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STATE OF MICHIGAN
IN THE SUPREME COURT

Appeal from the Michigan Court of Appeals
Cavanagh, P.J., Sawyer and Servitto, JJ

JOSHUA WADE,

Plaintiff-Appellant,

SC: 156150
COA: 330555
Ct of Claims: 15-000129-MZ

v

UNIVERSITY OF MICHIGAN,

Defendant-Appellee.
_____/

DEFENDANT-APPELLEE'S APPENDIX
(EXHIBITS 1-10; APPX. 1b-143b)

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DEFENDANT-APPELLEE'S INDEX OF APPENDIX EXHIBITS

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Exhibit	Date	Description	App. Pages
1	01/27/2021	Register of Actions for: *Wade v University of Michigan*, Court of Claims Case No. 15-000129-MZ	**1b – 2b**
2	06/09/2015	Complaint: *Wade v University of Michigan*, Court of Claims Case No. 15-000129-MZ	**3b – 8b**
3	07/23/2015	University of Michigan's Motion for Summary Disposition and Brief in Support of the Motion: *Wade v University of Michigan*, Court of Claims Case No. 15-000129-MZ	**9b – 46b**
4	09/14/2015	Wade's Response to University of Michigan's Motion for Summary Disposition and Brief in Support of the Motion: *Wade v University of Michigan*, Court of Claims Case No. 15-000129-MZ	**47b – 68b**
5	11/13/2015	Court of Claims Opinion and Order: *Wade v University of Michigan*, Court of Claims Case No. 15-000129-MZ	**69b – 78b**
6	01/04/2016	Wade's Brief on Appeal: *Wade v University of Michigan*, Court of Appeals Docket No. 330555	**79b – 111b**
7	06/06/2017	Court of Appeals Opinion: *Wade v University of Michigan*, 320 Mich App 1; 905 NW2d 439 (2017)	**112b – 123b**
8	11/24/2009	*Bloedorn v Grube, et al*, unpublished order of the United States District Court, Southern District of Georgia, issued Nov. 24, 2009 (Case No. 609CV055); 2009 WL 4110204	**124b – 132b**
9	01/00/1995	University of Michigan 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, Article X (revised April, 2001)	**133b – 138b**
10	12/07/2017	Lt. John M. Weinstein, *Should We Allow Armed CCP Holders on Campus? 11 Reservations of a 'Gun Guy,'* Campus Safety (November/December 2015)	**139b – 143b**

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EXHIBIT 1

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CASE

Judicial Officer	Date Filed	Adjudication	Status
STEPHENS, CYNTHIA	6/9/15	SUMMARY DISPOSITION 11/13/15	CLOSED 11/13/15

PARTICIPANTS

PLAINTIFF 1	WADE, JOSHUA	FILED: 6/9/15
	ATTY: STEVEN W. DULAN # 54914 PRIMARY RETAINED	
DEFENDANT 1	UNIVERSITY OF MICHIGAN	FILED: 6/9/15
	ATTY: LEONARD M. NIEHOFF # 36695 PRIMARY RETAINED	

RECEIVABLES/PAYMENTS

	Assessed	Paid/Adjusted	Balance
PTF 1 JOSHUA WADE	$195.00	$195.00	$0.00
	Assessed	**Paid/Adjusted**	**Balance**
DEF 1 UNIVERSITY OF MICHIGAN	$40.00	$40.00	$0.00

CHRONOLOGICAL LIST OF ACTIVITIES

Activity Date	Activity		User	Entry Date
6/9/15	SUMMONS AND COMPLAINT PTF 1 DEF 1	$150.00	mmla mmla	6/9/15 6/9/15
6/9/15	JUDICIAL OFFICER ASSIGNED TO STEPHENS, CYNTHIA DIANE 28417		mmla	6/9/15
6/9/15	RECEIVABLE FILING FEE	$150.00	mmla	6/9/15
6/9/15	PAYMENT RECEIPT NUMBER: COC-LAN.0000749 METHOD: CHECK $150.00	$150.00	mmla	6/9/15
7/9/15	APPEARANCE DEF 1		mmla	7/10/15
7/23/15	MOTION FOR SUMMARY DISPOSITION AND BRIEF IN SUPPORT DEF 1	$20.00	mmla mmla	7/23/15 7/23/15
7/23/15	RECEIVABLE MOTION FEE	$20.00	mmla	7/23/15
7/23/15	PAYMENT RECEIPT NUMBER: COC-LAN.0000809 METHOD: CHECK $20.00	$20.00	mmla	7/23/15
9/14/15	MOTION FOR CONSIDERATION OF LATE-FILED BRIEF PTF 1	$20.00	mmla mmla	9/14/15 9/15/15
9/14/15	RECEIVABLE MOTION FEE	$20.00	mmla	9/14/15
9/14/15	PAYMENT RECEIPT NUMBER: COC-LAN.0000878 METHOD: CHECK $20.00	$20.00	mmla	9/14/15
9/14/15	RESPONSE TO THE DEFENDANT'S MOTION FOR SUMMARY DISPOSITION		mmla mmla	9/14/15 9/15/15

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Activity Date	Activity		User	Entry Date
	PTF 1			
9/15/15	PROOF OF SERVICE FOR RESPONSE TO MOTION FOR SUMMARY DISPOSITION AND MOTION FOR CONSIDERATION		mmla	9/15/15
	PTF 1			
9/23/15	RESPONSE TO PLAINTIFF'S MOTION FOR CONSIDERATION OF LATE-FILED BRIEF		mmla	9/23/15
	DEF 1			
10/7/15	ORDER		mmla	10/7/15
10/13/15	MOTION (UNOPPOSED) FOR LEAVE TO FILE REPLY BRIEF	$20.00	mmla mmla	10/14/15 10/14/15
	DEF 1			
10/13/15	RECEIVABLE MOTION FEE	$20.00	mmla	10/14/15
10/13/15	REPLY BRIEF OF THE UNIVERSITY OF MICHIGAN IN SUPPORT OF MOTION FOR SUMMARY DISPOSITION		mmla	10/14/15
	DEF 1			
10/13/15	NOTICE OF CHANGE OF ADDRESS		mmla	10/14/15
	DEF 1			
10/14/15	PAYMENT	$20.00	mmla	10/14/15
	RECEIPT NUMBER: COC-LAN.0000926			
	METHOD: CHECK $20.00			
11/9/15	REVIEW DATE	CANCELLED 11/13/15 8:00 A	mmla	8/10/15
11/13/15	OPINION AND ORDER		mmla	11/13/15
	DEF 1			
11/13/15	ORDER		mmla	11/13/15
11/13/15	CLOSE CASE STATUS		mmla	11/13/15
11/13/15	REVIEW 11/13/15 8:00 AM		mmla	11/13/15
	CANCELLED			
	CASE ADJUDICATED			
12/4/15	CLAIM OF APPEAL	$25.00	mmla mmla	12/4/15 12/4/15
	PTF 1			
12/4/15	RECEIVABLE APPEALS FEE	$25.00	mmla	12/4/15
12/4/15	PAYMENT	$25.00	mmla	12/4/15
	RECEIPT NUMBER: COC-LAN.0001007			
	METHOD: CHECK $25.00			
2/8/16	COMMENT		amd	2/8/16
	Notification from the Court of Appeals requesting file within 21-days.			
2/8/16	COMMENT		amd	2/8/16
	File prepared and sent to the Court of Appeals electronically.			
6/6/17	OPINION AND ORDER (FROM APPELLATE COURT) AFFIRM		amd	6/6/17
6/6/17	OPINION AND ORDER (FROM APPELLATE COURT) DISSENTING		amd	6/6/17

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EXHIBIT 2

Approved, SCAO

Original - Court
1st copy - Defendant

2nd copy - Plaintiff
3rd copy - Return

STATE OF MICHIGAN JUDICIAL DISTRICT JUDICIAL CIRCUIT COUNTY PROBATE	SUMMONS AND COMPLAINT	CASE NO. 15- 129 -MZ Court of Claims

Court address
925 W Ottawa St, Lansing, MI 48909

2015 JUN -9 PM 12:22

Stephens

Court telephone no.
(517) 373-0807

Plaintiff's name(s), address(es), and telephone no(s).
Joshua Wade
2080 Medford Road
Apt 15
Ann Arbor, MI 48104
(734) 619-9994

v

Defendant's name(s), address(es), and telephone no(s).
University of Michigan
2074 Fleming Building
Ann Arbor, MI 48109-1340
(734) 764-6270

RECEIVED
JUN 15 2015
UNIVERSITY OF MICHIGAN
GENERAL COUNSEL

OFFICE OF THE PRESIDENT
Received
JUN 15 2015

Plaintiff's attorney, bar no., address, and telephone no.
Steven W. Dulan (P54914)
1750 E Grand River Ave
Suite 101
East Lansing, MI 48823
(517) 333-7132

SUMMONS | **NOTICE TO THE DEFENDANT**: In the name of the people of the State of Michigan you are notified:

1. You are being sued.
2. **YOU HAVE 21 DAYS** after receiving this summons to **file a written answer with the court** and serve a copy on the other party **or take other lawful action with the court** (28 days if you were served by mail or you were served outside this state). (MCR 2.111[C])
3. If you do not answer or take other action within the time allowed, judgment may be entered against you for the relief demanded in the complaint.

Issued	This summons expires	Court clerk
6-9-15	9-8-15	Jerome W. Zimmer Jr.

This summons is invalid unless served on or before its expiration date. This document must be sealed by the seal of the court.

COMPLAINT | ***Instruction: The following is information that is required to be in the caption of every complaint and is to be completed by the plaintiff. Actual allegations and the claim for relief must be stated on additional complaint pages and attached to this form.***

This is a business case in which all or part of the action includes a business or commercial dispute under MCL 600.8035

Family Division Cases

There is no other pending or resolved action within the jurisdiction of the family division of circuit court involving the family or family members of the parties.

An action within the jurisdiction of the family division of the circuit court involving the family or family members of the parties has been previously filed in _____ Court.
The action remains is no longer pending. The docket number and the judge assigned to the action are:

Docket no.	Judge	Bar no.

General Civil Cases

✓ There is no other pending or resolved civil action arising out of the same transaction or occurrence as alleged in the complaint.

A civil action between these parties or other parties arising out of the transaction or occurrence alleged in the complaint has been previously filed in _____ Court.
The action remains is no longer pending. The docket number and the judge assigned to the action are:

Docket no.	Judge	Bar no.

VENUE

Plaintiff(s) residence (include city, township, or village)	Defendant(s) residence (include city, township, or village)
Ann Arbor	Ann Arbor

Place where action arose or business conducted
Ann Arbor

6/9/15
Date

Signature of attorney/plaintiff

If you require special accommodations to use the court because of a disability or if you require a foreign language interpreter to help you fully participate in court proceedings, please contact the court immediately to make arrangements.

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PROOF OF SERVICE

SUMMONS AND COMPLAINT
Case No. 15- 129 -MZ

TO PROCESS SERVER: You are to serve the summons and complaint not later than 91 days from the date of filing or the date of expiration on the order for second summons. You must make and file your return with the court clerk. If you are unable to complete service you must return this original and all copies to the court clerk.

CERTIFICATE / AFFIDAVIT OF SERVICE / NONSERVICE

OFFICER CERTIFICATE OR **AFFIDAVIT OF PROCESS SERVER**

I certify that I am a sheriff, deputy sheriff, bailiff, appointed court officer, or attorney for a party (MCR 2.104[A][2]), and that: (notarization not required)

Being first duly sworn, I state that I am a legally competent adult who is not a party or an officer of a corporate party, and that: (notarization required)

I served personally a copy of the summons and complaint,
I served by registered or certified mail (copy of return receipt attached) a copy of the summons and complaint, together with _____
List all documents served with the Summons and Complaint

on the defendant(s):

Defendant's name	Complete address(es) of service	Day, date, time

I have personally attempted to serve the summons and complaint, together with any attachments, on the following defendant(s) and have been unable to complete service.

Defendant's name	Complete address(es) of service	Day, date, time

I declare that the statements above are true to the best of my information, knowledge, and belief.

Service fee	Miles traveled	Mileage fee	Total fee
$		$	$

Signature

Name (type or print)

Title

Subscribed and sworn to before me on _____ (Date) _____ County, Michigan

My commission expires: _____ (Date) Signature: _____ (Deputy court clerk/Notary public)

Notary public, State of Michigan, County of _____

ACKNOWLEDGMENT OF SERVICE

I acknowledge that I have received service of the summons and complaint, together with _____ (Attachments)

on _____ (Day, date, time)

_____ on behalf of _____

Signature

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STATE OF MICHIGAN
IN THE COURT OF CLAIMS 2015 NOV -9 P 12:22

Joshua Wade, an individual,

Plaintiff,

v.

