No. 24-773

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 Court of Appeals of Michigan

Brief *Amicus Curiae* of Gun Owners of America, Inc., Gun Owners Foundation, Gun Owners of California, Heller Foundation, Tennessee Firearms Association, Tennessee Firearms Foundation, America's Future, U.S. Constitutional Rights Legal Defense Fund, and Conservative Legal Defense and Education Fund in Support of Petitioner

KERRY L. MORGAN
Wyandotte, MI

JOHN I. HARRIS III
Nashville, TN

WILLIAM J. OLSON*
JEREMIAH L. MORGAN
ROBERT J. OLSON
WILLIAM J. OLSON, P.C.
370 Maple Ave. W., Ste. 4
Vienna, VA 22180
(703) 356-5070
wjo@mindspring.com
**Counsel of Record*
Attorneys for Amici Curiae

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INTEREST OF THE *AMICI CURIAE*[1]

Amici Gun Owners of America, Inc., Gun Owners Foundation, Gun Owners of California, Heller Foundation, Tennessee Firearms Association, Tennessee Firearms Foundation, America's Future, U.S. Constitutional Rights Legal Defense Fund, and Conservative Legal Defense and Education Fund are nonprofit organizations, exempt from federal income tax under either sections 501(c)(3) or 501(c)(4) of the Internal Revenue Code. These entities, *inter alia*, participate in the public policy process, including conducting research, and informing and educating the public on the proper construction of state and federal constitutions, as well as statutes related to the rights of citizens, and questions related to human and civil rights secured by law.

Two of these *amici* filed an *amicus* brief when this case was before the Supreme Court of Michigan (Brief *Amicus Curiae* of Gun Owners of America, *et al.*, MSC No. 156150 (Jan. 27, 2021)), and another when it was before the Court of Appeals of Michigan (Brief *Amicus Curiae* of Gun Owners of America *et al.*, *Wade v. Board of Regents*, Ct. of App. No. 330555 (Mar. 9, 2023)).

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[1] It is hereby certified that counsel of record for all parties received timely notice of the intention to file this brief; 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.

STATEMENT OF THE CASE

The University of Michigan, a governmental corporation created by the Michigan Constitution, enacted an ordinance, known as Article X ,that banned possession of firearms on all properties under the University's control. Petitioner sought and was denied permission to possess a firearm on University property. Petitioner filed suit to enjoin the University ordinance for denying his Constitutional right to possess a firearm on University property. The Michigan Court of Claims denied injunctive relief and granted summary judgment in the University's favor.

The Court of Appeals affirmed, applying a two-part test, where: (1) the threshold inquiry was whether the challenged regulation "regulates conduct that falls within the scope of the Second Amendment right as historically understood," and then (2) 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). Applying this test, the court held that the University's complete ban on firearm possession covering all of its owned and controlled property was constitutional.

Application for leave to Appeal to the Michigan Supreme Court was granted and briefed, but later, on its own motion and in the wake of *New York Rifle and Pistol Association, Inc. v. Bruen*, 597 U.S. 1 (2022), the

Court vacated both its Order granting the Application, and the Court of Appeals decision affirming the trial court's decision. The Supreme Court then remanded the case back to the Court of Appeals to consider *Bruen*. Justice David Viviano 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." *Wade v. Univ. of Mich.*, 510 Mich. 1025, 1028, 981 N.W.2d 56, 58 (2022) (Viviano, J., concurring).

On remand, the Court of Appeals again affirmed the Court of Claims, finding Article X constitutional. The Court of Appeals applied *Bruen* in name only by using interest balancing via its own multi-part balancing test, and mechanically held that safety sensitive presumptive *dicta* of *D.C. v. Heller*, 554 U.S. 570 (2008), applied to all university land, property, and buildings. It also held that a university is a school and as such was unrebuttably exempt from the Second Amendment. The university as a political subdivision with vaguely defined geographical boundaries was declared a sensitive place, *en mass*.

The court undertook no historical review except to cite a dictionary written in 1928 defining a school. It found no historical analogue. It ignored a significant 1906 published history of the University which never mentioned "gun," or "firearm," or "pistol," or any

prohibition related thereto. It never looked for any historical analogue that persons such as Petitioner, simply walking on campus property, were regulated, let alone prohibited, from possessing firearms. In short, the Court of Appeals turned a blind eye to history and failed to follow this Court's decision in *Bruen*.

