STATE OF MICHIGAN

COURT OF APPEALS

JOSHUA WADE, Plaintiff-Appellant, v UNIVERSITY OF MICHIGAN, Defendant-Appellee.	FOR PUBLICATION July 20, 2023 9:10 a.m. No. 330555 Court of Claims LC No. 15-000129-MZ Advance Sheets Version

ON REMAND

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

PER CURIAM.

This matter is on remand from the Michigan Supreme Court for consideration in light of *NY State Rifle & Pistol Ass'n, Inc v Bruen*, 597 US 1; 142 S Ct 2111; 213 L Ed 2d 387 (2022) (*Bruen*).[1] As explained in this Court's prior opinion, plaintiff, Joshua Wade, appeals as of right the order granting summary disposition in favor of defendant, University of Michigan (University), "and dismissing plaintiff's complaint seeking declaratory and injunctive relief from a University ordinance that prohibits firearms on any University property." *Wade v Univ of Mich*, 320 Mich App 1, 5; 905 NW2d 439 (2017), vacated and remanded 510 Mich 1025 (2022). We continue to affirm.

I. BACKGROUND

A. THE ORDINANCE

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

[1] *Wade v Univ of Mich*, 510 Mich 1025 (2022).

"**Section 1. Scope of Article X**

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

Section 2. Possession of Firearms, Dangerous Weapons and Knives

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

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

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

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

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

Section 4. <u>Exceptions</u>

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

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

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

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

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

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

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

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

Section 5. Violation Penalty

A person who violates this Article X is guilty of a misdemeanor, and upon conviction, punishable by imprisonment for not less than ten (10) days and no more than sixty (60) days, or by a fine of not more than fifty dollars ($50.00) or both." [*Wade*, 320 Mich App at 6-7, quoting University of Michigan Ordinance, art X.][2]

B. PROCEDURAL HISTORY

After plaintiff's request for a waiver under § 4(1)(f) of Article X was denied, he filed this two-count action in the Court of Claims, alleging that Article X violated the Second Amendment of the United States Constitution and was preempted by MCL 123.1102 (prohibiting local units of government from establishing their own limitations on the purchase, sale, or possession of firearms). *Wade*, 320 Mich App at 7-8. The University moved for summary disposition under MCR 2.116(C)(8), arguing that the Second Amendment does not reach "sensitive places," such as schools. And even if the Second Amendment applied, the University argued, Article X was constitutional because it was substantially related to important governmental interests; Article X did not violate the Michigan Constitution; and MCL 123.1102 did not apply to the University. *Id.* at 8. The Court of Claims agreed and granted the University's motion, finding that the University is a school and, thus, a sensitive place; therefore, the Second Amendment did not apply. The Court of Claims also concluded that MCL 123.1102 did not apply to the University. *Id*. at 9-10.

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

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

C. MICHIGAN SUPREME COURT REMAND ORDER

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

Justice VIVIANO issued a concurring statement in which he offered his thoughts about how *Bruen* might apply to this case. *Wade*, 510 Mich at 1025-1029 (VIVIANO, J., concurring). He opined that, in *Bruen*, the United States Supreme Court rejected the two-part inquiry applied by this Court in its prior opinion and instead replaced it with a test that required courts to examine any historical analogues of the modern regulation. *Id*. at 1025-1026. Justice VIVIANO set forth two historical investigations that he believed would need to be done to determine whether Article X is constitutional. First, this Court should consider "whether there were any analogous firearm regulations on university and college campuses in the relevant historical period." *Id*. at 26. Second, this Court should consider whether large modern campuses, like the University's, are "so dispersed and multifaceted that a total campus ban would now cover areas that historically would not have had any restrictions[.]" *Id*. at 1028. Justice VIVIANO offered in response to those inquiries that he found no campus-wide ban generally prohibiting open or concealed carry during the colonial period and that "large, modern university campuses differ from their historical antecedents." *Id*.

D. SUPPLEMENTAL BRIEFS ON REMAND

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

1. PLAINTIFF'S SUPPLEMENTAL BRIEF ON REMAND

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

[3] *Wade*, 510 Mich at 1025. Because our Supreme Court only remanded for consideration in light of *Bruen*, which relates to the Second Amendment issue, the preemption issue is not before this Court on remand. Regardless, the preemption issue was resolved in *Mich Gun Owners, Inc v Ann Arbor Pub Sch*, 502 Mich 695, 700-701; 918 NW2d 756 (2018), in which the Court held that the Legislature had not preempted school districts' regulation of firearms.

preference for the interpretation of the Second Amendment following its adoption in 1791, and to a slightly lesser degree, following the adoption of the Fourteenth Amendment in 1868.