University of Michigan,
a Michigan constitutional
corporation,

Defendant.
/

Case No. 15- 129 -MZ

Hon. Stephens

COMPLAINT

Steven W. Dulan (P54914)
The Law Offices of
Steven W. Dulan, PLC
Attorney for Plaintiff
1750 E. Grand River Ave, Ste. 101
East Lansing, MI 48823
(517) 333-7132
/

Complaint
For Declaratory and Injunctive Relief

There is no other pending or resolved civil action arising out of the transaction or occurrence alleged in the complaint.

Plaintiff Joshua Wade states the following:

Jurisdiction and Venue

1. Plaintiff is a citizen of the United States and a resident of the State of Michigan.

2. Defendant is a state-run university established under Mich Const 1963 Art VIII § 5.

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3. MCL 600.6419 establishes exclusive jurisdiction over statutory and constitutional claims for equitable relief in the Court of Claims.

Nature of Claim

4. Plaintiff's claim arises under the rights granted under Mich Const 1963 Art 1 § 6.

5. Plaintiff's claim additionally involves the doctrine of preemption established in MCL 123.1101, *et seq.*

6. The University of Michigan's firearms policies, enacted in violation of MCL 123.1101, *et seq.*, injured Plaintiff's rights under Mich Const 1963 Art 1 § 6 and US Const Amd II.

Factual Allegations

7. Art X § 2 of the 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 ("Ordinance") prohibits all persons from carrying firearms on any University property.

8. Art X §4 of the Ordinance allows an individual to apply for a personal waiver of the terms of Art X § 2.

9. On September 4, 2014, Plaintiff applied to Defendant's Director of Public Safety for such a personal waiver.

10. On September 5, 2014, the Director's office contacted Plaintiff, explaining that the waivers were handled by the Chief of the University of Michigan Police department.

11. On September 5, 2014, Plaintiff applied to Defendant's Chief of Police for the same relief.

12. On September 24, 2014, Defendant's Chief of Police denied Plaintiff's request. (Ex. A)

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Count I—Constitutional Violation
Mich Const 1963 Art I § 6 and US Const Amd II
Right to Keep and Bear Arms

13. Plaintiff incorporates by reference ¶¶ 1–12.

14. Mich Const 1963 Art 1 § 6 states that the right of the people to keep and bear arms for the defense of themselves and of the state shall not be violated.

15. US Const Amd II protects the individual right of the people to keep and bear arms. *District of Columbia v Heller*, 554 US 570 (2008).

16. The fundamental rights protected under US Const Amd II have been incorporated to the states under *Chicago v McDonald*, 561 US 742 (2010).

17. By outright banning the acts protected under these rights, Defendant's Ordinance violates Mich Const 1963 Art 1 § 6 and US Const Amd II.

Plaintiff respectfully requests that this Court order declaratory relief and declare that Defendant's Ordinance violates Mich Const 1963 Art 1 § 6 and US Const Amd II, by unconstitutionally abridging the right of citizens to keep and bear arms. Plaintiff respectfully requests that Defendant be enjoined from the enforcement of the Ordinance.

Count II—Preemption Violation
MCL § 123.1101, et seq.
Preemption of Firearms Regulation

18. Plaintiff restates and incorporates by reference Paragraphs 1 through 17.

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19. MCL 123.1101, et seq., prohibit local units of government from establishing their own limitations on the purchase, sale, or possession of firearms.

20. The Ordinance amounts to a restriction on a person's ability to possess a firearm.

21. *Capital Area District Library v Michigan Open Carry Inc.*, 298 Mich App 220, 239; 826 NW2d 236 (2012), states that the MCL 123.1101, et seq., preemption is a general prohibition against all levels of government in Michigan.

22. According to *Regents of the University of Michigan v Michigan Employment Relations Commission*, 389 Mich 96, 108; 204 NW2d 218 (1973), the University's Mich Const 1963 Art VIII Sec 5 independence may not "thwart the clearly established public policy of the people of Michigan."

Plaintiff respectfully requests that this Court order declaratory relief and declare that Defendant's Ordinance is invalid pursuant to the preemption declared in MCL 123.1101, et seq. Plaintiff respectfully requests that Defendant be enjoined from the enforcement of the Ordinance.

Respectfully Submitted,

Steven W. Dulan (P54914)
Attorney for Plaintiff

Dated: 6/9/15

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EXHIBIT 3

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State Of Michigan
In The Court Of Claims

Joshua Wade, an individual,

Plaintiff,

v.

University of Michigan,
a Michigan constitutional
corporation,

Defendant.
_____/

Case No. 15-129-MZ

Hon. Cynthia D. Stephens

Motion for Summary Disposition

2015 JUL 23 P1:12:08

HONIGMAN MILLER SCHWARTZ
AND COHN LLP

John D. Pirich (P23204)
Leonard M. Niehoff (P36695)
John J. Rolecki (P78460)
130 South First Street, 4th Floor
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(734) 418-4246
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jrolecki@honigman.com

Timothy G. Lynch (P77385)
Vice President and General Counsel
University of Michigan
5010 Fleming Administration Building
503 Thompson Street
Ann Arbor, MI 48109
(734) 764-0305
Attorneys for Defendant

THE LAW OFFICES OF STEVEN W.
DULAN, PLC

Steven W. Dulan (P54914)
1750 E. Grand River Ave., Ste. 101
East Lansing, MI 48823
(517) 333-7132
Attorneys for Plaintiff

MOTION FOR SUMMARY DISPOSITION PURSUANT TO MCR2.116(C)(8)

Defendant the Regents of the University of Michigan ("the University") moves for summary disposition for the following reasons:

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1. Plaintiff's complaint fails to state a legally cognizable claim for relief and summary disposition is therefore appropriate under MCR 2.116(C)(8).

2. The grounds supporting this Motion are more fully set forth in Defendant's Brief filed with this Motion.

3. On July 22, 2015, Defendant's counsel sought concurrence in the relief requested in this motion from Plaintiff's counsel, Steven W. Dulan, but was unable to obtain such concurrence.

4. Defendant respectfully requests oral argument before the Court.

WHEREFORE, Defendant respectfully requests that this Court:

a) Dismiss Plaintiff's complaint in its entirety and with prejudice;

b) Award Defendant its costs, including reasonable attorney fees, incurred in defending this action and in bringing this Motion; and

c) Grant Defendant any other appropriate relief.

Respectfully Submitted,

2015 JUL 23 PM 12:08

HONIGMAN MILLER SCHWARTZ AND COHN LLP

By: _____

John D. Pirich (P23204)
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Attorneys for Defendant

Dated: July 23, 2015

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State Of Michigan
In The Court Of Claims

Joshua Wade, an individual,

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_____/

Case No. 15-129-MZ

Hon. Cynthia D. Stephens

Motion for Summary Disposition

HONIGMAN MILLER SCHWARTZ AND COHN LLP

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1750 E. Grand River Ave., Ste. 101
East Lansing, MI 48823
(517) 333-7132
Attorneys for Plaintiff

BRIEF IN SUPPORT OF MOTION FOR SUMMARY DISPOSITION

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INTRODUCTION

Plaintiff Joshua Wade achieved notoriety this past March when he openly carried a pistol into a high school choir concert attended by students and their understandably frightened families.[1] Plaintiff now seeks to repeat that performance at the University of Michigan, where he does not work, reside, or attend school.

Under the Michigan Constitution, Defendant the Board of Regents of the University of Michigan (the "University") is a branch of the State government, "a constitutional corporation of independent authority, which, within the scope of its functions, is coordinate with and equal to that of the legislature." *Board of Regents of the University of Michigan v Auditor General*, 167 Mich 444, 450 (1911). Indeed, under article VIII, § 5 of the 1963 Michigan Constitution, the Regents hold plenary "authority over 'the absolute management of the University.'"[2]

The University is an institution that has campuses in Ann Arbor, Flint, and Dearborn, with 19 schools and colleges in Ann Arbor.[3] Fall 2014 enrollment of undergraduate, graduate, and professional students was 43,525.[4] The University provides housing to almost 10,000 undergraduate students in 18 residence halls and apartment buildings.[5] At its Ann Arbor campus

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[1] *See* Ann Arbor school choir show turns into gun rights standoff, March 7, 2015, http://www.mlive.com/news/annarbor/index.ssf/2015/03/ann_arbor_school_choir_show_tu.html

[2] *Federated Publications v Board of Trustees of Michigan State University*, 460 Mich 75, 87 (1999). It should be noted that Wade has incorrectly named "University of Michigan, a Michigan constitutional corporation" as Defendant. The correct Defendant is the "Regents of the University of Michigan." Defendant responds as though Wade had named the proper party.

[3] *See* the Michigan Almanac, Overview of the University, http://obp.umich.edu/wp-content/uploads/almanac/Almanac_Ch1_Jan2015.pdf, p. 2. The data that follows refer to the Ann Arbor campus alone.

[4] *Id.*

[5] *Id.*

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alone, the University employs almost 7,000 faculty members and about 14,000 staff members.[6] The University's Health System includes 3 hospitals and 40 outpatient locations with more than 120 clinics, resulting in 1.9 million visits and 45,000 hospital stays each year.[7] Hundreds of thousands of visitors come to the University every year to attend athletic competitions, concerts, performances, the Ann Arbor Art Fair, and other events, and to see the collections at the University's many museums. The University's visitors include numerous children, such as those who reside at the institution while attending one of its 25 youth sport camps.[8] The University has a Division of Public Safety and Security, which includes the University's own Police Department, Health System Security Services Department, and Housing Security and Safety Services Department.[9]

Fourteen years ago, pursuant to its authority under the Michigan Constitution to manage the University, protect the safety of the University's students, faculty, staff, and hundreds of thousands of visitors each year, and ensure an open and supportive environment for learning, the Regents adopted an ordinance prohibiting individuals from possessing firearms on University property ("Article X").[10] That sensible and reasonable ordinance is fully consistent with both the United States and Michigan constitutions, and Plaintiff's claims to the contrary are without merit and should be dismissed. Indeed, this is not a close case.

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[6] *Id.*

[7] *See* University of Michigan Health System, Facts & Figures, http://www.uofmhealth.org/about%20umhs/facts-figures

[8] *See* Michigan Sport Camps webpage at http://camps.mgoblue.com/

[9] *See* Division of Public Safety and Security webpage at http://dpss.umich.edu/.

[10] An Ordinance to Regulate Parking and Traffic, and to Regulate the Use and Protection of the Buildings and Property of the University of Michigan, Article X, § 2. The ordinance also forbids the possession of other "dangerous weapons," as defined, and includes a number of exceptions. *Id.* at § 4. A copy of Article X in its entirety is attached as Exhibit A.

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Count I fails because the Supreme Court in *District of Columbia v Heller*, 554 US 570 (2008) expressly allowed bans on carrying guns in schools, finding that there is no Second Amendment right to possess a firearm in such special places. Because no such right exists, a school prohibition on firearms possession cannot and does not violate it. Furthermore, even if Second Amendment rights were implicated here, which they are not, Article X would easily pass constitutional muster. Article X also comports with article I, § 6 of the Michigan Constitution.

Count II fares no better. The statute on which Plaintiff bases his preemption argument does not—by its express terms—apply to the University. And, if it did, it would run afoul of article VIII, § 5 of the Michigan Constitution.

Because Plaintiff's Complaint fails to state a claim, the University respectfully requests that this Court grant summary disposition in its favor pursuant to MCR 2.116(c)(8).

FACTUAL BACKGROUND

The Regents adopted Article X in April of 2001. The legislative history of Article X shows that the Regents did so based on the recommendations of the University's Campus Safety and Security Advisory Committee (comprised of faculty, staff, and students), its Department of Public Safety, the administration of its hospitals and health centers, its executive vice president and chief financial officer, and its academic leadership—including the deans, the provost, and the chancellors of its Flint and Dearborn campuses.[11] Thus, the University leaders charged with principal responsibility over safety, security, health, academics, pedagogical environment, and University property (including dormitories, classrooms, hospitals, clinics, and other buildings) uniformly supported adoption of Article X.

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[11] *See* February 6, 2001 Memorandum to the Board of Regents from Vice President Lisa Tedesco and March 19, 2001 University Record announcement by Vice President Robert Kasdin, both attached as Exhibit B.