The Michigan Supreme Court denied a second Application for Leave to Appeal, with Justice David Viviano joined by Justice Brian Zahra dissenting. Justice Viviano noted that the Court of Appeals had failed to identify any "tradition of [a] complete firearm ban" on campus. He also zeroed in on the Court of Appeals' "complex, multifactor test that is not grounded in the text of the Second Amendment or the Supreme Court's caselaw interpreting it." *Wade v. Univ. of Mich.*, 12 N.W.3d 6 (Mich. 2024) (Viviano, J., dissenting). He noted that *Bruen*'s historical test must still be undertaken to determine if a school, in this case a university, is a sensitive place "in which firearms have historically been forbidden." Observing that sensitive places are those locations where longstanding "laws forbidding the carrying of firearms" that may include schools (*Bruen*, 597 U.S. at 30), the Court of Appeals inverted the issue, ruling sensitive places include schools, and schools include universities, and therefore, a university may enact laws forbidding carrying firearms in those locations. *Wade v. Univ. of Mich.*, 12 N.W.3d 6, 9 (Mich. 2024).

SUMMARY OF ARGUMENT

Petitioner challenged an ordinance banning possession of all firearms on all properties under the control of the University of Michigan. The ordinance in question was not enacted in the conventional manner by elected city officials, but by a Board of Regents of the University of Michigan, which is a governmental corporation created by the Michigan Constitution. The University of Michigan argued that even though it was a vast and sprawling university, it was a "school" under *Bruen*, and thus benefitted from the presumption it was a "sensitive place" where firearms could be banned both inside buildings and in open areas. The Michigan state courts agreed, and to navigate this Court's precedents, it fashioned a novel theory as to how *Heller* and *Bruen* applied to "sensitive places."

The lower court first acknowledged that *Heller* created only a rebuttable presumption, that firearms could be banned in sensitive places, but erroneously asserted *Bruen* reversed this rule, making the presumption irrebuttable. Therefore, once the University of Michigan asserted it was a school, firearms could be banned on all property owned by the University, and the state had no burden to show relevant historical analogues. As a further reason for its ruling, it asserted no distinction could be made between buildings and other areas such as parking garages and parks, because that would require an impossible partition. As a result, the lower court affirmed the University rule that was applicable to as many as 100,000 persons living and working in an

area over 5 square miles in size. The University of Michigan may be a University, but under Michigan law it is a department of the State government which more resembles a small city than a school.

ARGUMENT

I. THE MICHIGAN COURTS APPLIED A NOVEL WAY TO CIRCUMVENT THIS COURT'S "SENSITIVE PLACES" RULE, WHICH CANNOT BE ALLOWED TO STAND.

A. The Michigan State Court of Appeals Evaded Application of the *Bruen* Methodology.

On October 18, 2024, the Supreme Court of Michigan denied Petitioner's application for leave to appeal the July 20, 2023 *per curiam* opinion of the Court of Appeals of Michigan, allowing that decision to stand. After acknowledging it understood the basic methodology for evaluating Second Amendment challenges under *Bruen*, the court of appeals jettisoned it, and developed a novel approach which allowed it to evade the *Bruen* sensitive places framework to rule against a pending challenge to Article X. As Michigan Supreme Court Justice Viviano described it, "the Supreme Court has articulated nothing like the multifactor test concocted by the Court of Appeals." *Wade*, 12 N.W.3d at 9 (Viviano, J., dissenting). The lower court explained its decision as follows:

> [1.] In *Bruen* ... 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**.... [*Wade*, 2023 Mich. App. LEXIS 5143, *22 (emphasis added) (citations omitted).]

From this brief analysis of *Bruen*, the Michigan court concluded:

> [2.] 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. [*Id.* at *22-23 (emphasis added) (citations omitted).]

As a result, the court adopted a simple test:

> [3.] [I]f the University is a **school or government building**, then Article X does **not violate** the Second Amendment. [*Id.* at *23 (emphasis added).]

There are flaws in each aspect of the court's analysis. As to Points 1 and 2, the *Bruen* court never said it was settled that firearms could be banned at "schools," but rather there were "'sensitive places' ... '*e.g.*, legislative assemblies, polling places, and courthouses'" as to which the court was "aware of no disputes" and thus it could "assume it is settled." *Bruen* at 30.