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

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

2. THE UNIVERSITY'S SUPPLEMENTAL BRIEF ON REMAND

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

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

According to the University, while plaintiff argues that historical firearm policies were not comprehensive bans like Article X, plaintiff's argument ignores the fact that many general state laws broadly forbade the possession of firearms in educational institutions. Thus, there is a longstanding tradition of forbidding firearms within educational institutions. Plaintiff also relies heavily on Justice VIVIANO's concurring statement. But the question posed by Justice VIVIANO is not the correct inquiry, and his suggested analysis is inconsistent with *Bruen*. *Bruen* only endorsed the use of analogies when there is no direct historical precedent, but there is in this case. Further, under *Bruen*, it is not necessary to find a "twin" or "dead ringer" with regard to historical precursors. *Bruen* expressly stated that the inapplicability of the Second Amendment to sensitive places is settled. Finally, Justice VIVIANO's concurrence rested on the incorrect premise that

colleges and universities are inherently larger and more complex institutions than K-12 schools. All sensitive places abut other property, and that proximity alone cannot render a firearm prohibition invalid.

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

3. PLAINTIFF'S SUPPLEMENTAL REPLY BRIEF ON REMAND

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

4. AMICI CURIAE BRIEFS ON REMAND

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

II. ANALYSIS

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

A. STANDARD OF REVIEW

We review de novo a trial court's decision on a motion for summary disposition brought under MCR 2.116(C)(8) to determine whether the opposing party failed to state a claim upon which relief can be granted. *Pittsfield Charter Twp*, *v Washtenaw Co Treasurer*, 338 Mich App 440, 448; 980 NW2d 119 (2021). This Court also reviews de novo questions of constitutional law. *Ass'n of Home Help Care Agencies v Dep't of Health & Human Servs*, 334 Mich App 674, 684-685; 965 NW2d 707 (2020).

B. APPLICABLE LAW

The Second Amendment provides: "A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed." US Const, Am II. In *Heller*, 554 US at 635, the Court struck down as unconstitutional the District of Columbia's complete ban on possession of handguns in the home and the requirement that any lawful firearm be disassembled or bound by a trigger lock at all times. Before addressing the ban, the Court noted:

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

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

> We made it clear in *Heller* that our holding did not cast doubt on such longstanding regulatory measures as "prohibitions on the possession of firearms by felons and the mentally ill," "laws forbidding the carrying of firearms in sensitive places such as schools and government buildings, or laws imposing conditions and qualifications on the commercial sale of arms." [*Id*. at 786 (citation omitted).]

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

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

In *Bruen*, 597 US at 10, the United States Supreme Court held "that the Second and Fourteenth Amendments protect an individual's right to carry a handgun for self-defense outside the home." The Court struck down New York's licensing regime for the carry of handguns publicly for self-defense. *Id*. at 11. Before considering the New York law, the Court addressed the proper framework for analyzing Second Amendment challenges. *Id*. at 17-19. The Court declined to adopt the two-part approach adopted by courts following *Heller* and *McDonald*. *Id*. at 17, 19. Rather, the Court held:

> [W]hen the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct. To justify its regulation, the government may not simply posit that the regulation promotes an important interest. Rather, the government must demonstrate that the regulation is consistent with this Nation's historical tradition of firearm regulation. Only if a firearm regulation is consistent with this Nation's historical tradition may a court conclude that the individual's conduct falls outside the Second Amendment's "unqualified command." [*Id*. at 17 (citation omitted).]

The Court explained that this test "requires courts to assess whether modern firearms regulations are consistent with the Second Amendment's text and historical understanding." *Id*. at 26. The Court stated:

> In some cases, that inquiry will be fairly straightforward. For instance, when a challenged regulation addresses a general societal problem that has persisted since the 18th century, the lack of a distinctly similar historical regulation addressing that problem is relevant evidence that the challenged regulation is inconsistent with the Second Amendment. Likewise, if earlier generations addressed the societal problem, but did so through materially different means, that also could be evidence that a modern regulation is unconstitutional. And if some jurisdictions actually attempted to enact analogous regulations during this timeframe, but those proposals were rejected on constitutional grounds, that rejection surely would provide some probative evidence of unconstitutionality. [*Id*.]