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The Regents adopted Article X for significant and understandable reasons. First, they did so following changes in Michigan law making it substantially easier to secure a license to carry a concealed weapon.[12] Second, their decision followed a number of tragic school shootings, including a 1998 incident in which a Wayne State University student shot and killed his advisor,[13] a 2000 incident in which a University of Arkansas student shot and killed the faculty director of the program from which the student had been dismissed,[14] the 1999 shootings at Columbine High School, which left twelve students and one teacher dead and twenty-one other people wounded,[15] and the June 25, 1992 shooting of Dr. John Kemink, a prominent otolaryngologist at the University who was shot dead by his patient in an examining room.[16] The Regents, based on the overwhelming recommendation of the University's academic and public safety leadership, concluded that the institution needed to respond to these developments. They did so by, among other things, adopting Article X.

On September 4, 2014, over thirteen years after the Regents adopted Article X, Plaintiff applied to the University's Director of Public Safety for a personal waiver of the ordinance's terms that prohibit him from carrying a firearm on University property. (Compl. ¶ 9). On September 5, 2014, Plaintiff sought the same waiver from the University's Chief of Police.

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[12] *See* Tedesco Memorandum, attached as Exhibit B.

[13] *See* Doctoral Student Arraigned in Advisor's Death, December 12, 1998, http://media.wayne.edu/1998/12/12/doctoral-student-arraigned-in-advisers-death

[14] *See* Grad Student, Professor Fatally Shot at University, August 28, 2000, http://abcnews.go.com/US/story?id=95994&page=1#.UM0LFXfzMpc

[15] Report of Sheriff of Jefferson County, Colorado, April 20, 1999, http://www.cnn.com/SPECIALS/2000/columbine.cd/Pages/FORWARD.htm

[16] *See* Prominent Doctor Slain and Patient Is Held, June 25, 1992, http://www.nytimes.com/1992/06/26/us/prominent-doctor-slain-and-patient-is-held.html

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(Compl. ¶ 11). On September 24, 2014, Plaintiff's request was denied. (Compl. ¶ 12). This lawsuit followed.

ARGUMENT

I. Article X Does Not Violate the Second Amendment.

The Second Amendment 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." US CONST, Am II. This provision protects an individual's right to possess a firearm for traditionally lawful purposes, including within the home. *District of Columbia v Heller*, 554 US 570, 608, 628-29, 635 (2008).[17] But the Supreme Court unambiguously declared in *Heller* that:

> 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.

Heller, 554 US 570, 626-27 (2008) (emphasis added). The *Heller* Court added in a footnote that it "identif[ied] these *presumptively lawful* regulatory measures only as examples; our list does not purport to be exhaustive." *Id.* at n. 26 (emphasis added). Two years later the Court took pains to reiterate this point—and to reiterate that *Heller* was unambiguous in this respect:

> 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.' ***We repeat those assurances here.***

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[17] It is also incorporated into the Fourteenth Amendment's Due Process Clause and therefore enforceable against the states. *McDonald v City of Chicago*, 561 US 742, 748 (2010).

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McDonald, 561 US at 786 (quoting *Heller*, 554 US at 626-27) (internal citations omitted) (emphasis added). *Heller* and *McDonald* thus plainly establish that "laws forbidding the carrying of firearms in sensitive places such as schools and government buildings," like Article X, are "presumptively lawful regulatory measures." *Heller*, 554 US at 626-27 and n. 26.

A. The Second Amendment Does Not Reach Sensitive Places Such as University Property.

Heller makes short work of Plaintiff's claim under the Second Amendment. Public educational institutions like the University are obviously "schools" within the meaning of *Heller*. *See DiGiacinto v Rector and Visitors of George Mason University*, 704 SE2d 365, 369-370 (Va 2011) (holding that university buildings are "sensitive places as contemplated by *Heller*").[18] In addition, the University's structures are "government buildings"—another of the "sensitive places" *Heller* recognized as traditionally and presumptively subject to firearms prohibitions. Because the University is "sensitive place" under *Heller*, the Second Amendment does not reach its property and Article X is therefore constitutional.

A number of lower court cases have applied this precise analysis. *See, e.g., US v Greeno*, 679 F3d 510, 518 (6th Cir 2012). In that case, the court held that the foundational question is "whether the challenged law burdens conduct that falls within the scope of the Second Amendment right, as historically understood." *Id.* The court went on: "as the Seventh Circuit recognized, '*Heller* suggests that some federal gun laws will survive Second Amendment challenge *because they regulate activity falling outside the terms of the right* as publicly understood when the Bill of Rights was ratified.'" *Id.* (citing *Ezell v Chicago*, 651 F3d 684, 702

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[18] *DiGiacinto* discussed a number of facts about the GMU campus that supported its decision in this respect. *Id.* at 368-69. The same facts—the large number of students and employees, of elementary and high school visitors, etc.—apply with respect to the University, as discussed in the Introduction, *supra.*

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(7th Cir 2011) (emphasis added).[19] In sum, if a court determines that the prohibition in question applies to one of the "sensitive places" identified in *Heller* then its analysis ends. Article X does so—and that puts a full stop to Plaintiff's Second Amendment claim.

B. Even if the Second Amendment Applies, Article X Is Constitutional.

Article X thus does not implicate Second Amendment rights. Where a firearms restriction *does* do so, courts review the law under the intermediate scrutiny standard. *See, e.g.*, *GeorgiaCarry.Org, Inc v US Army Corps of Engineers*, 38 F Supp 3d 1365, 1376 (N.D. Ga. 2014) *aff'd*, No. 14-13739, 2015 WL 3555822 (11th Cir June 9, 2015) ("the intermediate scrutiny standard applies" in the second prong of the Second Amendment analysis).[20] Intermediate scrutiny "requires a law to be substantially related to an important governmental interest," *GeorgiaCarry.Org, Inc.*, 38 F Supp 3d at 1376, or, in some formulations, to be "reasonably adapted to a substantial governmental interest." *United States v Masciandaro*, 638 F3d 458, 469-73 (4th Cir. 2011).

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[19] In *Ezell*, the Seventh Circuit drew an analogy to the First Amendment and concluded that "some categories of speech are ***unprotected*** as a matter of history and legal tradition. ***So too with the Second Amendment.*** *Heller* suggests that some federal gun laws will survive Second Amendment challenge because ***they regulate activity falling outside the terms of the right.***" *Id.* (emphasis added). Several other circuit courts agree. *See, e.g.*, *GeorgiaCarry.Org, Inc v US Army Corps of Engineers*, 38 F Supp 3d 1365, 1373 (ND Ga 2014) *aff'd*, No. 14-13739, 2015 WL 3555822 (11th Cir June 9, 2015) (the "restriction of firearm possession in certain [sensitive] locations did not burden any pre-existing rights."); *United States v Marzzarella*, 614 F3d 85, 91 (3d Cir 2010), cert. denied, 131 S Ct 958 (2011) ("these longstanding limitations are exceptions to the right to bear arms."), *United States v Bena*, 664 F3d 1180, 1183 (8th Cir 2011) ("It seems most likely that . . . the regulatory measures listed in *Heller* . . . do not infringe on the Second Amendment right."); *Nat'l Rifle Ass'n of Am, Inc v Bureau of Alcohol, Tobacco, Firearms, & Explosives*, 700 F3d 185, 196-97 (5th Cir 2012) (a "presumptively lawful regulatory measure" as set forth in *Heller* "would likely fall outside the ambit of the Second Amendment"), *Heller v District of Columbia*, 670 F3d 1244, 1253 (DC Cir 2011) (*Heller*'s exceptions "are presumed not to burden conduct within the scope of the Second Amendment.") (internal citations omitted).

[20] *See, e.g.*, *United States v Laurent*, 861 F Supp 2d 71, 103 (EDNY 2011) ("Courts of appeals have adopted intermediate scrutiny to evaluate restrictions on gun possession by particular people or in particular places") (collecting cases).

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Because the University is a special place within *Heller*, the court need not apply intermediate scrutiny to Article X. If the court were to do so, however, Article X would easily satisfy that standard.

Article X serves a number of University interests that are substantial—indeed, critical. It serves the University's interest in maintaining a safe environment for its students, faculty, staff, and visitors.[21] Unremarkably, numerous courts have recognized that a university has a substantial interest in doing so.[22] Further, article VIII, § 5 of the Michigan Constitution recognizes that the University has a vital interest in managing and controlling its property, which logically includes doing so in a manner that helps keep everyone on the property safe. As noted in the Introduction, the University is a vast and complex institution and it includes countless places where, in the University's judgment, the introduction of firearms would raise grave safety concerns.

Furthermore, the University has an important interest in fostering an environment in which the members of its community can freely and openly exchange ideas—even controversial, unsettling, and emotionally provocative ones. The Supreme Court has recognized a university's interest in cultivating such an open "marketplace of ideas" as one of constitutional magnitude under the First Amendment. *See*, *e.g.*, *Keyishian v Board of Regents,* 385 US 589, 603 (1967)

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[21] *See* 3/19/2001 University Record announcement by Vice President Robert Kasdin, attached as Exhibit B.

[22] *See*, *e.g.*, *Healy v James*, 408 US 169, 184 (1972) ("[A] college has a legitimate interest in preventing disruption on the campus."), *DiGiacinto*, 281 Va at 132, 704 S.E.2d at 368 (finding a "compelling State interest" in the "safety concerns on a public university campus."), *Bloedorn v Grube*, No. 609CV055, 2009 WL 4110204, at *7-8 (SD Ga Nov. 24, 2009) *aff'd*, 631 F3d 1218 (11th Cir 2011) ("Maintaining safety, efficiency, and order on campus are crucial to the furtherance of the University's mission of providing a proper educational environment . . . . the University has an interest in maintaining campus safety in order to support its educational mission."), *Rock for Life-UMBC v Hrabowski*, 643 F Supp 2d 729, 747 (D Md 2009) *aff'd*, 411 F App'x 541 (4th Cir 2010) ("Safety and security are legitimate interests of a university.").

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(noting that a university's "academic freedom" is a "special concern of the First Amendment" and that "[t]he classroom is peculiarly the 'marketplace of ideas'"). Article X reflects the University's judgment that the presence of firearms creates risks of fear, intimidation, and self-censorship that are wholly inconsistent with this important interest.[23]

A substantial and reasonable—indeed, obvious—relationship exists between these interests and Article X.[24] Certainly, the University acted reasonably in concluding that Article X would promote safety.[25] And, just as certainly, the University acted reasonably in concluding that Article X would help cultivate an educational environment that is welcoming, open, expressive, experimental, and free from intimidation. Plaintiff may disagree with those judgments, but they are the University's—not his—to make and courts traditionally defer to institutional views on matters of pedagogy, academic atmosphere, and educational environment.[26]

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[23] Indeed, guns are excluded from courtrooms for many of the same reasons. Controversial, unsettling, and emotionally provocative things are also said in court. And concerns that judges, lawyers, jurors, and witnesses would be intimidated—and their conduct affected—by the presence of firearms are inarguably legitimate.

[24] Article X is also substantially related to serve this important governmental interest because it only applies to University property. It does not impact any existing right to possess and carry firearms outside of the relatively small boundaries of the University's campus.

[25] A number of courts have acknowledged the connection between promoting public safety and regulating the possession of weapons. *See, e.g.*, *Kachalsky v Cnty of Westchester*, 701 F3d 81, 98 (2d Cir 2012) ("The connection between promoting public safety and regulating handgun possession in public is not just a conclusion reached by New York. It has served as the basis for other states' handgun regulations, as recognized by various lower courts.") (collecting cases), *Nat'l Rifle Ass'n of Am, Inc v McCraw*, 719 F3d 338, 348 (5th Cir 2013) *cert. denied*, 134 S Ct 1365, 188 L Ed 2d 297 (2014) ("Texas's handgun carriage scheme is substantially related to this important government interest in public safety through crime prevention.").

[26] *See, e.g.*, *Grutter v Bollinger*, 539 US 306, 328-29 (2003) ("The Law School's educational judgment that such diversity is essential to its educational mission is one to which we defer.") (collecting cases); *see also Smith v Tarrant Cnty Coll Dist*, 694 F Supp 2d 610, 627 (ND Tex 2010) ("the federal judiciary has never denied a university's authority to impose

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II. Article X Does Not Violate the Michigan Constitution.

Article I, § 6 of the 1963 Michigan Constitution ("Section 6") provides that "[e]very person has a right to keep and bear arms for the defense of himself and the state." The cases uniformly hold that this provision is subject to reasonable regulation by State government, such as reasonable exercises of the police power by the legislature.[27] Article X easily passes this reasonableness test.[28] As outlined above, Article X is a manifestly reasonable exercise of the University's authority under article VIII, § 5 of the Michigan Constitution to control its property, to maintain safety on that property, and to cultivate a learning environment free from intimidation.[29]

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reasonable regulations compatible with that mission upon the use of its campus and facilities.") (quoting *Widmar v Vincent*, 454 US 263, 268 n. 5 (1981)).

