STATE OF MICHIGAN
IN THE COURT OF APPEALS

JOSHUA WADE,

Plaintiff-Appellant,

v.

THE BOARD OF REGENTS OF THE UNIVERSITY OF MICHIGAN,

Defendant-Appellee.

/

Court of Appeals No. 330555

Court of Claims No. 15-000129-MZ

BRIEF *AMICUS CURIAE* OF GUN OWNERS OF AMERICA, INC. AND GUN OWNERS FOUNDATION

/

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THE APPEAL INVOLVES A RULING THAT A PROVISION OF THE CONSTITUTION, A STATUTE, RULE OR REGULATION, OR OTHER STATE GOVERNMENTAL ACTION IS INVALID.

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INTEREST OF THE *AMICI CURIAE*

Gun Owners of America, Inc. ("GOA") is a California nonprofit corporation, exempt from federal income taxation under section 501(c)(4) of the Internal Revenue Code ("IRC"). GOA is dedicated, *inter alia*, to the correct construction, interpretation, and application of state and federal constitutional protections guaranteeing the right to keep and to bear arms. Gun Owners Foundation ("GOF") is a Virginia nonprofit corporation, exempt from federal income taxation under IRC section 501(c)(3), with the same mission as GOA.[1]

Gun Owners of America, Inc. and Gun Owners Foundation have filed scores of amicus briefs in state and federal courts across the country, including in New York State Rifle & Pistol Ass'n, Inc. v. City of New York, 590 U.S.___ (2020), and New York State Rifle & Pistol Ass'n, Inc. v. Bruen, 597 U.S. ___; 142 S. Ct. 2111 (2022).[2]

GOA and GOF believe their experience and expertise in this area may aid the Court's understanding in this case. These organizations previously filed an *amicus* brief in the Michigan Supreme Court when this matter was then pending before the court. The Court of Appeals entered an order permitting the filing of this brief on or before March 9, 2023.

[1] It is hereby certified that no counsel for a party authored this brief in whole or in part; and that no person other than these *amici curiae*, their members, or their counsel made a monetary contribution to its preparation or submission.

[2] *See* http://www.lawandfreedom.com/wordpress/wp-content/uploads/2021/07/NYSRPA-amicusbrief-final.pdf

STATEMENT

The question before the Court is whether the University's complete ban on possession of a firearm by students throughout the entirety of its expansive political and geographical boundaries, is constitutional under the Second Amendment to the United States Constitution. The Michigan Supreme Court has remanded this case for consideration of this question in light of the United States Supreme Court's recent decision in New York State Rifle & Pistol Ass'n v. Bruen, 597 U.S. ___; 142 S. Ct. 2111 (2022).

Amici's brief seeks to aid the Court by demonstrating Plaintiff-Appellant's constitutional right as determined by Bruen to keep and bear arms applies within Defendant-Appellee's geographical boundaries. The University's legal status is not only a constitutional corporation and a state agency, but also functions as a political subdivision of the state with specifically identifiable geographical boundaries. Wade's right to keep and bear arms everywhere within those boundaries is presumed under the Second Amendment. If the Court is so inclined to apply the state constitution, his right is also guaranteed under Art. 1, Sec. 6 of the Michigan Constitution ensuring that "Every person has a right to keep and bear arms for the defense of himself and the state." The Michigan Constitution carries no "sensitive location" exception, nor can one be judicially fabricated without doing violence to the state constitution and its prior case law.

Under Bruen, the central interpretive issue is whether the University of Michigan has identified relevant historical analogues to the current ban throughout the extent of the University's property. Having identified no such analog, it falls back on what Heller, McDonald, and Bruen described as "sensitive places" including "schools." However, under that standard, the ban could only *possibly* apply to those few physical locations where and when enrolled students are regularly

taught. The "sensitive places" designation, however, is only a legal presumption and is neither irrebuttable nor conclusive.

In this case, the presumption is overcome by the history of the University itself, where student rules were grounded in *in loco parentis*. In the decades following the ratification of the Second Amendment, the relationship of the University to the students was governed by *in loco parentis*, not criminal law. This is the Bruen-based tradition that controls a student's right to keep and bear arms on campus. Did the student's parents permit it? If yes, the student could keep and bear anywhere. If not, the student could do neither. The University was the paternal agent without authority to criminalize behavior.