The Court further noted:

> While the historical analogies here and in *Heller* are relatively simple to draw, other cases implicating unprecedented societal concerns or dramatic technological changes may require a more nuanced approach. The regulatory challenges posed by firearms today are not always the same as those that preoccupied the Founders in 1791 or the Reconstruction generation in 1868. Fortunately, the Founders created a Constitution—and a Second Amendment—"intended to endure for ages to come, and consequently, to be adapted to the various crises of human affairs." Although its meaning is fixed according to the understandings of those who ratified it, the Constitution can, and must, apply to circumstances beyond those the Founders specifically anticipated. [*Id*. at 27-28 (citations omitted).]

In determining whether a historical analogue exists, the Court stated that *Heller* and *McDonald* pointed toward at least two metrics to be used to determine whether regulations are

relevantly similar—"how and why the regulations burden a law-abiding citizen's right to armed self-defense." *Id*. at 29. When engaging in this analogical inquiry, the central considerations are "whether modern and historical regulations impose a comparable burden on the right of armed self-defense and whether that burden is comparably justified . . . ." *Id.* The Court further explained:

> To be clear, analogical reasoning under the Second Amendment is neither a regulatory straightjacket nor a regulatory blank check. On the one hand, courts should not "uphold every modern law that remotely resembles a historical analogue," because doing so "risk[s] endorsing outliers that our ancestors would never have accepted." On the other hand, analogical reasoning requires only that the government identify a well-established and representative historical *analogue*, not a historical *twin*. So even if a modern-day regulation is not a dead ringer for historical precursors, it still may be analogous enough to pass constitutional muster. [*Id*. at 30 (citation omitted; alteration in *Bruen*).]

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

> Consider, for example, *Heller*'s discussion of "longstanding" "laws forbidding the carrying of firearms in sensitive places such as schools and government buildings." Although the historical record yields relatively few 18th- and 19th-century "sensitive places" where weapons were altogether prohibited—*e.g.*, legislative assemblies, polling places, and courthouses—we are also aware of no disputes regarding the lawfulness of such prohibitions. See D. Kopel & J. Greenlee, The "Sensitive Places" Doctrine, 13 Charleston L. Rev. 205, 229–236, 244–247 (2018); see also Brief for Independent Institute as *Amicus Curiae* 11–17. We therefore can assume it settled that these locations were "sensitive places" where arms carrying could be prohibited consistent with the Second Amendment. And courts can use analogies to those historical regulations of "sensitive places" to determine that modern regulations prohibiting the carry of firearms in *new* and analogous sensitive places are constitutionally permissible. [*Id*. at 30 (first citation omitted).]

In analyzing the New York law, the *Bruen* Court first concluded that the proposed conduct of the petitioners—two ordinary, law-abiding, adult citizens—to carry handguns publicly for self-defense was presumptively protected by the Second Amendment. *Id*. at 31-32. Before considering the historical sources, the Court noted the dispute regarding whether it was proper to consider laws from 1791, when the Second Amendment was adopted, or from 1868, when the Fourteenth Amendment was adopted. *Id*. at 34-35. The Court did not resolve the issue, concluding that the result was the same using either time period. *Id*. at 37-38. The Court, however, suggested that it believed 1791 was the proper time period because "individual rights enumerated in the Bill of Rights and applicable against the States through the Fourteenth Amendment have the same scope as against the Federal Government," and the scope of the protection applicable to the Federal Government depends on public understanding when the Bill of Rights was adopted. *Id*. at 37. After considering the historical evidence presented by the respondent, the Court concluded that it did not demonstrate a tradition of broadly prohibiting the public carry of commonly used firearms for self-defense. *Id*. at 37-71.

C. APPLICATION

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

(1) Courts must first consider whether the Second Amendment presumptively protects the conduct at issue. If not, the inquiry ends, and the regulation does not violate the Second Amendment. *Bruen*, 597 US at 17, 31-32.

(2) If the conduct at issue is presumptively protected, courts must then consider whether the regulation at issue involves a traditional "sensitive place." If so, then it is settled that a prohibition on arms carrying is consistent with the Second Amendment. *Id*. at 30.