The court below briefly addressed the assertion of *amici* Gun Owners of America and Gun Owners Foundation that Heller's sensitive places doctrine constituted at best a rebuttable presumption. The court admitted that before *Bruen* and under *Heller*, the "sensitive places" presumption was rebuttable:

> 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* ... 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...." Accordingly, there is **no support** for the assertion that the

> finding of a "sensitive place" results in a **mere presumption that may be rebutted**. [*Wade* at *28-29 (bold added) (citations omitted).]

Having taken out of context the single word "settled," the lower court discerned an 180 degree reversal from *Heller's* rebuttable presumption to *Bruen's* irrebuttable presumption — providing a novel means to circumvent *Bruen*. To the contrary, in *Heller*, what constituted a "sensitive place" was described as a "rebuttable presumption" — which could be rebutted. Under *Bruen*, challenges to bans on firearms in sensitive places proceed according to the standard *Bruen* analysis — placing the burden on the government to demonstrate relevantly similar historical analogues. The lower court's focus on the single word "settled" is of no avail.

Point 3 is clever, but not good law. The lower court asserted that under *Bruen* all firearms may be banned at all "**schools and other government buildings**," but then changed the conjunctive "and" to the disjunctive "or" in asserting that the Second Amendment allows firearms bans "if the University is a **school or government building**." This twist of language first allows the lower court to evade Bruen's obvious implication that only "**school buildings**" could be deemed sensitive places — not all property that may be owned by a school — and also implies that Bruen was discussing the land outside "schools."

The court below then went on to evaluate what was a "school" and concluded that the University of Michigan was indeed, a "school" under *Heller* and

Bruen, effectively ending its Second Amendment analysis. It then deemed all University of Michigan buildings and surrounding areas to be part of a school and thus properly subject to the ban. It gave short shrift to the notion that even if firearms may be banned in buildings, the same rule would not necessarily apply outside, asserting:

> 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. [*Wade* at *28 (emphasis added).]

The notion of partitioning is a red herring. Would it really require "partitioning" to apply the ban to the inside of buildings where classes are conducted, but not outside in the parking lots, grounds, leased properties, and other areas of the sprawling campus? Indeed, the University of Michigan is much like a small city, as explained in Section II, *infra*.

At one point, the Petition states that the Michigan Courts erred, misapplying *Bruen*, but the lower court did far more. Both the Petition and Michigan Supreme Court Justice Viviano explain how that four-part test "evades the rigorous historical inquiry mandated by

Bruen...." Petition at 12. In fact, that four-part test in no way resembles the *Bruen* test.

B. The University Ordinance Does Not Survive Application of the *Bruen* Methodology.

Under *Bruen*'s textual and historical test, when the Constitution's:

> **plain text** covers an individual's conduct, the Constitution **presumptively** protects that conduct. **The government must then justify** its regulation by demonstrating that it is consistent with the Nation's historical tradition of firearms regulation. Only then may a court conclude that the individual's conduct falls outside the Second Amendment's "unqualified command." [*Bruen* at 24 (emphasis added).]

Between *Bruen* and *Heller*, the Supreme Court has consistently and "expressly rejected the application of any judge-empowering interest-balancing inquiry that asks whether the statute burdens a protected interest in a way or to an extent that is out of proportion to the statute's salutary effects upon other important governmental interests" when it comes to the pre-existing right to keep and bear arms. *Bruen* at 22 (cleaned up); *see also McDonald v. City of Chicago*, 561 U.S. 742, 790-91 (2010); *Caetano v. Mass.*, 577 U.S. 411 (2016) (per curiam).

Under *Bruen*, Petitioner clearly enjoys a **presumption of constitutional protection** under the Second Amendment's plain text. As a law-abiding citizen who is eligible to possess firearms under state and federal law, Petitioner belongs to "the people." *Bruen* at 31-32. Next, Petitioner's "proposed course of conduct" is to "carry[] handguns publicly for self-defense," which falls squarely within the right to "bear arms," as the definition of 'bear' naturally encompasses public carry" and the Second Amendment contains no locational qualification. *Id*. at 32. Finally, Petitioners' handgun is an "arm" within the meaning of the Second Amendment because the text "extends, prima facie, to all instruments that constitute bearable arms, even those that were not in existence at the time of the founding," and "handguns are weapons 'in common use' today for self-defense." *Heller* at 582, *Bruen* at 28, 32. All told, the Second Amendment guarantees a right to carry arms for self-defense in the public areas of the University of Michigan.