[27] *See, e.g.*, *People v Brown*, 253 Mich 537, 540; 235 NW 246 (1931) ("regardless of the basis of the right to bear arms, the state, nevertheless, has the police power to reasonably regulate it."), *Michigan Coal. For Responsible Gun Owners v City of Ferndale*, 256 Mich App 401, 405-06, 662 NW2d 864, 867 (2003) ("the constitutionally guaranteed right to bear arms, Const. 1963, art 1, § 6, is not absolute, but "may yield to a legislative enactment that represents a reasonable regulation by the state in the exercise of its police power to protect the health, safety, and welfare of Michigan citizens.") (citing *Kampf v Kampf*, 237 Mich App 377, 383, n. 3, 603 NW2d 295 (1999)); *see also* 2010 Mich Op Att'y Gen No 7254 (Oct. 26, 2010) ("Consistent with *McDonald*, the Michigan Supreme Court construed former Const 1908, art 2, § 5, which created a right to bear arms for specific purposes, as being subject to the reasonable exercise of the State's police power.") (citing *Brown*, 253 Mich at 539-541).

[28] One Michigan decision suggests an analytical framework for this inquiry that mirrors the two-prong analysis utilized for Second Amendment issues, as set forth in Section I, *supra*. *People v Swint*, 225 Mich App 353, 359, 572 NW2d 666, 669 (1997) ("we must determine whether the case at bar involves an infringement on a constitutionally protected interest . . . . Only if we were to conclude that the statute infringes on an interest in bearing arms that is protected by the state constitution would we have to decide what level of justification the state must proffer to support such an infringement and whether the state has satisfied that burden in this case."). The University therefore incorporates its analysis in Section I to support its assertion of Article X's constitutionality under the Michigan Constitution.

[29] Plaintiff's reliance on article I, section 6 also errs because it disregards the broader constitutional structure. There is no question that article 1, section 6 is subject to restrictions by the legislature under its constitutional authority. *Michigan Coal. For Responsible Gun Owners*, 256 Mich App at 405-06. Similarly, the provision is subject to restrictions by the judiciary under

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III. The University's Ordinance Is Not Preempted.

The second count of Plaintiff's complaint challenges Article X as inconsistent with a Michigan statute that prohibits local units of government from establishing their own limitations on the purchase, sale, or possession of firearms, citing MCL § 123.1101 *et seq*. Plaintiff's argument suffers from two fatal flaws. First, by its plain language the statute on which Plaintiff relies does not apply to the University of Michigan. Second, if the statute did apply to the University it would be invalid under article 8, § 5 of the 1963 Michigan Constitution.

A. The Statute Does Not Apply to the University.

MCL § 123.1102 provides that a "local unit of government" shall not "enact or enforce any ordinance or regulation pertaining to, or regulate in any other manner the … possession of pistols or other firearms, ammunition for pistols or other firearms, or components of pistols or other firearms, except as otherwise provided by federal law or a law of this state." MCL § 123.1101 specifically defines "local unit of government" to mean a "city, village, township, or county." The University is none of these things. To the contrary, the University is a constitutional corporation that derives its existence, autonomy, and authority from article VIII, § 5 of the 1963 Michigan Constitution.[30] As a result of this political structure, "the board of regents is made the highest form of juristic person known to the law, a constitutional corporation

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its constitutional authority. *See* Mich. Sup. Ct. Admin. Order 2001-1 ("The issue of courthouse safety is important not only to the judicial employees of this state, but also to all those who are summoned to Michigan Courtrooms or who visit for professional or personal reasons . . . It is ordered that weapons are not permitted in any courtroom, office or other space used for official court business . . ."). It is therefore also subject to restrictions by the University under its constitutional authority as "a constitutional corporation of independent authority, which, within the scope of its functions, is coordinate with and equal to that of the legislature." *See Board of Regents of the University of Michigan v Auditor General*, 167 Mich 444, 450 (1911); *see also* Section III(A), *infra*.

[30] The Michigan Constitutions of 1850 and 1908 contained similar provisions. *See Board of Regents of the University of Michigan v Auditor General*, 167 Mich 444, 450 (1911).

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of independent authority, which, within the scope of its functions, is coordinate with and equal to that of the legislature."[31] MCL § 123.1101 does not include the University or any other constitutional corporation within its terms. Accordingly, the statute simply does not apply to the University.[32]

In addition, MCL § 123.1102 expressly states that a local unit of government may adopt firearms restrictions to the extent "provided by federal law or a law of this state." Thus, even if the University were a local unit of government—which it is not—it would have the authority to enact such restrictions under another "law of this state": article VIII, § 5 of the Michigan Constitution, which confers upon the University the authority to control and manage its property.

B. If the Statute Did Apply to the University it Would Be Invalid.

As noted above, by its express terms MCL § 123.1101 does not apply to the University. But, if it did, it would run afoul of Article VIII, § 5 of the Michigan Constitution.

It has been settled, for more than 150 years, that as a matter of state constitutional law the University has the authority to manage and control its property. The Michigan Constitution of 1850 incorporated article XIII, § 8, which broadly provided that "[t]he board of regents shall have the general supervision of the university and control of all expenditures from the university interest fund." Cases decided under this constitutional provision recognized the expansive authority it vested in the Regents. *See, e.g., People v ex rel Drake v Regents of the University of Michigan*, 4 Mich 98, 104 (1856) ("To their judgment and discretion as a body is committed the

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[31] *Id.*

[32] Plaintiff's Complaint cites *Capital Area District Library v Michigan Open Carry Inc.*, 298 Mich App 220 (2012) in support of his allegation that MCL § 123.1101 "is a general prohibition against all levels of government in Michigan." Complaint at ¶ 21. That case is inapposite and the Complaint mischaracterizes it. That case held only that MCL § 123.1101 preempted a lower-level unit of government (a district library) that was created by an agreement between a county and a municipality (both of which *are* defined in the statute as local units of government) from adopting firearm regulations.

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supervision of the financial and all other interests of an institution in which all the people of this state have a very great interest") and *Sterling v Regents of the University of Michigan*, 110 Mich 369, 382 (1896) ("[u]nder the Constitution, the State cannot control the action of the regents").

The 1908 Constitution incorporated a very similar provision, except that it also included the Board of Trustees of Michigan State University. Mich Const 1908, art 11, §§ 7, 8. The Michigan Supreme Court interpreted this provision equally broadly. *See, e.g., Board of Regents of the University of Michigan v Auditor General*, *supra*, and *State Board of Agriculture v Auditor General*, 226 Mich 417, 423-24 (1924) (McDonald, J., concurring) ("[t]he framers of the Constitution of 1850 wisely [placed the University's] exclusive management in the hands of a constitutional board elected by the people").

This principle of expansive university autonomy and authority carried over into the Michigan Constitution of 1963, which states that "[t]he Regents of the University of Michigan . . . shall have general supervision of its institution and the control and direction of all expenditures from the institution's funds." Mich Const 1963 art 8, § 5. Numerous opinions from the Michigan Supreme Court and the Michigan Court of Appeals have interpreted this provision—like the virtually identical earlier versions—as giving the University expansive authority over its affairs and property. *See, e.g., Michigan United Conservation Clubs v Board of Trustees of Michigan State University*, 172 Mich App 189, 191 (1988) (holding that article VIII, § 5 of the Constitution "gives [MSU] the power to control and manage [MSU] property to the exclusion of all other state departments" and that the Board of Trustees of MSU "is an independent authority possessing power coordinate with and equivalent to the Legislature within the scope of its function."), *Sprik v Regents of the University of Michigan*, 43 Mich App 178, 186-87 (1972) (holding that "[i]t is well established that [the Constitution] gives the Regents the

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entire control and management of university affairs, including the management of property"), and *Federated Publications v Board of Trustees of Michigan State University*, 460 Mich 75, 87 (1999) (holding that "[t]he constitution grants the governing boards authority over the absolute management of the University, and the exclusive control of all funds received for its use.") (quotation marks and citations omitted).

If, as Plaintiff argues, MCL § 123.1101 did attempt to preempt the University from adopting Article X, which it does not, it would violate this longstanding body of case law and article VIII, § 5 of the Michigan Constitution. The issue of firearm possession on University property goes directly to the day-to-day operations of the institution (*see Federated*). It implicates the University's judgments regarding safety, housing, and how best to foster an open and welcoming educational environment—all matters central to the University's function. And, of course, it directly concerns the control and management of University property (*see Michigan United Conservation Clubs* and *Sprik*).[33]

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[33] Plaintiff's Complaint cites *Regents of the University of Michigan v Michigan Employment Relations Commission*, 389 Mich 96 (1973) ("the *MERC* case") to assert that Article VIII, § 5 may not "thwart the clearly established public policy of the people of Michigan." (Compl. ¶ 22). The *MERC* case is inapposite here. First, for the reasons discussed above there is no conflict between the articulated legislative policy of MCL § 123.1101 *et seq.*—that local units of government may not adopt their own restrictions on firearms possession unless the law provides otherwise—and Article X. As noted, the University is not a local unit of government and, if it were, then a provision of Michigan law (article VIII, § 5 of the Michigan Constitution) affords it the authority to adopt such restrictions. Thus, nothing in Article X "thwarts" public policy. Second, if there were some tension between MCL § 123.1101 *et seq.* and Article X, the *MERC* case does not stand for the proposition that Article X simply vaporizes. To the contrary, in the *MERC* case the court recognized that the legislature had the general constitutional authority to set policy about the resolution of labor disputes (so the University was subject to the Public Employees Relations Act) but *also* recognized that the University's unique constitutional status would affect the scope of bargaining. The court held that those conflicts would need to be addressed on a case-by-case basis. It did *not* hold that legislative action in a field disempowered the University from exercising its constitutionally conferred authority and, indeed, any such holding would be inconsistent with *Federated*.

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CONCLUSION

For the foregoing reasons, the University respectfully requests that this Court (a) uphold its effort to preserve the safety of its students, faculty, staff, and visitors and to foster a learning environment free from intimidation, (b) grant its Motion for Summary Disposition, (c) dismiss Plaintiff's Complaint, and (d) award such additional relief as it deems just.

Respectfully Submitted,

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Dated: July 23, 2015

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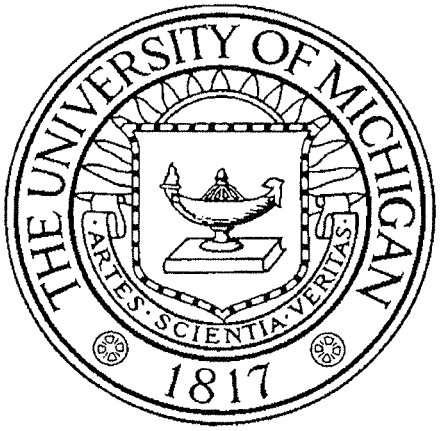
An Ordinance to Regulate Parking and Traffic and to Regulate the Use and Protection of the Buildings and Property of the Regents of the University of Michigan



Adopted January 1995
Revised April 2001
Maintained by the Office of the Vice President and Secretary of the University of Michigan

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An Ordinance to Regulate Parking and Traffic and to Regulate the Use and Protection of the Buidlings and Property of the Regents of the University of Michigan

WHEREAS, Article VIII, Section 5 of the Michigan Constitution of 1963 provides that The Regents of The University of Michigan and their successors in office shall constitute a body corporate and vests therein the general supervision of said University; and

WHEREAS, Section 5 of Public Act 151 of 1851, as amended (Michigan Compiled Laws Annotated, Section 390.5), provides that the said Regents shall have power to enact ordinances, by-laws, and regulations for the government of said University; and

WHEREAS, Section 3 of Public Act 151 of 1851, as amended (Michigan Compiled Laws Annotated, Section 390.3), provides that the government of the University is vested in said Regents; and

WHEREAS, Section 1 of Public Act 80 of 1905, as amended (Michigan Compiled Laws Annotated, Section 19.141), provides that the said Regents shall have authority to make and prescribe rules and regulations for the care, preservation, and protection of buildings and property dedicated and appropriated to the public use, over which the said Regents have jurisdiction or power of control and the conduct of those coming upon the property thereof, which may be necessary for the maintenance of good order and the protection of said state property, and further provides that the said Regents shall have authority to enforce such rules and regulations; and

WHEREAS, Section 1 of Public Act 291 of 1967 (Michigan Compiled Laws Annotated, Section 390.891), authorizes said Regents to enact parking, traffic, and pedestrian ordinances for the government and control
of its campuses, and to provide fines for violations of such ordinances; and Section 3 of that Act permits said Regents to establish a Parking Violations Bureau as an exclusive agency to accept admissions of responsibility in cases of civil infraction violations of any parking
ordinance and to collect and retain fines and costs as prescribed in the ordinance for such violations; and

WHEREAS, pursuant to the above-designated authority, and in
discharge of the responsibility imposed thereby, The Regents of The University of Michigan deem it necessary to adopt an ordinance and rules and regulations for the care, preservation, protection, and government of University property; for the conduct of persons coming upon said property; for the regulation of the driving and parking of motor vehicles, vehicles and bicycles upon said property; for the removal and impoundment of motor vehicles, vehicles and bicycles abandoned thereon; for the maintenance of good order; and for the promotion of public health, safety, and general welfare in and upon said property;

NOW, THEREFORE, THE REGENTS OF THE UNIVERSITY OF MICHIGAN HEREBY ORDAIN AS FOLLOWS:

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must be promptly exhibited to a requesting University representative. The appropriate Dean, Director, Department Head or Building Director may either uniformly prohibit such sales and solicitations or uniformly regulate the time, place and manner of such in order to provide for the maintenance of good order and the protection of University property.