ARGUMENT

I. THE UNIVERSITY OF MICHIGAN IS A POLITICAL SUBDIVISION OF THE STATE.

In the published decision, 36th District Court v. Owen, 359059, March 2, 2023, the Court of Appeals' Judges, M.J. Kelly, Boonstra, and Swartzle held that the 36th District court was a political subdivision of the state for purposes of the Michigan Constitution, Art. 11, § 3, because it discharges certain authority of the state, is geographically limited to a defined area, and governs itself through elected and appointed officers. *See* OAG, 1963-1964, No. 4,037 (January 2, 1963).

That same reasoning applies here to the University. As previously stated by this Court in Wade v. Univ. of Michigan, 320 Mich. App. 1, 15–17; 905 N.W.2d 439, 446–47 (2017), *vacated and remanded*, 981 N.W.2d 56 (Mich. 2022), the Board of Regents of the University 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 N.W. 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 N.W.2d 491 (1999), *quoting* Regents of Univ. of Mich. v. Auditor General, 167 Mich. 444, 450; 132 N.W. 1037 (1911); *see also* Regents of Univ. of Mich. v. Brooks, 224 Mich. 45, 48; 194 NW 602 (1923) (recognizing that the University is a state agency within the executive branch of state government). Booth Newspapers, Inc. v. Univ. of Michigan Bd. of Regents, 444 Mich. 211, 225; 507 N.W.2d 422, 428 (1993) ("[I]t is beyond question that the University of Michigan Board of Regents is a public body.").

II. HELLER AND MCDONALD STRUCK DOWN SIMILAR GUN RESTRICTION SCHEMES ENACTED BY STATES AND THEIR POLITICAL SUBDIVISIONS.

In District of Columbia v. Heller, 554 U.S. 570, 128 S. Ct. 2783, 171 L.Ed.2d 637 (2008), as supplemented by McDonald v. Chicago, 561 U.S. 742, 130 S. Ct. 3020, 177 L.Ed.2d 894 (2010), the U.S. Supreme Court held that the Second and Fourteenth Amendments protect an individual right to keep and bear arms for self-defense. The Second Amendment "is the very product of an interest balancing by the people," and it "surely elevates above all other interests the right of law-abiding, responsible citizens to use arms" for self-defense. Heller, 128 S. Ct. at 2129 - 31.

The Second Amendment, *inter alia*, protects an individual right to possess a firearm for self-defense in a residential setting. "In sum, we hold that the District'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." Heller, 128 S. Ct. at 2821–22). A student's dorm room is his or her residence and is the functional equivalent of the residence absolutely protected by Heller which is not subject to any sensitive place exception whatsoever. The same rule must apply here to a student's on-campus residence as in Heller.

III. THE UNIVERSITY MUST DEMONSTRATE THAT ITS FIREARM REGULATION IS CONSISTENT WITH ITS HISTORICAL TRADITION OF FIREARM REGULATION.

Until Bruen, courts generally applied at least intermediate scrutiny to firearms laws and conducted a means-end analysis to determine whether the state's interest in the regulation was sufficient to overcome whatever burden the law placed on one's Second Amendment right. In Bruen, however, the Supreme Court of the United States determined that these lower courts (and in effect the Michigan Court of Appeals' prior opinion) had been incorrect in applying balancing tests and means-end scrutiny.

Rather than balancing any government interest whatsoever, great or small, the Supreme Court reaffirmed what it had decided in Heller: "Constitutional rights are enshrined with the scope they were understood to have when the people adopted them." Bruen (quoting District of Columbia v. Heller, 554 U.S. at 634–35) (emphasis in original). Because the Second Amendment was adopted in 1791, only those regulations that would have been considered constitutional in that time frame can be constitutional now. The Supreme Court prescribed the mandate for lower courts to follow:

> In keeping with *Heller*, we hold that when 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.

Bruen, 142 S. Ct. at 2126 (internal citations omitted).