Therefore, it is entirely the Respondent's burden under *Bruen* to establish a historical tradition dating back to the time of the Founding of distinctly similar restrictions on carrying firearms on campus grounds. Although *Bruen* did not specify just how much historical evidence constitutes a "tradition," it is clear that a handful of outlier statutes, even from around the Founding era, are insufficient.

Contrary to any claim that historical tradition supports disarmament in public areas, the historical record is replete with examples of earlier generations carrying firearms on public greens and commons

during the colonial and Founding eras. For example, Boston Common, "America's oldest park," served as a mustering ground for the Massachusetts colonial militia and as an "encamp[ment]" for British soldiers in 1773.[2] Village greens also often served as armed "rallying point[s] for the defense against the hostile Indians."[3] Faced with the prospect of armed belligerents traversing public land, it defies logic that early Americans would have disarmed themselves in response — and they never did.

But for Respondent's ordinance, Petitioner would exercise his constitutionally protected rights to bear arms for self-defense on campus grounds. Consequently, the University's restriction against carrying firearms in these obviously non-sensitive public locations offends the natural right of self-defense. Indeed, as *Heller* explained, individual self-defense is "the *central component* of the right" protected by the Second Amendment. *Heller* at 599.

In the last paragraph of its opinion, the lower court again addressed another argument drawn from the Gun Owner of America *amicus* brief — the fact that the ban operates over a vast area, not just school buildings:

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[2] *Boston Common*, City of Boston, http://tinyurl.com/mry6abyb; Leonid Kondratiuk, A Guide to the Ancient and Honorable Artillery Company of Massachusetts at 9, http://tinyurl.com/3r55t7m5.

[3] Frederic S. Dennis, The Norfolk Village Green at 3 (1917), http://tinyurl.com/22ay6th7.

> 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. [*Wade* at *30-31 (emphasis added).]

While recognizing this vast area and enormous number of people covered by of the sanctioned ban, the court's hands were tied by its method of analysis: 1. Schools are conclusively sensitive places where guns can be banned; 2. this school is vast and cannot be "partitioned" by limiting the ban to buildings or in any other way; and therefore, 3. the ban can control the self-defense needs of possibly 100,000 people spread over the area of a small city. Surely, this result is in no way supported by any of this Court's decisions, requiring review.

II. THE UNIVERSITY OF MICHIGAN IS FIRST AND FOREMOST A POLITICAL SUBDIVISION OF THE STATE AND NOT A "SCHOOL."

As the lower court viewed the case, the only issue to decide was whether the University of Michigan was a "school" based on its assumption the Second Amendment allowed a complete firearms ban on all school properties regardless of size and scope. These

amici believe the Petition should be granted based on the court of appeals' misreading of the *Heller* and *Bruen* decisions, as discussed in Section I, *supra*. However, since the court of appeals made the central issue in the case the definition of a "school," the following section is offered to give greater insight into the lower court's erroneous methodology, and how it violated this Court's rule that any large area (*e.g.*, the entire island of Manhattan) could not be deemed a sensitive place.

A. The University of Michigan Is Akin to a Municipality in which its Different Schools Are Located.

In *Thirty-Sixth Dist. Court v. Owen*, 345 Mich. App. 637, 8 N.W. 3d 626 (2023), the Michigan Court of Appeals ruled that the 36th District court was a political subdivision of the state for purposes of the Michigan Constitution, Art. XI, § 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 (Jan. 2, 1963). That same reasoning applies here to the University.

As previously stated by the lower court in *Wade v. Univ. of Michigan*, 320 Mich. App. 1, 15–17, 905 N.W.2d 439, 446–47 (2017), *vacated and remanded,* 510 Mich. 1025, 981 N.W.2d 56 (Mich. 2022), the Board of Regents of the University has a unique legal character under Michigan law 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) (emphasis added).

Although the University Board of Regents has at various times been referred to as part of the executive branch that may be governed by the Legislature's plenary powers, it has also been recognized that the Board of Regents 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.").

When the Michigan Supreme Court first remanded this case to the Court of Appeals for reconsideration in light of the Supreme Court's decision in *Bruen*, Justice Viviano 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[.]" *Wade v. Univ of Mich.*, 510 Mich 1025, 1028 (2022) (Viviano, J., concurring).