Section 2. University Grounds

Except as otherwise provided in the Bylaws of the Board of Regents, sales and solicitations of sales of items and solicitations of contributions on University grounds may take place only with the prior written permission of the Executive Vice President and Chief Financial Officer or the Executive Vice President's written designee, which written permission must be promptly exhibited to a requesting University representative. The Executive Vice President and Chief Financial Officer or the Executive Vice President's written designee may either uniformly prohibit such sales and solicitations or uniformly regulate the time, place and manner of such in order to provide for the maintenance of good order and the protection of University property.

Section 3. Violation Penalty

A violation of this Article IX shall constitute a civil infraction and shall be punishable by a fine of not more than fifty dollars ($50.00).

Article X: Weapons

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 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.

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Section 4. Exceptions

(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 pursuant to Standard Practice Guide 201.94;

(b) to non-University law enforcement officers of legally established law enforcement agencies or to other non-University employees who, in either situation, are authorized by their employer to possess or use such a device during the time the employee is engaged In work requiring such a device;

(c) when someone possess or uses such a device as part of a military or similar uniform or costume In connection with a public ceremony or parade or theatrical performance;

(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 or uses such a device for recreational hunting on property which has been designated for such activity by the University provided such possession and use is in strict compliance with applicable law; 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.

Article XI: University of Michigan Identification Cards and Parking Permits

Section 1. Possession or Display

No person shall possess or display any University student, staff or faculty identification card or University parking permit that is altered, fraudulent or that has been issued to another person. University staff who handle University identification cards or parking permits as a requirement of their job are exempt from this section where they are handling such identification cards or parking permits in the performance of their official duties.

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MEMORANDUM
Office of the Vice President
and Secretary of the University
The University of Michigan
734/ 763-5553 (phone); 734/ 763-8011 (fax)

TO: Board of Regents

FROM: Lisa A. Tedesco

DATE: February 6, 2001

RE: **Concealed Weapons on Campus**

Colleagues,

Earlier this year a new concealed weapons bill was signed into State law, and will take effect on July 1st. The purpose of this memorandum is to provide you with information on University policies and expected changes regarding policies for concealed weapons on campus.

Description of Old and New Law. The old law required that applicants for permits to carry concealed weapons demonstrate need. The law gave county gun boards broad discretion to grant or deny application for concealed weapon permits.

The new law standardizes the requirements for acquiring a concealed weapon permit and county gun boards have far less discretion to deny application for these permits. If an applicant satisfies minimal criteria (viz., US citizen, no criminal convictions, no record of being institutionally committed for mental illness, completion of a gun safety course) county gun boards "shall issue" a concealed weapon permit. Applicants are no longer required to demonstrate need.

In states where concealed weapon laws have been relaxed the number of persons carrying concealed weapons has doubled. At the present time, there are 31,000 weapons permits in the State of Michigan, half of which are in Macomb County.

The new law does not allow permit holders from this state or any other state to carry weapons in the following places: dormitories or classrooms of colleges, day care centers, sports arenas and stadiums, bars, lounges or dining rooms holding Michigan Liquor Control Code licenses, entertainment facilities with 2500 or more person capacity, hospitals, K-12 educational sites.

The new law does allow employers to prohibit employees from carrying a concealed weapon in the course of their employment.

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Policy Review. With the new law about to take effect, we have been reviewing our policies and practices in relation to ensuring safety and security, broadly, on campus and on all properties owned, leased or otherwise controlled by the University.

At the present time, students are prohibited from carrying concealed weapons by the Student Code of Conduct, and this will not change. The Regents Ordinance (1995) Article X concerns weapons and states "no person while on University property, may possess firearms, except as permitted by State law." Attached is a copy of the full article from the Ordinance. And, at the present time, there is no Standard Practice Guide (SPG) Policy for employees.

The deans have endorsed establishing policy that ensures no weapons on campus and the Campus Safety and Security Advisory Committee (comprised of faculty, staff and students) provided the same recommendation, passed unanimously, to the Provost and CFO. In addition, Bill Bess, Director of DPS, has had experience with campus security departments where the university policy is one of no weapons on campus, while the state law allowed concealed weapons.

To that end, an SPG has been drafted and can be enacted administratively. A draft copy is attached for your information. Also attached is a comparison of other weapons policies for employees at other Michigan universities and Big Ten schools.

Once the SPG has been promulgated, the only policy remaining in need of revision will be the Regents Ordinance, Article X. A revision would ensure that visitors to campus and other University properties would not carry concealed weapons, along with all other members of the University community.

Please let me know if you have any concerns about moving forward with an Ordinance revision.

Thank you.

--Lisa

NB: Conversations on campus are ongoing. The Michigan Daily had some coverage today on the topic of concealed weapons and University policy, but much of their information was inaccurate. Coverage in the Ann Arbor News may follow.

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The University Record, March 19, 2001

Proposed Regents Ordinance Change

From Robert A. Kasdin, executive vice president and chief financial officer:

In January 2001, the Campus Safety and Security Advisory Committee (CSSAC) passed and forwarded to Provost Cantor and me a resolution recommending that the University be weapons-free except in special circumstances approved by the Department of Public Safety.

Based on this resolution, and on a desire to minimize violence on our campus to the greatest extent possible, I have reviewed our current policies on weapons. These policies include the *Code of Student Conduct* (applicable to students) and the *Standard Practice Guide* (applicable to employees), both of which prohibit weapons except in special circumstances. I am now recommending that *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* ("Regents Ordinance") be amended as to this issue.

With some limited exceptions, the revised Regents Ordinance would restrict weapons anywhere on University property regardless of who possesses them, ensuring a safe educational environment. The amended Regents Ordinance is similar to regulations already in effect at other state universities and has received the full support of the director of the Department of Public Safety, the administration of University Hospitals and Health Centers, and the chancellors of the Flint and Dearborn campuses.

As was the case the last time the Regents Ordinance was amended in December 1994, CSSAC is seeking input from members of the University community regarding the proposed ordinance amendments. Comments must be submitted in writing, either via e-mail to public.comments@umich.edu, fax to (734) 763-8011; or letter to CSSAC, 2014 Fleming Administration Building 1340.

Deadline for receipt of comments is March 30. If you have any questions, please call (734) 763-5553.

ARTICLE I: GEO~~R~~GRAPHIC SCOPE

Section 1. Geographic Scope of Ordinance. Except as otherwise provided below, t~~T~~his Ordinance shall apply solely to the Ann Arbor campus of the University of Michigan which, for the purposes of this Ordinance, is deemed to include all Ann Arbor campus property owned or leased by the Regents of The University of Michigan.

* * *

ARTICLE X: WEAPONS

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 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~~1~~. Possession of Firearms, Dangerous Weapons and Knives. Except as otherwise provided in Section 4, n~~N~~o 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) ~~University property, may possess firearms, except as permitted by~~

~~State law. No person, while on University property, shall~~ wear on his or her person or carry in his or her ~~person or carry in his~~ 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, ~~except as follows:~~

~~(1)During the time when the person is engaged in work requiring such a device.~~

~~(1)When the device is securely packaged for purposes of purchase or sale.~~

~~When the device is worn as part of a military or fraternal uniform in connection with a public ceremony, parade or theatrical performance.~~

Section ~~3~~2. Discharge or Use of Firearms, Dangerous Weapons and Knives~~of a Weapon~~. Except as otherwise provided in Section 4, n~~N~~o 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~~any weapon within the boundaries of University property, except in connection with a regularly schedule educational, recreational, or training program under adequate supervision, or in connection with the performance of lawful duties of law enforcement, or for the protection of a person or property when confronted with deadly force.~~

Section ~~4~~3 Exceptions.

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

(a) to employees who are authorized to possess and/or use such a device pursuant to Standard Practice Guide 201.94;

(b) to non-University law enforcement officers of legally established law enforcement agencies who are authorized by their employer to possess or use such a device during the time the employee is engaged in work requiring such a device;

(c) when someone possesses or uses such a device as part of a military or similar uniform or costume in connection with a public ceremony or parade or theatrical performance;

(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 possesses or uses such a device for recreational hunting on property which has been designated for such activity by the University provided such possession and use is in strict compliance with applicable law; 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 fine of not more than fifty dollars ($50) or both.

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Amended Ordinance

ARTICLE I: GEOGRAPHIC SCOPE

Section 1. Geographic Scope of Ordinance. Except as otherwise provided below, this Ordinance shall apply solely to the Ann Arbor campus of the University of Michigan which, for the purposes of this Ordinance, is deemed to include all Ann Arbor campus property owned or leased by the Regents of The University of Michigan.

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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. Exceptions.

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

(a) to employees who are authorized to possess and/or use such a device pursuant to Standard Practice Guide 201.94;

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(e) when someone possesses or uses such a device for recreational hunting on property which has been designated for such activity by the University provided such possession and use is in strict compliance with applicable law; 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.

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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 fine of not more than fifty dollars ($50) or both.

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STATE OF MICHIGAN
IN THE COURT OF CLAIMS

Joshua Wade, an individual,

Plaintiff

v.

University of Michigan, a Michigan Constitutional corporation,

Defendant.
_____/

Case No. 15-129-MZ

Hon. Cynthia D. Stephens

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_____/

CERTIFICATE OF SERVICE

Carolyn R. Lindeman, states that on the 23rd day of July, 2015, she caused the *Motion for Summary Disposition Pursuant to MCR 2.116(C)(8), Brief in Support of Motion for Summary Disposition*, and this *Certificate of Service*, to be served upon counsel for Plaintiff, namely Steven W. Dulan, at his law offices located at 1750 E. Grand River Ave., Suite 101, East Lansing, MI 48823, via first-class U.S. Mail, by placing said documents in a postage prepaid envelope and depositing same in a United States mail receptacle in Lansing, Michigan.

Carolyn R. Lindeman

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EXHIBIT 4

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STATE OF MICHIGAN
IN THE COURT OF CLAIMS

Joshua Wade,

Plaintiff,

v.

The Board of Regents of the University of Michigan,

Defendant.

Case No. 15-129-MZ

Hon. Cynthia Stephens

14/09/2015 PLAINTIFF'S RESPONSE TO THE DEFENDANT'S [sic] MOTION FOR SUMMARY DISPOSITION

/

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Introduction

On June 9, 2015, Plaintiff Joshua Wade filed the instant action alleging that the University of Michigan violated Mich Const 1963 Art I § 6 and the Second Amendment when it passed Article X, an ordinance which forbids any possession of firearms on any University property. Plaintiff additionally alleges that Article X is invalid as it conflicts with the field preemption over firearms embodied in MCL 123.1101, et seq, and following case law.

The University, represented by its Board of Regents, moved for summary disposition under MCR 2.116(c)(8), alleging that Plaintiff had failed to state a claim for which relief may be granted. In support of that motion, the University first claims that the University's Article X does not violate US Const Amd II because no such right exists under *Dist of Columbia v Heller*, 554 US 570 (2008). The University further argues that even if such right existed, Article X passes constitutional muster and is valid under Mich Const 1963 Art I § 6. The University then claims that the restrictions of MCL 123.1101, et seq, do not apply to the University by the express terms of the statute, and if they did, the statute would violate Mich Const 1963 Art VIII § 5.

The Regents' motion should be denied because Plaintiff has properly stated claims for which relief can be granted. Contrary to Defendant's claims, *Heller* did not hold that there is no Second Amendment right to possess a firearm in places such as schools. As such, Defendant's reliance on *Heller* in claiming that "a school prohibition on firearms possession cannot and does not violate [the

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Second Amendment]" is misplaced. Defendant's claim that Article X is a reasonable use of plenary powers is not supported, as Mich Const 1963 Art VIII § 5 is not a grant of the State's plenary powers to the University.

While Defendant's claim that the University is not expressly listed in the statute's "local units of government" is technically correct, the claim fails to consider subsequent case law which has found an intent by the legislature to fully occupy the field of firearms regulation. Such field preemption extends the effect of MCL 123.1101, et seq, beyond the expressly listed units of government.