IV. PLAINTIFF'S RIGHT TO BEAR ARMS ON CAMPUS IS PROTECTED BY THE STATE AND FEDERAL CONSTITUTIONS.

The Second Amendment to the United States Constitution states that "[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. II. Even more strongly guaranteed, Art. 1, Sec. 6 of the Michigan Constitution ensures that "Every person has a right to keep and bear arms for the defense of himself and the state." *There is no sensitive place exception under the state Constitution*. Neither the state legislature nor the University have any such power, both being equally subject to the state constitution, to constitute it a crime for a student to possess a firearm for the legitimate defense of himself and his property. Moreover, just as exercise of any right guaranteed by the state constitution cannot be made subject to the will of a sheriff, it cannot be made subject to the will of the board of regents.[3] Thus, when viewed in light of the Michigan

[3] If this Court were to observe the original intention of the Michigan guarantee, it would find no such "sensitive place" or other limit whatsoever on the right to keep and bear, but only on the right to carry. The Michigan Supreme Court affirmed this in 1922, holding that:

> Firearms serve the people of this country a useful purpose wholly aside from hunting, and under a constitution like ours, granting to aliens who are bona fide residents of the state the same rights in respect to the possession, enjoyment, and inheritance of property as native-born citizens, and to every person the right to bear arms for the defense of himself and the state, while the Legislature has power in the most comprehensive manner to regulate the carrying and use of firearms, that body *has no power to constitute it a crime for a person, alien or citizen, to possess a revolver for the legitimate defense of himself and his property.* The provision in the Constitution granting the right to all persons to bear arms is a *limitation upon the power of the Legislature* to enact any law to the contrary. The exercise of a right guaranteed by the Constitution cannot be made subject to the will of the sheriff. The part of the act under which the prosecution was planted is not one of regulation, but is one of prohibition and confiscation."

People v. Zerillo, 219 Mich. 635, 638–39; 189 N.W. 927, 928 (1922) (emphasis added).

Constitution, once Plaintiff-Appellant establishes he is a non-felon person and his firearm an arm, his *state constitutional* protection is extant. No regulation can constitutionally touch it.

Indeed, Plaintiff is a "person" and a member of the "people." A firearm is an "arm." The University has infringed his keeping and bearing that arm by its Article X regulation. The Second Amendment covers the conduct at issue: possession of a firearm. Since the University's ban implicates conduct that is constitutionally protected, its Article X regulation is presumptively unconstitutional unless the Government can show that "it is consistent with the Nation's historical tradition of firearm regulation." Bruen, 142 S. Ct. at 2130. According to Bruen, "[h]istorical evidence that long predates [the ratification] ... may not illuminate the scope of the right if linguistic or legal conventions changed in the intervening years." *Id.* at 2136. Likewise, the Court cautioned that lower courts "must also guard against giving post enactment history more weight than it can rightly bear," by only considering those post enactment sources that help "determine the public understanding of [the Second Amendment]" at the time of its ratification. *Id.* (emphasis and alteration in original) (citation omitted).

If the legislature has no such power, and certainly not the power to enact "common sense" gun control measures such as universal background checks or red flag laws, then no other constitutional corporation such as the University likewise subject to the state constitution, *has any power to constitute it a crime for a student to possess a revolver for the legitimate defense of himself and his property.* Likewise, because "Tasers and stun guns do not fit any of the exceptions to the Second Amendment enumerated in Heller, we find that they are protected arms. Heller held unconstitutional a law that completely banned the possession of protected arms in the home." People v. Yanna, 297 Mich. App. 137, 145, 824 N.W.2d 241, 245–46 (2012).

Later exceptions to the right to bear arms include regulation of gun possession by felons. People v. Deroche, 299 Mich. App. 301, 307; 829 N.W.2d 891 (2013). Similarly, this Court has held, "[a] right to bear arms does not encompass the possession of a firearm during the commission of a felony." People v. Graham, 125 Mich. App. 168, 172–173; 335 N.W.2d 658 (1983). People v. Powell, 303 Mich. App. 271, 273; 842 N.W.2d 538, 541 (2013). Sensitive places, however, are absent.

Taking those instructions together, the historical inquiry must determine the understanding of the right at the time it was enshrined in the Constitution. Any modern regulation that does not comport with the historical understanding of the right is unconstitutional, regardless of how desirable or important that regulation may seem to the University, or to judges, in our modern society. The burden falls on the University to "affirmatively prove that its firearms regulation is part of the historical tradition [or analogous to an historical tradition] that delimits the outer bounds of the right to keep and bear arms." *Id*. at 2127. The application of the Bruen approach must first and foremost look closely at Michigan's history which demonstrates no such historical burden on the right, in Michigan or elsewhere.