(3) If the regulation does not involve a traditional "sensitive place," courts can use historical analogies to determine whether the regulation prohibits the carry of firearms in *a new and analogous* "sensitive place." If the regulation involves a new "sensitive place," then the regulation does not violate the Second Amendment. *Id*. at 29-30.

(4) If the regulation does not involve a sensitive place, then courts must consider whether the government has demonstrated that the regulation is consistent with this Nation's historical tradition of firearms regulations. This inquiry will often involve reasoning by analogy to consider whether regulations are relevantly similar under the Second Amendment. If the case involves "unprecedented societal concerns or dramatic technological changes," then a "more nuanced approach" may be required. *Id.* at 17, 27.

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

Under *Bruen*, the first inquiry is whether the plain text of the Second Amendment covers plaintiff's conduct. If so, the Constitution presumptively protects that conduct. Plaintiff alleges that his proposed conduct is to openly carry a lawfully owned pistol for self-defense on University property. As in *Bruen*, plaintiff is an ordinary, law-abiding, adult citizen and, thus, he is part of the "people" protected by the Second Amendment. *Bruen*, 597 US at 31-32. In addition, handguns are weapons "in common use" for self-defense. *Id*. at 32. Under *Bruen*, the Second Amendment protects carrying handguns in public for self-defense. *Id*. Because plaintiff's conduct is presumptively protected by the Second Amendment, the University has the burden to show that Article X, which is a regulation that prohibits all firearms on University property, involves a traditional "sensitive place."

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

In *Bruen*, 597 US at 30, the Court stated that it was "settled" that arms carrying could be prohibited consistently with the Second Amendment in locations that are "sensitive places." The Court explained that, although the historical record showed relatively few eighteenth- and nineteenth-century "sensitive places," such as legislative assemblies, polling places, and courthouses, there was no dispute regarding the lawfulness of prohibitions on carrying firearms in sensitive places such as schools and government buildings. *Id*. The Court's statements indicate that, even though eighteenth- and nineteenth-century "sensitive places" were limited to legislative

assemblies, polling places, and courthouses, laws prohibiting firearms in schools and other government buildings are nonetheless consistent with the Second Amendment. See *The "Sensitive Places" Doctrine*, 13 Charleston L R at 263 ("Widespread bans on arms in government buildings or schools came in the later part of the twentieth century."). Thus, if the University is a school or government building, then Article X does not violate the Second Amendment.

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

In his concurring statement to our Supreme Court's order remanding this matter to this Court, Justice VIVIANO suggested that the relevant historical point for this determination is 1791, when the Second Amendment was adopted. *Wade*, 510 Mich at 1025 n 1 (VIVIANO, J., concurring). However, considering the definition of "school" from that time period leads to the same conclusion. Samuel Johnson's dictionary from 1773 defines "school," in part, as: "A house of discipline and instruction," and as "[a] place of literary education; an university."[4] It defines "university" as "[a] school, where all the arts and faculties are taught and studied."[5] Thus, considering either time period, the term "school" included universities.

Notably, the reference to "schools" being sensitive places was first made by Justice Scalia in *Heller*. In discussing the "longstanding" tradition of laws forbidding firearms in sensitive places such as "schools and government buildings," Justice Scalia did not define the term "school," nor did he cite or rely on any authority. *Heller*, 554 US at 626. Given that the term "school" is not found in the Second Amendment, but was first used by Justice Scalia, it is not clear that either 1791 or 1868 are the correct time periods to determine the meaning of that term as used in *Heller*. Nonetheless, the plain meaning of "school" when Justice Scalia used the term in 2008, similarly included universities. *Merriam-Webster's Collegiate Dictionary* (2003) defines "school," in part, as "an organization that provides instruction," such as a "COLLEGE, UNIVERSITY." Significantly, in the law review article cited in *Bruen* by Justice Thomas, see *Bruen*, 597 US at 30, the authors presume that *Heller*'s reference to "schools" included universities. See *The "Sensitive Places" Doctrine*, 13 Charleston L Rev at 251-252. Thus, at all potentially relevant time periods, the term "school" included universities, and thus, the University is a "sensitive place."

In support of his argument that the University is not a school, plaintiff relies on the definition of "school" in *Black's Law Dictionary*, which in turn quotes the 1993 edition of Am Jur 2d. Plaintiff also argues that the Michigan Legislature delineated between schools and universities in MCL 28.425o (prohibiting carrying a concealed pistol on certain premises). *Black's Law*

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[4] *A Dictionary of English Language* (1773), available at <https://babel.hathitrust.org/cgi/pt?id=osu.32435030881106&view=1up&seq=622> (accessed June 28, 2023) [https://perma.cc/4WXD-5FEK].