As to the second point, several Michigan cities have a comparable landmass to the University. Ranking these cities by square miles is illuminating. The University of Michigan spreads out over 3,207 acres or approximately 5.01 square miles.[4] The student population of the University of Michigan spread out over each of its three campuses in Ann Arbor, Flint, and Dearborn ranks at approximately 33rd out of 1,467 Michigan municipalities for population.[5]

Each comparable city has a City Council elected by the people. Each has a Police Department and offers various municipal services to its citizens including recreation and education. Each has schools within their municipal boundaries. For instance, Mason has 21 schools.[6] Birmingham has 21 schools.[7] Howell has

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[4] *See* Michigan Land area in square miles, 2010 by City.

[5] *See* n.4 *supra*.

[6] *See* https://www.greatschools.org/michigan/mason/.

[7] *See* https://www.greatschools.org/michigan/birmingham/.

50 schools,[8] and Petosky has 23 schools.[9] By comparison the University boasts 19 schools and colleges within its geographical boundaries.[10]

The effect of the Court of Appeals decision is to declare *en mass* that each and every Michigan college or University is a gun free zone. How many is that exactly? The State of Michigan boasts 93 colleges and universities. According to a 2021 survey, one of the early Morrill land-grant universities,[11] Michigan State University, now covers over 5,300 acres (8.28 square miles) and enrolls 38,574 undergraduate students and 11,085 graduate students for a total of 49,699 students. As noted, the University of Michigan is likewise spread out over 3,207 acres (5.01 square miles) and enrolled **52,065 students** in the Fall of 2023. An additional **57,394 faculty and staff** including hospital employees, brings the total combined number to **109,459 people** involved with the University.[12] Wayne State University, Michigan's

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[8] *See* https://www.greatschools.org/michigan/howell/.

[9] *See* https://www.greatschools.org/michigan/petoskey/.

[10] *See* https://umich.edu/schools-colleges/.

[11] The Morrill Act of 1862 (12 STAT. 503 (1862) later codified as 7 U.S.C. § 301, *et seq*.) was enacted during the American Civil War, and the Morrill Act of 1890 (the Agricultural College Act of 1890, 26 STAT. 417, later codified as 7 U.S.C. § 321, *et seq*.) expanded this model. *See* "What It Means To Be A Land-Grant University" Michigan State University (Oct. 1, 2005).

[12] *See* Faculty and Staff Census, By Campus, Health System and Total.

third largest University, is located on 203 acres (0.3 square miles) and enrolls approximately 16,839 undergraduates and 8,080 graduate students. These are just the top three Constitutionally created educational governmental entities. There are 90 other colleges and universities in Michigan of great diversity regarding size, enrollment, and services.

Like municipalities in the state established by the legislature or vote of the people, each of these three Michigan universities are corporate entities governed by an elected Board. A city is likewise typically governed by a Mayor and/or city manager, and City Council, and a Township is governed by a Supervisor and a Board of Trustees. These three universities are governed by Regents, Trustees, and Governors. They have different names, but they essentially share the same types of municipal governing functions. These Board members are public officials and are constitutionally established. Its Regents, Trustees, and Governors are elected by the people every eight years just the same as municipal officials are elected.[13]

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[13] *See* 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

Each University has an extensive population comparable to major Michigan cities. Using the University student and employee population of 109,459, the University of Michigan would rank **7th among all cities in Michigan by population**.[14] Using the enrolled population of 52,065 students, the University ranks 33rd among all cities in Michigan by population.[15] Counting employees ranks it as the 21st largest employer in Michigan.[16]

Each of these three universities have their own police department or department of public safety. The University of Michigan employ 59 uniformed police officers.[17] The University of Michigan Police Department is a full-service law enforcement agency, licensed by the Michigan Commission on Law

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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."

[14] *See* Michigan Cities by Population (2025), https://www.michigan-demographics.com/cities_by_population.

[15] *Id*.

[16] *See* https://www.zippia.com/advice/largest-companies-in-michigan/.

[17] *See* https://www.mlive.com/news/2017/10/michigans_60_largest_police_de.html.

Enforcement Standards. Officers have full authority to investigate, search, arrest and use reasonable force, if necessary, to protect people and property under Michigan law and the U-M Regents' Ordinance. UMPD officers are trained to use chemical sprays, batons, Tasers, and firearms.[18] This description could easily fit any major city in the state of Michigan as well as major Charter Townships.

Like many cities and townships in Michigan, the University of Michigan also has medical facilities within its boundaries. The Medical Center, located in Ann Arbor, is the second largest hospital in Michigan, with 1,107 licensed beds.[19] Moreover, just like many other municipalities, the University of Michigan has its own electrical generation facility. It is ranked 20th out of 73 natural gas power plants in Michigan in terms of total annual net electricity generation.[20]

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[18] *See* https://www.dpss.umich.edu/content/about/frequently-asked-questions/.