V. THE UNIVERSITY HAS FAILED TO "AFFIRMATIVELY PROVE" ANY HISTORICAL LIMITS ON THE RIGHT TO KEEP AND BEAR ARMS.

The University's own institutional history admits this result.[4] To summarize, the University of Michigan was founded in 1817 on 1,920 acres of land ceded by the Chippewa, Ottawa, and Potawatomi people. The school moved from Detroit to Ann Arbor in 1837. It took four years to build the necessary facilities for the new campus in Ann Arbor. The buildings consisted of four faculty homes and one classroom-dormitory building. The dormitories, originally called "halls" and "Colleges," were afterwards turned into classrooms and a chapel, and in time became the two wings of University Hall. Cows owned by the faculty grazed over much of campus. As late as 1845, the campus was covered in the summer with a crop of wheat grown by a janitor as part of his remuneration. Faculty families harvested peaches from the orchard, and a wooden fence ran along the edge of campus to keep University cows in and city cows out.

[4] https://campusinfo.umich.edu/article/um-history
https://historyofum.umich.edu/why-1817-matters/

In its first year in Ann Arbor, the University had two professors and seven students. Students paid an initial admissions fee of ten dollars but no tuition. In 1866, the University had 1,205 enrolled students. In 1867, the enrollment reached an all-time high for that era of 1,255 students. At that time, the University was comprised of the Medicine Department, with 525 students; the Law Department, with 395 students; and the Literary Department, with 335 students. There were 33 faculty members.

There were no campus police and no firearm regulations. The History of the University of Michigan, with biographical sketches of Regents and Members of the University Senate from 1837 to 1906, by B. A. Hinsdale, (1837-1900) is one of the definitive works by the esteemed Michigan professor. Its 376 pages contain no reference to "gun," or "firearm," or "pistol." The modern term "assault weapon," which was designed to mischaracterize the nature of some of the most widely owned semi-automatic firearms in the country, did not exist.[5]

VI. THE UNIVERSITY'S HISTORICAL ROLE WAS TO STAND IN THE PLACE OF A STUDENT'S PARENTS, NOT TO DISREGARD A STUDENT'S PARENTS OR CONTROL STUDENTS BY "CONSTRAINT AND THE DREAD OF PENALTY."

The University has pointed to no founding era tradition of firearms regulation by the University at its inception. Lest there be a temptation to assume that there just had to be some type of regulation which has now been lost to history, such a regulation is inconsistent with those about which we do have a record. What then were the major regulations and traditions in effect? Let us carry ourselves back in time. *Amici* let history speak through Hinsdale:

> Students were required to attend some one of the village churches, to be chosen by their parents. The character of the discipline is well shown by two or three paragraphs that appear under the heading Government in successive catalogues. In the government of the institution the Faculty ever keep it in mind that most of the students are of an age which renders some substitute for parental superintendence

[5] https://archive.org/details/historyofunivers00hinsuoft/page/6/mode/2up

> absolutely necessary. It is believed that no College in the country can secure public confidence without watching over the morals of its students, and making strict propriety of conduct, as well as diligent application to study, a condition of membership. Considering the government of the students as a substitute for the regulations of the home, the faculty *endeavor to bring it as near to the character of parental control as possible; they do not seek to attain this aim wholly or chiefly by constraint and the dread of penalty, but by the influence of persuasion and kindness*. Respecting the perverse, whom nothing but the fear of penalty will influence, the Faculty consider themselves bound as standing in the place of parents or guardians; first to see that the student is kindly and faithfully advised and admonished, and that the parent is fully informed of any improper conduct in his son; but secondly, if such correction prove insufficient, to remove him, as his own best interests and the welfare of other students require, from the institution.[6]

As of the 1840's the University policy on student discipline and rules and regulations was controlled by *in loco parentis* premised on the influence of persuasion and kindness. [7] And that is the salient point to observe regarding the University's historical tradition or analogue to an historical tradition. That tradition was that the University from its earliest days stood *in loco parentis*, not as it now does as a governmental institution enforcing rules and regulations on student conduct, "chiefly by constraint and the dread of penalty." *Id*. at 36. That means the University followed the students' parents' lead.