[5] *Id*., available at <https://babel.hathitrust.org/cgi/pt?id=osu.32435030881106&view=1up&seq=1059> (accessed June 28, 2023) [https://perma.cc/A4QC-R3ZW].

Dictionary defines "school" as "[a]n institution of learning and education, esp. for children," and it quotes the following passage from Am Jur 2d:

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

This passage supports the conclusion that the term "school," used broadly, includes institutions of higher education and that *when used in a statute or contract* the term "school" usually does not include such institutions unless inclusion is clearly indicated. Again, the term "school" was first used in *Heller* and was used broadly, without any limitations. It also appears to have been used in a colloquial sense, given that Justice Scalia did not cite or rely on any authority. Because there is no indication that the term "school," as used in *Heller*, has a " 'unique legal meaning,' " it is also not appropriate to rely on a legal dictionary. See *Spartan Stores, Inc v Grand Rapids*, 307 Mich App 565, 575; 861 NW2d 347 (2014) (relying on a legal dictionary because the terms at issue had a unique legal meaning and were located in a complicated tax statute). With regard to the Michigan Legislature's delineation between schools and universities, we agree with the University that this has no relevance to the meaning of the term as used in *Heller*, *McDonald*, and *Bruen*.

Other courts have concluded that universities are schools and, thus, "sensitive places." See *DiGiacinto v Rector & Visitors of George Mason Univ*, 281 Va 127, 136; 704 SE2d 365 (2011) ("The fact that [George Mason University (GMU)] is a school and that its buildings are owned by the government indicates that GMU is a 'sensitive place.' "). See also *United States v Power*, unpublished memorandum opinion of the United States District Court for the District of Maryland, issued January 9, 2023 (Case No. 20-po-331-GLS), and *United States v Robertson*, unpublished memorandum opinion of the United States District Court for the District of Maryland, issued January 9, 2023 (Case No. 22-po-867-GLS), p 12 ("[T]he Court determines that a regulation centered on a 'college campus' falls under 'schools' and within the sensitive places doctrine.").[6] In *Power* and *Robertson*, the court upheld the National Institute of Health (NIH)'s regulation banning firearms on its campus because the NIH is a sensitive place. *Power*, unpub op at 2, 8-12; *Robertson*, unpub op at 2, 8-12. Thus, the challenged regulation did not violate the Second Amendment. The court explained that *Bruen* never said only "elementary schools" or "middle schools," and the terms "schools and government buildings are presented as broadly as possible, allowing the reader to consider all possible subtypes that fall within those two examples." *Power*, unpub op at 5; *Roberts*, unpub op at 5. Finally, in *Antonyuk v Hochul*, 635 F Supp 3d 111, 142-143 (ND NY, 2022), the court upheld a New York restriction on concealed carry at colleges and universities.

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

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

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 certain "areas" of the University to be partitioned off from other areas of the University, and other "sensitive places" like courthouses would likewise have to be partitioned. More importantly, plaintiff provides no support for partitioning "sensitive areas," and no such support can be found in *Heller* or *Bruen*, which used the term "schools" and "government buildings" broadly.

Finally, GOA, as amicus in support of plaintiff, argues that the "sensitive places" doctrine is a mere presumption, which can be rebutted absent a historical analogue. In *Heller*, 554 US at 627 n 26, the Court stated in a footnote following its reference to "sensitive places" the following: "We identify these presumptively lawful regulatory measures only as examples; our list does not purport to be exhaustive." Thus, it is true that the Court in *Heller* referred to such regulations as only *presumptively* lawful. However, in *Bruen*, the Court clearly and unequivocally pronounced that it could assume that it was "*settled* that these locations were 'sensitive places' where arms carrying *could be prohibited* consistent with the Second Amendment." *Bruen*, 597 US at 30 (emphasis added). Accordingly, there is no support for the assertion that the finding of a "sensitive place" results in a mere presumption that may be rebutted.

III. CONCLUSION

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

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

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

Affirmed.

/s/ Mark J. Cavanagh
/s/ Deborah A. Servitto

SAWYER, J., did not participate in the decision of this case because he retired from the Court of Appeals, effective December 31, 2022.