analysis required under *Bruen*. The Court should reject this and instead focus on the central question: whether the Second Amendment permits the designation of an entire university's property—including open, public areas—as a "sensitive place" without a clear historical basis. This case presents an ideal opportunity for the Court to clarify the limits of broad per se exemptions that avoid the need to undertake *Bruen*'s historical tradition test.

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24. Petitioner's Appendix B at 42a.

25. Petitioner's Appendix C at 51a-52a

26. Petitioner's Appendix C at 52a.

27. Petitioner's Appendix B at 42a.

IV. Urgency for Supreme Court Review on "Sensitive Places" and Second Amendment Rights

The constitutional significance of this case, combined with the urgent need for clarity on the scope of broad, per-se exemptions to *Bruen*'s historical tradition test makes immediate review imperative. The substantial burden on fundamental Constitutional rights imposed by the ordinance underscores the need for this Court's intervention. Continued uncertainty exposes law-abiding citizens to criminal prosecution and chills the exercise of a fundamental right. This case presents an opportunity for the Court to clarify the scope of "sensitive places," an issue left open in *Bruen*.[28]

"Percolation" is unwarranted. The Second Amendment is neither unsettled nor novel; it is a well-established, fundamental right. Moreover, percolation is inappropriate when the legal question is clear and the facts are straightforward, as continued lower court review would impose unnecessary costs and delays without yielding additional insight.[29]

Respondent's argument diminishes the significance of an individual's fundamental constitutional right to a triviality, disregarding the longstanding principle that even minimal infringement of a fundamental right warrants review. Respondent disregards the Second Amendment as an enumerated, fundamental right,

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28. *Bruen*, 597 U.S. at 30 ("[W]e have no occasion to comprehensively define 'sensitive places' in this case[. . .].")

29. *Goodman's Furniture Co. v. U.S. Postal Service*, 561 F.2d 462, 465 (1977) (Weis, J., concurring).

evidenced by their refusal to acknowledge its fundamental status at any point in their reply. Allowing this right to be reduced to a mere privilege, untethered from meaningful historical analysis, would be a grave error. Delaying review risks undermining the uniformity and authority of this Court's jurisprudence.

CONCLUSION

This case presents an ideal opportunity for this Court to address the critical questions regarding the scope and constitutionality of lower-court-created per se exemptions under the Second Amendment. The Michigan Court of Appeals' decision not only contradicts the principles established in *Bruen*, but it also raises important due process concerns. These concerns relate not only to the unclear boundaries of what constitutes a campus but also to the exercise of a fundamental constitutional right that is subject to the unrestricted discretion of an unelected public official. A ruling on this matter would have nationwide implications, providing necessary guidance on the constitutional limits of firearm regulations in public spaces. For the foregoing reasons and those stated in the petition, this Court should grant the petition for writ of certiorari.

Respectfully submitted,

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