Therefore, it is instructive to examine how parents would have viewed the issue. It was certainly a rare family that did not possess a firearm in the home. If parents laid down a rule of conduct, the University pledged itself to follow. The University's historical tradition was not to

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[6] Hinsdale, p. 35 (emphasis added).
https://archive.org/details/historyofunivers00hinsuoft/page/35/mode/2up

[7] The focus of university regulations was on Greek Letter Societies organizations and secret societies, and rules governing matriculation and degrees. Hinsdale, pp. 90, 124. The religious atmosphere of the institution was the subject of much solicitude to the people of the state. Nearly all the Professors were clergymen. Moreover, the reports of the Board of Regents and of successive Boards of Visitors point to the prevalent interest in the subject. For example, the report of the Regents for 1842 shows that they were trying to steer between religious' indifference on the one side and sectarianism on the other. Nothing but a Christian institution, they say, would satisfy the people of the state. Id.

supersede the will of the parents or replace the parents' wishes with its own misdemeanor punishment such as imposed by Article X.

Under the common law, as Sir William Blackstone explained, a father could "delegate part of his parental authority ... to the tutor or schoolmaster of his child; who is then *in loco parentis*, and has such a portion of the power of the parent committed to his charge, [namely,] that of restraint and correction, as may be necessary to answer the purposes for which he is employed."[8] There was never any historical tradition regarding student possession of firearms at the University of Michigan in the early years after the University's founding in 1817, during the nation's "founding era." Instead, the tradition was that the University acted on behalf of the parents' wishes, not despite their wishes.

There is no reason to believe that parents who owned firearms would have not wanted their adult sons and daughters to be able to protect themselves by possession or carrying a weapon, and no reason to believe that the faculty and administration acting *in loco parentis* would have taken a diametrically opposite position. That is the tradition of firearm regulation - serve the will of each students' parents.[9] There is no merit to the claims that the administration would contradict the parents' desires for their child, including their self-defense choices. More to the point, Heller's ban on a government prohibiting possession of a firearm at home dictates that the University cannot ban possession of a firearm in a student dorm, their on-campus residence.[10]

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[8] 1 W. Blackstone, Commentaries on the Laws of England, 441 (1765) (some emphasis added). Mahanoy Area Sch. Dist. v. B. L. by & through Levy, 141 S. Ct. 2038, 2051 (2021).

[9] Even if Hinsdale's description is twisted into a *parens patriae* power, *"[P]arens patriae* interest favors preservation, not severance, of natural familial bonds." Santosky v. Kramer, 455 U.S. 745, 766–67 (1982). In re Sanders, 495 Mich. 394, 416; 852 N.W.2d 524, 535 (2014).

[10] As to rules and regulations of student dormitories, we read that:

VII. THE "SENSITIVE PLACES" EXEMPTION IS MERELY A PRESUMPTION THAT IS REBUTTED ABSENT AN HISTORICAL ANALOGUE.

The Heller Court wanted to make clear that it was not resolving every challenge to a firearm regulation that could be raised, and therefore specified that its "opinion should not 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." Heller, 128 S. Ct. at 2786. There would be time enough, in future cases, to resolve whether those regulations would stand constitutional scrutiny.[11]

> Dr. Tappan caused the dormitory system, which had existed from the beginning, to be abandoned. He believed that whatever the convenience and the charm of the dormitory mode of life might be, they were more than balanced by even so much of home as a student could find in a lodging or boarding house; while the abolition of the system would at once set free space in the College buildings that was much needed for other purposes, and relieve the treasury of a large expenditure of money, and the Faculty of a great deal of care and annoyance in the way of supervision.

Writing in 1906, Hinsdale observed that in 1857 with "the coming of the Society House, the students lived, as most of them still live, in boarding houses and in the homes of citizens of Ann Arbor." Hinsdale, Dormitories abolished, 46, 47, 148, 152. https://archive.org/details/historyofunivers00hinsuoft/page/46/mode/2up

Any argument that the University maintains that it banned firearms in student dormitories at the time of the ratification of the Fourteen Amendment in 1868 is meritless. Even use of the 1868 date is wrong. The ratification of the Amendment essentially incorporated the meaning of the Second Amendment which was set in 1791, not 1868. The University's argument errs because it is the *meaning* of the 1791 amendment that controls. *See* Defendant-Appellee's Supplemental Brief, p. 15.