Plaintiff respectfully requests that Defendant's motion for summary judgment be denied.

Argument

I. Grounds for Summary Disposition under MCR 2.116(c)(8)

A motion under MCR 2.116(c)(8) for summary disposition tests the legal sufficiency of the complaint. "All well-pleaded factual allegations are accepted as true and construed in a light most favorable to the nonmovant, a motion under MCR 2.116(C)(8) may be granted only where the claims alleged are 'so clearly unenforceable as a matter of law that no factual development could possibly justify recovery.'" *Maiden v Rozwood*, 461 Mich 109, 119-20; 597 NW2d 817 (1999) [internal citations omitted]. A court considers only the pleadings when deciding a motion under MCR 2.116(c)(8). MCR 2.116(g)(5).

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II. Article X violates the Second Amendment of the United States Constitution

A. The Second Amendment right to keep and bear arms for self-defense is an enumerated fundamental right.

The Second Amendment 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." US Const Amd II. In 2008, the US Supreme Court held that the Second Amendment guaranteed to individuals the right to keep and bear arms for self-defense. *Heller*, 554 US at 592, 599. The Supreme Court examined the historical background of the Second Amendment and concluded that it guarantees to an individual the "right to possess and carry weapons in case of confrontation." *Id.* at 592. As a result, the Supreme Court struck down the District of Columbia's ban on the possession of handguns in the home. *Id.* at 622, 635. Michigan's Constitution also protects the people's right to possess firearms for their own defense. Mich Const 1963 Art I § 6.

Two years after *Heller*, the Supreme Court held that the Due Process Clause of the Fourteenth Amendment incorporated the Second Amendment and the Second is thus enforceable against the States. *McDonald v City of Chicago*, 561 US 742, 748 (2010). Specifically, the Supreme Court held that "the Framers and ratifiers of the Fourteenth Amendment counted the right to keep and bear arms as among those fundamental rights necessary to our system of ordered liberty." *Id.* at 778. Like in *Heller*, the Supreme Court then struck down Chicago's handgun ban that was "similar to the District of Columbia's." *Id.* at 750.

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The *Heller* and *McDonald* decisions make it clear that an individual may use the Second Amendment to challenge federal, state, and local gun laws, including ordinances passed by universities like Article X. However, neither *Heller* nor *McDonald* specify the level of scrutiny that should be applied in Second Amendment challenges. *See generally McDonald*, 561 at 887 (Stevens, J., dissenting) (criticizing *Heller* for the lack of a "rule that is clearly and tightly bound in scope"). While the US Supreme Court has not outlined a clear test for reviewing Second Amendment claims, the applicable standard of review can be gleaned from the language in *Heller* and *McDonald*.

B. Traditional Standard of Review for Constitutional Rights Challenges

Generally, constitutional claims are reviewed using one of three levels of scrutiny. *Heller* explicitly rejects the most deferential, a rational basis review. *Heller*, 554 US at 628, n 27 (noting that rational basis "could not be used to evaluate the extent to which a legislature may regulate a specific enumerated right").

Certain important rights are judged under an intermediate level of scrutiny, which requires the government to show that regulations are "substantially related to an important governmental interest." *GeorgiaCarry.Org, Inc. v US Army Corps of Engineers*, 38 FSupp 3d 1365, 1376 (ND Ga, 2014) *aff'd*, No. 14-13739, 2015 WL 355822 (CA 11, 2015). Another statement of the intermediate scrutiny standard is that regulation must be "reasonably adapted to a substantial government interest." *United States v Masciandaro*, 638 F3d 458, 469-73 (CA 4, 2011).

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Strict scrutiny is applied in cases where a fundamental right is at issue. *See Jones v Helms*, 452 US 412, 415 (1981). Strict scrutiny requires that a governmental entity must show a compelling governmental interest in legislation and must also show that the legislation is the least restrictive means to reach that interest. *See Johnson v California*, 543 US 499, 505 (2005).

C. *Heller* Dicta Have Led to a Two-Prong Test For Determining the Constitutionality of Firearms Regulations.

Since the Supreme Court ruled in *Heller*, lower courts have struggled to determine how to review Second Amendment claims. This is because the Supreme Court only disposed of one standard—rational basis review—when ruling in *Heller*. The lower courts have attempted to glean the appropriate standard from the dicta in *Heller*.

In *Heller*, the Supreme Court stated that the "right to possess and carry weapons in case of confrontation" is the "*central component*" of the Second Amendment. *Heller*, 554 US at 592, 599 (emphasis in original). The Court further explained that a ban on the most common firearm used for self-defense would fail under any applied standard. *Id.* at 628-29.

The Second Amendment is not without its exceptions. The Court explained that restrictions against felons or the mentally ill would be presumed lawful. *Id.* at 626-27. The Court also stated that carrying in "sensitive places such as schools and government buildings" would be presumptively lawful. *Id.*

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Relying upon the dicta regarding "sensitive places" and "presumptively lawful", several circuits have established a two-pronged test for evaluating Second Amendment claims; Defendant also relies upon this test. First, the government must establish that its challenged firearms law does not burden conduct historically understood to be protected by the Second Amendment; if the government cannot do so, the law must be evaluated under the intermediate scrutiny standard. *See Ezell v Chicago*, 651 F3d 684, 702-03 (CA 7, 2011); *United States v Marzzarella*, 614 F3d 85, 89 (CA 3, 2010); *United States v Chester*, 628 F3d 673, 680 (CA 4, 2010); *United States v Reese*, 627 F3d 792, 800-01 (CA 10, 2010); *United States v Greeno*, 679 F3d 510, 518 (CA 6, 2012).

Some circuits have ruled that the level of scrutiny applied depends on the burden the law imposes upon the right to possess a firearm for self-defense. *See Chester*, 628 F3d at 682-83; *United States v Skoien*, 614 F3d 638, 641-42 (CA 7, 2010); *United States v Decastro*, 682 F3d 160, 166 (CA 2, 2012); *Kachalsky v County of Westchester*, 701 F3d 81, 90 (CA 2, 2012).

D. This Court Should Reject Defendant's Interpretation of the Two-Pronged Second Amendment Test Because It Undermines the Central Component of the Second Amendment

Relying on the two-pronged test, Defendant cites a single Virginia state court case and concludes that it is "obviously" a sensitive place under *Heller*. In doing so, Defendant attempts to shoehorn into *Heller* a premise for which that case does not stand. Article X is a blanket restriction on firearm protection for all citizens in

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all areas owned by the University. Under Defendant's interpretation, education in some areas of the University renders the conversation complete and Article X valid. If we accept this version of the two-pronged test, anything looking remotely like one of *Heller*'s presumptively valid laws would be entirely shielded from judicial review, without any chance to rebut the presumption.

Such a reading of *Heller* undermines the holding that possession of a firearm in case of confrontation is a central element of the right to keep and bear arms. Such a reading leads to absurd results. Even accepting, arguendo, that dicta in Heller carves out some special exception for schools. The University of Michigan is not a school as that word is commonly understood. It is a community where people live and work, just as in any community.

II. Even if Article X Does Not Violate the Constitution in Isolation, the State Legislature Has Preempted Its Promulgation

Defendant correctly states that case law bears out the fact that Second Amendment rights are not unlimited. Second Amendment rights may be subject to some reasonable regulation. On that basis, Article X may, or may not, be an allowable exercise of regulatory authority. However, the constitutionality of Article X is not determinative in this case. Even assuming arguendo that Article X is not unconstitutional on its face, the Michigan legislature has closed off the field of firearms to regulation by any other governmental actor. *See Capital Area Dist Library v Michigan Open Carry, Inc.*, 298 Mich App 220; 826 NW2d 736 (2013).

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Therefore, Article X's constitutionality independent of a preemption framework is not controlling in this case.

A. The Regents' Ordinance is Preempted Despite the Narrow Definition of "Local Unit of Government" in MCL 123.1101

Defendant's claim that preemption under MCL 123.1101, et seq, does not apply to Defendant is an overly narrow reading of the state's statutory scheme. *See* MCL 123.1101, et seq. The Michigan legislature made clear its intent to be the sole government actor regulating firearms. *Capital Area Dist Library*, 298 Mich App at 239. The legislature's word choice in MCL 123.1101 is of little import when the effect of the statute is to vest exclusive regulatory authority for the field of firearms possession with the state legislature. *Id.* Though the Michigan Constitution of 1963 grants broad powers to the regents over the supervision and expenditure of University funds, it would be an absurd result for the state constitution to tolerate the Regents exercising plenary powers in contradiction with the legislature's clearly-established and duly-enacted policy of preemption. *Regents of the University of Michigan v Michigan Employment Relations Commission*, 389 Mich 96, 108; 204 NW2d 218 (1973).

Defendant makes much of the specific language of MCL 123.1101, which defines "local units of government." Though MCL 123.1101, et seq, are bound to the definition of "local units of government," i.e. cities, villages, townships, or counties, the Court of Appeals has expanded the prohibition on local gun

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regulation to other "quasi-municipal" entities not specifically named in the statute. MCL 123.1101; *Capital Area Dist Library*, 298 Mich App at 240-41.

Given the nature of the University of Michigan, integrated as it is with the City of Ann Arbor, and given the *Capital Area District Library* court's recognition that §§ 123.1101, et seq, combined with the state's regulation on virtually every aspect of firearms ownership and use, have entirely occupied the field of firearms regulation in Michigan, it is logical to apply the same principles of preemption to the University as § 1102 would have us apply to a municipality. *See Capital Area Dist Library*, 298 Mich App at 239. Michigan courts have recognized that quasi-municipal corporations "are constitutionally or statutorily authorized to operate 'for and about the business of the State.'" *Jackson Dist Library v Jackson County No. 1*, 146 Mich App 392, 396; 380 NW2d 112 (1985) [citing *Attorney General ex rel Kies v Lowrey*, 131 Mich 639, 643 (1902)]. Like a quasi-municipal corporation, the University is bound by the exercise of the police power of the legislature. *See Michigan Employment Relations Commission*, 389 Mich at 108. These cases establish that powers granted under the Michigan Constitution may be reasonably limited by the legislature's exercises of its police powers for the welfare of the state.

The principles of field preemption, both generally and with specific regard to firearms regulation, are well established in Michigan. S*ee generally, Capital Area Dist Library*, 298 Mich App 220; *People v Llewellyn*, 401 Mich 314; 257 NW2d 902 (1977). The Michigan Supreme Court has established that

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> [a] state statutory scheme preempts regulation by a lower-level [non-federal] governmental entity when either of two conditions exist: (1) the local regulation directly conflicts with the state statutory scheme or (2) the state statutory scheme occupies the field of regulation that the lower-level government entity seeks to enter, 'even where there is no direct conflict between the two schemes of regulation.' *Capital Area Dist. Library*, at 233, citing *Llewellyn* at 322.

The University of Michigan, despite its constitutional origins, should legally be considered a "lower-level government entity" than the state legislature when it comes to legislative matters. The Michigan Constitution vests the power to legislate with the state legislature, not with the state universities: "The legislative power of the State of Michigan is vested in a senate and a house of representatives," and nowhere else. Mich Const 1963 art 4 § 1. Furthermore, "the Supreme Court has recognized that the University *is a state agency within the executive branch* of the State government and that the regents thereof are state officers" (emphasis added). *Michigan Employment Relations Commission*, 389 Mich at 104-05. Like the district library in *Capital Area Dist. Library*, the University is also a state agency charged with executing the laws passed by the legislature. "[T]he legislature can validly exercise its police power for the welfare of the people of this State, and a constitutional corporation such as the Board of Regents. . . can lawfully be affected thereby. The University of Michigan is an independent branch of the government of the State of Michigan, but it is not an island." *Federated Publications, Inc v Board of Trustees of Michigan State University*, 460 Mich 75, 83; 594 NW2d 491 (1999). The legislature draws legitimacy from its custody of plenary police powers, which are *not* granted to the University under the Michigan constitution. It is clear that the Board of Regents

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is powerful within the governance of the University itself, but it has no authority to attempt to usurp the legislature's constitutionally-delegated role in the state government.

Llewellyn's tests for preemption are satisfied here. No party contends that the Board of Regents is not a "lower-level government entity" than the state legislature when it comes to conflicts of legislative authority. Regulation by lower-level government entities is preempted because the state statutory scheme occupies the field of firearms regulation in Michigan. *Capital Area Dist. Library*, at 239. Therefore a "lower-level government entity" must not regulate the field of firearms possession.

Since the Board of Regents is a lower-level government entity than the state legislature with regard to legislative matters, it is an ideal target for the *Llewellyn* field preemption analysis.