[19] "It is the flagship hospital campus of Michigan Medicine, a non-profit academic health system owned and operated by the University of Michigan. The medical centre is home to the 550-bed University Hospital, as well as the C.S. Mott Children's Hospital, Von Voigtlander Women's Hospital, A. Alfred Taubman Health Care Center, the Frankel Cardiovascular Center and the University of Michigan Rogel Cancer Center." *See* https://www.hospitalmanagement.net/features/top-ten-largest-hospitals-michigan-bed-size-2021/.

[20] The University of Michigan has six generators which generated 54.9 GWh during the 3-month period between September 2024 to December 2024. *See* https://www.gridinfo.com/plant/university-of-michigan/50431.

B. Just Because the University Promotes Education, Does Not Render It a "School."

All of these statistics illustrate one point: promotion of education does not make a governmental corporation a school. The University of Michigan is in key respects no different than a municipality. It certainly engages in education, but that is not enough to declare all of its facets a school under *Heller* and *Bruen*. Even if its primary purpose is education of adults 18 and up, all of it is not a "school" for Second Amendment purposes. It engages in police activity, but that does not make the University itself a police department. It engages in medical services, but that does not make the University a hospital. It operates its own gas electrical generation facility, but that does not make the University a power plant. So too, just because it engages in education, does not render the entire business a school. The Michigan Court of Appeals classification of the University as a school *en mass* is purely a legal fiction.

Like a municipality, the University has elected officials, police officers, and the power to make and enforce criminal ordinances (such as Article X, the one in dispute in this case). Just like any other city of comparable size enjoying schools within its municipal limits, the University of Michigan has 19 colleges in its geographic boundaries. This is entirely unremarkable. Most municipalities have multiple schools and colleges within their municipal boundaries. But this does not make the municipality itself a "school" under *Bruen*. So too, virtually all Michigan municipalities with

comparable populations have hospitals or medical resources available within their municipal boundaries, and apparently 72 others boast electrical generation plants. By force of reasoning, this does not make the comparable cities of Mason, Birmingham, Howell, or Petosky, either a "school" or hospital.

What then of the concern that the University of Michigan is "so dispersed and multifaceted that a total campus ban would now cover areas that historically would not have had any restrictions"? It is plain to see this is the actual case. It has extensive campuses. It has a significant population. It is intertwined into cities including Ann Arbor, making geographical lines difficult to identify. It has a governing board elected by the people. It is a public corporate body. It houses schools, hospitals, electrical generation facilities, and law enforcement among its multifaceted focus.

C. *Bruen* Banned Classifying Land Masses as Sensitive Places.

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* at 3. The University likewise has failed to demonstrate any historical basis for it to effectively declare its entire campus/island a "sensitive place" based on either history or an analogue.

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 enrolled students. 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. The "school" designation is not "conclusive," but merely the starting point. As such, 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."

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 by declaring the entire city a "sensitive location" simply because some local students attend a local school or community college in that city. Yet, this is precisely the result the University demands. As *Bruen* declared: "Respondents' argument would in effect exempt cities from the Second Amendment and would eviscerate the general right to publicly carry arms for self-defense...." *Bruen* at 31.

This Court "must look, however, to the substance of things, not the names by which they are labeled, particularly in dealing with rights created and conserved by the Federal Constitution and finding their ultimate protection in the decisions of this court." *Crenshaw v. Arkansas*, 227 U.S. 389, 400 (1913). This case is not just about the University of Michigan, but it is about whether broad municipal-wide bans of firearms are precluded by *Bruen*.

CONCLUSION

For the foregoing reasons, the petition for certiorari should be granted.

Respectfully submitted,

KERRY L. MORGAN
PENTIUK, COUVREUR & KOBILJAK, P.C.
2915 Biddle Ave., Ste. 200
Wyandotte, MI 41892

JOHN I. HARRIS III
SCHULMAN, LEROY & BENNETT, PC
3310 West End Ave.
Suite 460
Nashville, TN 37203

WILLIAM J. OLSON*
JEREMIAH L. MORGAN
ROBERT J. OLSON
WILLIAM J. OLSON, P.C.
370 Maple Ave. W., Ste. 4
Vienna, VA 22180
(703) 356-5070
wjo@mindspring.com
**Counsel of Record*
Attorneys for Amici Curiae
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