[11] The Court in Bruen held:

> While we do not now provide an exhaustive survey of the features that render regulations relevantly similar under the Second Amendment, we do think that Heller and McDonald point toward at least two metrics: how and why the regulations burden a law-abiding citizen's right to armed self-defense. As we stated in Heller and repeated in McDonald, "individual self-defense is 'the central component' of the Second Amendment right." McDonald, 561 U.S. at 767, 130 S. Ct. 3020 (quoting Heller, 554 U.S. at 599, 128 S. Ct. 2783); see also Id., at 628,

The Supreme Court was quick to point out in footnote 26, however, that sensitive locations like schools which prohibited firearms were merely "presumptively lawful regulatory measures." Heller, 128 S. Ct. 2783, 2817. This recognition was echoed in Bruen, 142 S. Ct. 2111, 2162. (Kavanaugh, J. and Roberts, C.J., concurring). These statements were not definitive rulings on validity, but simply limitations on the scope of a particular decision. Indeed, one of the central cannons of interpretation is that all laws are presumed constitutional --- until evaluated and determined to be unconstitutional considering explicit enumeration of state and federal Constitutional rights. *See* A. Scalia & B. Garner, Reading Law: The Interpretation of Legal Texts, Thompson West, at 180 (2012).

The Supreme Court did not hold in Heller, and has never held in any other case since then, that such prohibitions were irrebuttably lawful or that such a "presumption of validity" could not be challenged or overcome. Indeed, the High Court has struck down conclusive presumptions in Stanley v. Illinois, 405 U.S. 645, 92 S. Ct. 1208, 31 L.Ed.2d 551 (1972), and Cleveland Board of Education v. LaFleur, 414 U.S. 632, 94 S. Ct. 791, 39 L.Ed.2d 52 (1974). The same constitutional concerns apply to judicial decisions such as Heller, creating a rebuttable presumption about firearm prohibitions in schools.

This means that no court may simply point to these references in Heller or Bruen to a school as a sensitive place and conclude *ipso facto* it is so, as a matter of law. Yet, this is precisely what the Michigan Court of Appeals did in its now vacated opinion. It premised its school analysis on

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> 128 S. Ct. 2783 ("the inherent right of self-defense has been central to the Second Amendment right"). Therefore, whether modern and historical regulations impose a comparable burden on the right of armed self-defense and whether that burden is comparably justified are 'central' considerations when engaging in an analogical inquiry. McDonald, 561 U.S. at 767, 130 S. Ct. 3020 (quoting Heller, 554 U.S. at 599, 128 S. Ct. 2783).

Bruen, 142 S. Ct. 2111, 2132–33.

the proposition that "the Supreme Court in Heller indicated that certain 'sensitive places,' including schools, are categorically unprotected . . . ." Wade, 320 Mich. App. 1, 14–15; 905 N.W.2d 439, 445 (2017), *vacated and remanded*, 981 N.W.2d 56 (Mich. 2022).

Not so. Schools are not "categorically" locations at which complete bans on firearms can be imposed, as the University would have the Court believe.[12] Even *settled* presumptions are rebuttable. The school/sensitive location presumption may be rebutted. The Court's reference to "schools" brings to mind public school buildings where students in grades K-12 visit for a few hours during the day to attend classes. That is quite a different matter from college campuses where many adult and near-adult students live 24/7.

Following *Bruen's historical* analytical approach, there were no founding-era statutes restricting firearms on campus. Even if an "exception" were found to the historical analogue for schools, that exception would only allow *regulation* of firearms at specific locations or buildings, where and when students are regularly taught. This is the Bruen based tradition analysis that historically determined a student's right to keep and bear arms on campus.[13]

[12] The University's supplemental brief argues it must only show that its campus has a governmental building and is school property. Supp. Brief, p. 9. It says that if it can show this, the inquiry ends, and Article X survives. The University makes the same erroneous argument that this court made in its now vacated opinion, declaring the presumption a conclusive one. This is the lynchpin of the entire argument it presents. When reading the University's brief, it keeps hammering away that the matter is "settled" (using a phrase the Court used) but this is not the ultimate test *as even "settled" presumptions are rebuttable*. This University, however, says not so. All "conclusive presumptions" are rebuttable.