The *Llewellyn* Court laid out a four-pronged test for determining whether the state legislature has completely occupied a field of regulation:

1. Whether state law expressly provides that the state's authority to regulate in a specified area of the law is to be exclusive
2. Whether preemption of a field is implied in the legislative history of the statutory basis for preemption
3. Whether the state has pervasively regulated the field in question
4. Whether the nature of the regulated subject matter demands exclusive state regulation to achieve uniformity necessary to serve the state's purpose or interest. *Llewellyn*, 401 Mich at 323. The *Capital Area Dist. Library* court found that all four prongs of the *Llewellyn*

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> test were satisfied, and there is no reason to find differently here. *Capital Area Dist Library*, 298 Mich App at 234-40.

First, the Michigan legislature has established exclusive authority for itself to regulate the field of firearms possession. The Michigan Court of Appeals decided this issue in *Michigan Coalition for Responsible Gun Owners v Ferndale*, and emphasized that the city's autonomy to control its own property was not dispositive of the issue:

> Section 1102 provides that a local unit of government shall not enact an ordinance pertaining to the transportation or possession of firearms, but the city of Ferndale does just that. Despite the clear language of the Legislature, *amicus curiae* contends in a conclusory fashion that § 1102 should not preempt ordinances like the Ferndale ordinance because the statute "is not clearly aimed at municipal control of activities within the confines of its own public buildings." *However, the language of § 1102 is broad and all-encompassing*. A state statute that prohibits a local unit of government from enacting "any ordinance or regulation" or regulating "in any other manner" the transportation or possession of firearms cannot reasonably be interpreted to exclude local ordinances that address the carrying of firearms in municipal buildings.

(Emphasis added). *Mich Coalition for Responsible Gun Owners v Ferndale*, 256 Mich App 401, 414-15; 662 NW2d 864 (2003).

Second, the legislative history of Michigan's firearms preemption statutes states unequivocally that the legislature wanted to avoid inconsistent regulations on firearms possession which would cause undue confusion for firearm owners. The history of § 123.1101 *et seq*. indicates that the bill was designed to address "concern that continued local authority to enact and enforce gun control ordinances may result in the establishment of a patchwork of ordinances." House

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Legislative Analysis, HB 5436, January 30, 1991, p. 1. Such a "patchwork of ordinances" is precisely the reason that the parties have come to court in this case. The *Capital Area Dist. Library* court had no difficulty in finding the clear intent of the legislature should overrule the narrow wording of the statute: "Although not included in the definition of 'local unit of government' set forth in MCL 123.1101(a), a district library is nevertheless a local unit of government. *Excluding a district library from the field of regulation . . . defies the purpose of the statute and would undoubtedly lead to patchwork regulation*" (emphasis added). *Capital Area Dist. Library*, 298 Mich App at 236-37. In other words, it is consistent with the purpose of Michigan's firearms regulatory scheme to apply the field preemption statutes broadly to any state governmental agency, including the University. The instant case concerns precisely the same issue as *Capital Area Dist. Library* and should be resolved in the same way.

Third, the Michigan legislature has already established a comprehensive scheme of statutes to control gun possession. It is duplicative and needlessly burdensome on the people of Michigan to allow multiple legislative authorities to tinker in the people's constitutional rights when the existing state statutory scheme already embodies a far-reaching and meticulously-detailed set of restrictions on that right. *see, e.g.*, MCL 750.234d(1) (prohibiting possession of firearms in "sensitive areas" like schools and sports arenas), MCL 28.425o(1) (prohibiting possession of concealed pistols in certain areas even for those licensed to do so), MCL 750.224 (prohibiting possession of firearms designed to shoot multiple shots automatically with a single trigger press), MCL 750.224(b) (prohibiting

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possession of short-barreled shotguns and rifles), MCL 750.224(f) (prohibiting possession of firearms by felons), MCL 750.226 (prohibiting possession of a firearm with the intent to use it illegally against another person), MCL 750.227 (prohibiting the carrying of a concealed firearm without a license to do so), MCL 750.227(b) (prohibiting possession of a firearm during the commission of a felony), MCL 750.227(c) (prohibiting possession of a firearm other than a pistol in or upon a sailboat or a motor vehicle, aircraft, motorboat, or any other vehicle propelled by mechanical means), MCL 750.227(d) (prohibiting possession of a firearm other than a pistol in or upon a motor vehicle or other self-propelled vehicle designed for land travel if the firearm is not inaccessible from the interior of the vehicle), MCL 750.233 (prohibiting intentionally aiming or pointing a firearm at another person), MCL 750.234(e) (prohibiting brandishing a firearm in public), MCL 750.234(f) (prohibiting possession of firearms in public by minors), MCL 750.237(1) (prohibiting the possession of a firearm while under the influence of alcohol and controlled substances), MCL 28.421(a) *et seq.* (establishing a standardized system to apply for and qualify to possess a concealed pistol license).

The *Capital Area Dist. Library* court recognized the legislature's pervasive regulation: "As can be gleaned from these numerous statutes included in the Legislature's statutory scheme regulating firearms, the statutory scheme includes 'a broad, detailed, and multifaceted attack' on the possession of firearms." *Capital Area Dist. Library*, 298 Mich App at 239, citing *Llewellyn*, 401 Mich at 326. The Michigan legislature has already made many modifications to the right

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to keep and bear arms. It defies the purpose stated in the legislative history to allow other units of state government to regulate the field against the legislature; doing so will result in just the inconvenient and inconsistent "patchwork of regulations" that the legislature was trying to avoid. House Legislative Analysis, HB 5436, *supra*.

Fourth, and consistently with the results of the first three prongs, the regulated subject matter (firearms possession) does indeed "demand exclusive state regulation to achieve the uniformity necessary to serve the state's purpose or interest." *Llewellyn*, 401 Mich at 324. The *Capital Area Dist. Library* court answers the question with a confident yes: "[t]he regulation of firearm possession undoubtedly calls for such exclusive state regulation." *Capital Area Dist. Library*, 298 Mich App at 239. It was the legislature's hope that situations such as the one underlying Mr. Wade's complaint could be avoided by having a uniform and consistent system of firearms regulation. Instead, his rights were needlessly abridged by a "Balkanized patchwork of inconsistent local regulations." *City of Brighton v Hamburg Twp*, 260 Mich App 345, 355; 677 NW2d 349 (2004).

Thus, as measured by each metric the *Llewellyn* Court established, the legislature has occupied the field of regulation for firearms possession, within the State of Michigan. There is no reason to allow another part of the state government, especially one with as minor a role in governance as a state university, to challenge the legislature's constitutional authority.

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Request for Relief

Plaintiff respectfully requests that this Court deny Defendant's Motion for Summary Judgment.

Respectfully Submitted,

The Law Offices of Steven W. Dulan, PLC

By: S W D
Steven W. Dulan (P54914)
Attorney for Plaintiff

Date: 9/14/15

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STATE OF MICHIGAN
IN THE COURT OF CLAIMS

Joshua Wade,

Plaintiff,

v.

The Board of Regents of the University of Michigan,

Defendant.

Case No. 15-129-MZ

Hon. Cynthia Stephens

Proof of Service

/

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Attorneys for Defendant

/

PROOF OF SERVICE

I, Laurette C. LeBlanc, do certify that on September 14, 2015, I served a copy of **Plaintiff's Response to Defendant's Motion for Summary Disposition,**

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Motion For Consideration of Late-Filed Brief, and Proof of Service to the following attorneys on record for the Defendant, by placing the aforementioned documents in an envelope, postage affixed, and by placing said envelope in a United States postal box located in East Lansing, Michigan:

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I declare that the statements above are true to the best of my information, knowledge and belief.

Date: September 14, 2015

Laurette C. LeBlanc

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EXHIBIT 5

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STATE OF MICHIGAN

COURT OF CLAIMS

JOSHUA WADE,

Plaintiff,

v

UNIVERSITY OF MICHIGAN,

Defendant.

OPINION AND ORDER

Case No. 15-000129-MZ

Hon. Cynthia Diane Stephens

This mater is before the Court on defendant, University of Michigan's, motion for summary disposition. At issue in this case is whether the University is permitted to enact and enforce ordinances related to the possession of firearms on the University's campus. Because this Court concludes that defendant's ordinance prohibiting the possession of firearms on University property is valid, defendant's motion for summary disposition is GRANTED.

In 2001, the Regents of the University of Michigan adopted Article X, a weapons ordinance that prohibits firearm possession on University property. The ordinance provides:

> 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 . . . [Article X, Sec. 2.]

The prohibition set forth in Article X, Section 2 applies regardless of whether the individual has a concealed weapons permit or is otherwise authorized by law to possess, discharge or use any of the enumerated weapons. The ordinance does not apply to weapons carried by law enforcement,

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the military or for educational purposes. Further, the ordinance permits the director of public safety to waive the prohibition "based on extraordinary circumstances." (Article X, Section 4.)

In September 2014, plaintiff, Joshua Wade, applied for and was denied a waiver. On June 9, 2015, plaintiff filed a two-count complaint in the Court of Claims seeking injunctive and declaratory relief. Plaintiff alleges that defendant's ordinance unconstitutionally abridges the right of citizens to keep and bear arms. Plaintiff also alleges that the ordinance is preempted by state statutory law, specifically, MCL 123.1102.

In lieu of an answer, defendant has filed a motion for summary disposition pursuant to MCR 2.116(C)(8). A motion under this court rule tests the legal sufficiency of the plaintiff's claims on the pleadings alone to determine whether the plaintiff has stated a claim on which relief may be granted. *Bailey v Schaaf,* 494 Mich 595, 603; 835 NW2d 413 (2013). Defendant maintains that plaintiff is not entitled to injunctive or declaratory relief because the University's ordinance does not violate the state or federal constitutions, is not preempted by state law, and it was enacted as a valid exercise of the powers granted to the University pursuant to Const 1963, art 8, § 5.

In Count I of his complaint, plaintiff alleges that the University's ordinance violates Const 1963, art 1, § 6 of the Michigan Constitution and the Second Amendment of the United States Constitution.[1] Plaintiff argues that the ordinance unreasonably infringes on the

[1] The Second Amendment of the United States Constitution 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." The Michigan counterpart provides: "Every person has a right to keep and bear arms for the defense of himself and the state." The Second Amendment is applicable to

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constitutional right to bear arms. Upon a review of both state and federal precedent, this Court finds plaintiff's arguments unpersuasive.

In 2008, the United States Supreme Court engaged in its "first in-depth examination of the Second Amendment" when it considered the case of the *District of Columbia v Heller,* 554 US 570, 635; 128 S Ct 2783; 171 L Ed 2d 637 (2008). In *Heller,* the Court held that the Second Amendment protects an individual's right to carry and possess a hand gun in the home for self-defense.[2] *Id.* at 635. The Court cautioned that the right secured by the Second Amendment is not unlimited, that is, it should not be read to confer a right "to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose." *Id.* at 626. Indeed, the Court specifically recognized a non-exhaustive list of "presumptively lawful regulatory measures":

> [N]othing 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 governmental buildings, or laws imposing conditions and qualifications on the commercial sale of arms. [*Id.*at 626-627 (emphasis added).]

Further supporting its conclusion that the Second Amendment is limited and does not confer an unfettered right to carry a firearm anytime or anywhere, the *Heller* Court noted that the laws banning "dangerous and unusual weapons" or regulating the storage of firearms to prevent accidents" do not run afoul of the Second Amendment. *Id.* at 627, 632.

It is interesting to note that the *Heller* Court was cognizant of the rising problem of handgun violence in this Country. In response to this concern, the Court specifically acknowledged that governmental entities have "a variety of tools for combating that problem,"

---

the states by virtue of the Fourteenth Amendment. *McDonald v City of Chicago,* 561 US 742, 750; 130 S Ct 3020; 177 L Ed 2d 894 (2010)

[2] Notably, the Court did not decide whether the Second Amendment extends outside the home.

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including "forbidding the carrying of firearms in sensitive places such as schools and government buildings." *Heller,* 444 US at 626-627 and n 27, 636. Two years after its opinion in *Heller,* the Supreme Court, in *McDonald v City of Chicago,* 561 US 742, 785-786; 130 S Ct 3020; 177 L Ed 2d 894 (2010), reiterated that the right to carry a firearm is not unlimited, and that "presumptively lawful regulatory measurers" include laws forbidding the carrying of firearms in schools. *Id.* at 786.