[13] Ignoring this historical evidence test, the University's Supplemental Brief quotes generic dictionaries to argue that universities were schools in the founding era. Supp. Brief, p. 11. With a legal term of art like "sensitive place," definitions from a dictionary are not particularly helpful. Bartalsky v. Osborn, 337 Mich. App. 378, 390; 977 N.W.2d 574 (2021). A dictionary may be consulted as one tool in the interpreter's toolbox; "[h]owever, recourse to dictionary definitions is unnecessary when the Legislature's intent can be determined from reading the statute itself." Id. At 390. See also Bloomfield Twp. v. Kane, 302 Mich. App. 170, 175; 839 N.W.2d 505 (2013). In

VIII. BRUEN BARS THE UNIVERSITY'S CAMPUS-WIDE FIREARM BAN AS "FAR TOO BROAD."

In adopting a campus-wide firearms ban, the University of Michigan has violated one of the central teachings of Bruen. Bruen rejected New York's attempt to classify the entire island of Manhattan as a sensitive location. The court rejected this geographical classification categorically. [R]espondents' attempt to characterize New York's proper-cause requirement as a 'sensitive-place' law lacks merit because there 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." Bruen, 142 S. Ct. at 2131 - 34. The University has failed to demonstrate any historical basis for the University to effectively declare its campus "island" a "sensitive place" based on either history or an analogue, and the analysis of these *amici*, set out herein, is in accord.

In other words, Bruen teaches that a political subdivision of designated geographical limits cannot be a sensitive place *en mass*. The University of Michigan is, as a matter of law, a "political subdivision" of the state. The University is first and foremost a governmental entity with specific boundaries like that of a municipality. Some of its *functions* within those boundaries are teaching

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other words, if the meaning of a statutory term is plain from the text and context of the statute itself, resort to a dictionary is unnecessary. Bartalsky, at 387-88.

Let this Court recall that a review of the Michigan Compiled Laws never even uses the phrase "sensitive place." And even where "sensitive" and "place" exist in the same statute, the context is environmental regulation, not schools. Yet, the University calls it a "doctrine" as if etched in stone. It's hard to swallow this claim as historical, since the legislative body of the state never recognized it—ever.

https://www.legislature.mi.gov/(S(2iwkmrkkai4c0ddtl53jrvro))/mileg.aspx?page=ExecuteSearch&query=list&isearchfulltext=place

enrolled students. But the locations where teaching students occurs are well defined and at specific hours only.

First and foremost, the political subdivision called the University of Michigan is not exclusively committed to teaching, any more than it is committed to football, medicine, or fund raising. These are *functions,* not places. Sensitive places or locations are only where educational functions are exclusively performed. The rebuttable presumption applies only to these limited locations. The "school" designation is not "conclusive," but merely the starting point. As such, and as the Bruen Court held, there is no historical basis for the University of Michigan to effectively declare the geographical outer boundaries of all University-owned property (like the entire island of Manhattan) a "sensitive place."

Likewise, simply because it is crowded and protected generally by a police department does not make it sensitive.[14] Only in limited geographical areas when the regular teaching of enrolled students takes place is it even arguable that the Defendant-Appellee may regulate campus possession which itself is alien to enforcement of its Article X's firearm ban.[15]

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[14] https://www.dpss.umich.edu/content/about/our-departments/police/

[15] Since Bruen, courts have applied its test to strike down laws punishing knowing possession of removed serial numbered firearms and possession of firearms by users of marijuana. "Any modern regulation that does not comport with the historical understanding of the right is to be deemed unconstitutional, regardless of how desirable or important that regulation may be in our modern society." United States v. Price, No. 2:22-CR-00097, 2022 WL 6968457, at *4 (S.D.W. Va. Oct. 12, 2022) (Government failed to demonstrate that federal law prohibiting knowing possession of firearm that had serial number removed, obliterated, or altered, was consistent with Nation's historical tradition of firearm regulation, and thus federal law violated Second Amendment.).

Another District Court held "It is not appropriate for a court to 'reflexively defer to [a legislative] label when a fundamental right is at stake.' And the use of marijuana does not become a violent, forceful, or threatening act merely because a legislature says that it is." United States v. Harrison, No. CR-22-00328-PRW, 2023 WL 1771138, at *18 (W.D. Okla. Feb. 3, 2023) (Statute prohibiting possession of a firearm by a user of marijuana, as applied to

Can the application of this controlling precent be less than obvious here? As a general matter, the University has a total undergraduate enrollment of 32,282 (Fall 2021) and 16,000 graduate students. The campus size is 3,207 acres.[16] It has 35,000 employees.[17] This means that a total of 88,282 persons could be on campus at the same time. It means that the University's ban under Article X affects 53,282 students (and perhaps also 35,000 employees). When compared to the population of Michigan cities, the University as a political subdivision would rank 10th in the state out of 533 incorporated municipalities.[18]

The rough equivalent of the University's ban would be like a Michigan political subdivision, enacting a city-wide ban on all of its residents effectively declaring the entire city a "sensitive location" simply because some local students attend a local community college in that City.[19] Yet this is precisely the result the University demands.

In either case, such an overly broad ban cannot be sustained under the Constitution's text, let alone under Heller or Bruen. As Bruen declared: "Respondents' argument would in effect exempt entire cities from the Second Amendment and would eviscerate the general right to

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defendant, was inconsistent with the nation's historical tradition of firearm regulation, and thus violated the Second Amendment).

[16] https://www.usnews.com/best-colleges/university-of-michigan-ann-arbor-9092

[17] https://www.zippia.com/university-of-michigan-careers-1417525/
It is also noted that 92 percent of its employees are members of the Democratic party, claims of diversity, equity, and inclusion, notwithstanding.

[18] https://worldpopulationreview.com/states/cities/michigan

[19] https://www.collegesimply.com/colleges/michigan/community-colleges/
There are 31 community colleges in Michigan.

publicly carry arms for self-defense . . ." Bruen, 142 S. Ct. 2111, 2134.[20] The Court must reject such a broad sweep.

Turning from population numbers to the physical infrastructure of the University, it includes more than 500 major buildings. The Campus areas are not all contiguous. The University also leases space. An East Medical Campus is on Plymouth Road. It has two golf courses, the Inglis House, an office building called Wolverine Tower, and the Matthaei Botanical Gardens. To *Amici*, this description sounds just like a description of a city's amenities.

Few of these locations, however, pertain to a school function even assuming *arguendo* that the University is historically a "school" within Heller's meaning. If the University actually operates any of those historic K-12 schools its brief claims a precedential, its argument would have some merit as to those schools only.[21]

[20] Indeed, "expanding the category of 'sensitive places' simply to all places of public congregation that are not isolated from law enforcement defines the category of 'sensitive places' far too broadly." Bruen, 142 S. Ct. 2111, 2134.

[21] The University's Supplemental Brief maintains that historically "the distinction between colleges and schools was fuzzy at best." Supp. Brief, pp. 11-12. We take this to mean that the University has *admitted there is a distinction*. This admission undermines its argument that one means the other. Yet, why the "fuzzy at best" reference and on page 12, it's "blurry"? Common sense suggests a difference between a 5th grader and a college sophomore. Nothing fuzzy or blurry there.

But the University goes on to argue that the University was like a high school and even an elementary school historically. Fair enough. *Amici* see no objection to prohibiting Wade from possessing his firearms in any of the University's current elementary and high school courses, provided the University advises this Court (on oral argument?) about the specific locations where its University sponsored elementary and K-12 teaching actually takes place.

CONCLUSION

This Court should hold that:

1) Plaintiff-Appellant's Second Amendment constitutional right as determined by Bruen to keep and bear arms applies everywhere within Defendant-Appellee's geographical boundaries.

2) The right is also more strongly guaranteed under Art. 1, Sec. 6 of the Michigan Constitution which never has adopted any "sensitive places" exception.

3) The Defendant-Appellee has failed to identify any historical analogue for firearms restrictions on college campus during the founding era.

4) The history of the University indicates that the relationship of the University to the students was governed by *in loco parentis*, not criminal laws such as Article X or any historical predecessor.

5) The "sensitive places" designation of "schools," which would only apply to those few physical locations where and when enrolled students are regularly taught, has no application here because it does not comply with the University's *in loco parentis* tradition.

6) The "sensitive places" designation is only a legal presumption and is neither irrebuttable nor conclusive. The presumption is overcome by the history of the University itself, grounded in *in loco parentis*. The "sensitive places" designation of "schools" does not survive this historical test.

7) Even if the "sensitive places" rule is applied, only specific locations or buildings within the geographical boundaries of the University, when they host enrolled students while regularly taught, qualify for that presumption.

8) As such, Plaintiff-Appellant is Constitutionally entitled to keep and bear a firearm on campus (and may concealed carry if state licensed to do so), at his discretion.

Respectfully Submitted,

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