Citing to the opinion in *Heller*, the courts in this State have similarly recognized that "there are constitutionally acceptable categorical regulations of gun possession" and that "some limits can be placed on the right to keep and bear arms." *People v Wilder,* 307 Mich App 546, 555; 861 NW2d 645 (2014); see also, *People v Deroche,* 299 Mich App 301, 307-308; 829 NW2d 891 (2013). In *Michigan Coalition for Responsible Gun Owners v City of Ferndale,* 256 Mich App 401, 405-406; 662 NW2d 864 (2003), the Court of Appeals reaffirmed that the constitutional right to bear arms as conferred by Const 1963, art 1, § 6 "is not absolute, but 'may yield to a legislative enactment that represents a reasonable regulation by the state in the exercise of its police power to protect the health, safety, and welfare of Michigan Citizens.'"

Thus, based upon the most recent and relevant pronouncements from the United States Supreme Court and this state's appellate courts, regulations restricting the carrying of firearms in sensitive places, specifically schools and government buildings, are presumptively legal. That is, the scope of the right conferred by the Second Amendment does not extend to theses places. It cannot legitimately be disputed that the University of Michigan, a public educational institution, is a school with unique characteristics inherent in such a designation. Defendant represents that as of the fall of 2014, enrollment reached over 43,000 students. The University provides high-density housing for nearly 10,000 undergraduate students. Many of these undergraduates are

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minors. With this demographic comes, all too frequently, alcohol consumption, impaired judgment and conduct. The University employs over 21,000 faculty and staff members. Defendant also notes that numerous children visit the campus to attend 25 youth sport camps each year. Defendant also operates the University Health System. Clearly, the University of Michigan is a "sensitive place" as contemplated by the Supreme Court in *Heller* and *McDonald.* As such, the University's prohibition on the possession of firearms is "presumptively lawful." Consequently, the University's ordinance does not fall within the scope of the right conferred by the Second Amendment or Const 1963, Art 1, § 6. Therefore, plaintiff has failed to state a claim upon which relief can be granted in Count I of his complaint.

In Count II of the complaint, it is alleged that the University's ordinance has been preempted by state law. In general, preemption is found in two situations: (1) where the ordinance directly conflicts with a state statutory scheme; or (2) where the statutory scheme completely occupies the field that the ordinance attempts to regulate. *People v Llewellyn,* 401 Mich 314, 322; 257 NW2d 902 (1977). Relying on the doctrine of field preemption, plaintiff argues that MCL 123.1102 precludes the University from adopting an ordinance creating gun-free zones. This Court disagrees. The plain language of MCL 123.1102 unequivocally defines the scope of its reach and it does not evidence intent by the Legislature to completely occupy the field of firearm regulation.

MCL 123.1102 provides:

> *A local unit of government* shall not impose special taxation on, enact or enforce any ordinance or regulation pertaining to, or regulate in any other manner the ownership, registration, purchase, sale, transfer, transportation, or possession of pistols, other firearms, or pneumatic guns, ammunition for pistols or other firearms, or components of pistols or other firearms, except as otherwise provided by federal law or a law of this state. [Emphasis added.]

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MCL 123.1101(b) defines "local unit of government" as: "a city, village, township or country." Because the University of Michigan does not constitute "a city, village, township or country," it is axiomatic that the prohibitions set forth in MCL 123.1102 do not apply to the University. Clearly, the Legislature limited the preemptive effective of MCL 123.1101 *et seq.* to firearm ordinances adopted by cities, villages, townships and counties.

Plaintiff argues that the forgoing analysis is an overly narrow reading of MCL 123.1102. He contends that "the legislature's word choice in MCL 123.1101 is of little import when the effect of the statute is to vest exclusive regulatory authority for the field of firearms possession with the state legislature." Plaintiff reasons that the definition of "local unit of government" necessarily includes "quasi-municipal" entities. However, plaintiff's analysis violates nearly every rule governing statutory construction. It is axiomatic that the primary goal of statutory interpretation is to give effect to the intent of the legislature. *Mich Ed Ass'n v Secretary of State (On Reh),* 489 Mich 194, 217; 801 NW2d 35 (2011). This determination always begins with examining the plain language of the statute itself. *Ter Beek v City of Wyoming,* 495 Mich 1, 8; 846 NW2d 531 (2014). If the statutory language is unambiguous, it is to be presumed that the Legislature intended the meaning plainly expressed, and further judicial construction is not permitted or required. *Id.* In this case, the statute could not be more clear. The Legislature specifically defined "local unit of government" as a "city, village, township, or county." It limited the scope of preemption to firearm regulations adopted by these entities. The Legislature did not leave any room for interpretation. It did not include "quasi-municipal" entities in its definition of "local unit of government." A court interpreting a statute is not free to add words to an unambiguous statute. *Rowland v Washtenaw County Road Com'n,* 477 Mich 197, 213 n 10; 731 NW2d 41 (2007). Based on a reading of the plain language of the statute, the Legislature

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did not intend to limit the ability of public universities to regulate firearms possession on their campuses.

This Court further finds that plaintiff's reliance upon the opinions in *Michigan Coalition for Responsible Gun Owners v City of Ferndale,* 256 Mich App 401; 662 NW2d 864 (2003) and *Capital Area District Library v Michigan Open Carry, Inc,* 298 Mich App 220; 826 NW2d 736 (2012) is misplaced. In *Michigan Coalition,* the Court found that MCL 123.1102 preempted a City of Ferndale regulation prohibiting the possession of weapons in all building owned or controlled by the city. *Michigan Coalition,* 256 Mich App at 402-403. In doing so, the Court stated:

> With the pronouncement in § 1102, the Legislature *stripped local units of government of all authority to regulate* firearms by ordinance or otherwise with respect to the areas enumerated in the statute, [footnote omitted] except as particularly provided in other provisions of the act and unless federal or state law provided otherwise. Unlike some other statutes, § 1102 does not use language to the effect that the act "occupies the whole field of regulation," [footnote omitted] but rather expressly r*emoves the power of local units of government* to regulate in the field. *The effect is to occupy the field to the exclusion of local units of government.* In other words, although stated in the negative, rather than the affirmative, the statutory language of § 1102 demonstrates that, in effect, state law completely occupies the field of regulation that the Ferndale ordinance seeks to enter, to the exclusion of the ordinance, although subject to limited exceptions. [Citation and footnote omitted.] *With the enactment of § 1102, the Legislature made a clear policy choice to remove from local units of government the authority to dictate where firearms may be taken.* [*Michigan Coalition,* 256 Mich App at 413-414 (emphasis added).]

The *Michigan Coalition* Court simply applied the plain language of the statute and emphasized that the preemptive effect of MCL 123.1102, was limited to "local units of government."

The opinion in *Capital Area District Library* (hereinafter "*CADL")* is similarly inapposite. In *CADL*, the Court considered "whether district libraries established under the District Library Establishment Act (DLEA), MCL 397.171 *et seq.*, are subject to the same

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restrictions regarding firearm regulation that apply to public libraries established by local units of government." *CADL,* 298 Mich App 223. Of particular note is the nature of such a library; Under the DLEA, two or more *municipalities* may enter into an agreement to create a district library. The CADL was a collaboration between the City of Lansing and Ingham County. *Id.* at 224, 228. As to the scope of the preemption, the Court first reiterated the holding in *Michigan Coalition,* that "state law *completely occupies*[3] the field of firearm regulation to the *exclusion of local units of government.*" *Id.* at 224 (emphasis added). The Court also noted that district libraries are not expressly included within the definition of a local unit of government by MCL 123.1102. However, it deemed the CADL a quasi-municipality. The Court ultimately concluded that MCL 123.1102 preempted the CADL's attempt to ban firearm possession in the libraries because the district library constituted a "local unit of government." The Court held that "[e]xcluding a district library from the field of regulation –simply because it is established by *two* local units of government instead of one—defies the purpose of the statute and would undoubtedly lead to patchwork regulation." *Id.* at 237. Contrary to plaintiff's assertion, the Court did actually expand the definition of "local government unit." Indeed, the Court's reasoning recognizes that the regulation at issue was actually promulgated by two local units of government *as defined by* MCL 123.1101(b), i.e. a city and a county.

Even if the University were deemed to be a local unit of government, MCL 123.1102 still would not prohibit the University from promulgating its own firearm regulations. MCL 123.1102 specifically permits "local units of government" to enact regulations as "otherwise

[3] Emphasis in original text.

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provided by federal law or a law of this state." In this case, the State Constitution grants to the University the autonomy to promulgate its own firearm regulations.

Our Supreme Court has noted that the Michigan Constitution confers a unique status on public universities and their government boards. *Federated Publications, Inc v Board of Trustees of Michigan State University,* 460 Mich 75, 84; 594 NW2d 491 (1999). Under Const 1963, art 8, § 5, the Regents of the University of Michigan constitute a "body corporate" vested with the "general supervision of its institution and the control and direction of all expenditures from the institution's funds." Indeed, the Court described the governing board's status as "a constitutional corporation of independent authority, which, within the scope of its functions, is co-ordinate with and equal to that of the legislature." *Id.* at 84 n 8 (citing *Bd of Regents of the Univ of Michigan v Auditor General,* 167 Mich 444, 450; 132 NW 1037 (1911)). Thus, "[t]he constitution grants the governing boards authority over 'the absolute management of the University and the exclusive control of all funds received for its use.'" *Id.* at 87. Promulgating firearm ordinances for the safety of the students, staff and faculty is, therefore, constitutionally permissible and inextricably intertwined with the operation of the University and its mission to educate. Thus, even if the University were deemed a "local unit of government," its ordinance would not run afoul of MCL 123.1102 because under the Michigan Constitution, the University has the autonomy to promulgate firearm regulations. Moreover, any legislative scheme that "clearly infringes on the university's educational or financial autonomy must, therefore, yield to the university's constitutional power." *Id.* Simply put, the Legislature may not interfere with the management and control of public universities when they are exercising their constitutional powers to supervise the institution. *Id.* at 87, 88.

IT IS HEREBY ORDERED that defendant's motion for summary disposition is GRANTED.

This order resolves the last pending claim and closes the case.

Dated:

NOV 13 2015

Hon. Cynthia Diane Stephens
Court of Claims Judge

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EXHIBIT 6

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STATE OF MICHIGAN
IN THE COURT OF APPEALS

Joshua Wade, an individual,

Appellant,

v.

The Board of Regents of the University of Michigan,

Appellees.

Case No. 330555

APPELLANT'S BRIEF ON APPEAL OF ORDER GRANTING DEFENDANT'S MOTION FOR SUMMARY DISPOSITION

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APPELLANT'S BRIEF ON APPEAL OF ORDER GRANTING DEFENDANT'S MOTION FOR SUMMARY DISPOSITION

ORAL ARGUMENT REQUESTED

THIS 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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TABLE OF AUTHORITIES

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Other Authority

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STATEMENT OF BASIS OF JURISDICTION

Jurisdiction properly rests with this Court pursuant to MCR 7.203(a), MCR 7.204, and MCR 7.202(6):

"The court [of appeals] has jurisdiction on an appeal of right filed by an aggrieved party from the following:

(1) A final judgment of the circuit court, or court of claims."

Appellant Joshua Wade appeals as of right an Opinion and Order entered by Michigan Court of Claims judge Cynthia D. Stephens on November 13, 2015, ordering that Mr. Wade's case be dismissed.

Mr. Wade is timely filing his appeal on January 4, 2016.

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STANDARD OF REVIEW

II. Second Amendment

Since the error of the Court of Claims is based on the application of the legal standard rather than the interpretation of the facts of the case, it is a question of law, which must be reviewed de novo.

McDougall v Schanz, 461 Mich 15, 23; 597 NW2d 148 (1999).

III. A, D: Constitutional Argument and Field Preemption

The Court of Claims erred in statutory interpretation, a question of law, making the proper standard of review de novo.

McDougall, 461 Mich at 23.

III. B, C: Failure to Apply Binding Precedent

The Court of Claims erred by failing to apply binding precedent to the facts of the case, a matter of law, making the proper standard of review de novo.

McDougall, 461 Mich at 23.

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QUESTIONS PRESENTED

I. Did the Court of Claims err when it ruled that a complete ban on firearms possession for the entire property of the University of Michigan was constitutional under the rules of *Heller* and *MacDonald*?

Appellants answer yes.

Appellees presumably answer no.

The Court of Claims presumably answers no.

II. Did the Court of Claims err when it ignored past limitations on the Regents' powers over the University in relation to public policy questions?

Appellants answer yes.

Appellees presumably answer no.

The Court of Claims presumably answers no.

III. Did the Court of Claims err when it ignored rulings from the Court of Appeals on the interpretations of Michigan's firearms preemptions statutes, instead applying its own interpretation?

Appellants answer yes.

Appellees presumably answer no.

The Court of Claims presumably answers no.

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APPELLANT'S BRIEF ON APPEAL OF ORDER GRANTING DEFENDANT'S MOTION FOR SUMMARY DISPOSITION

ORAL ARGUMENT REQUESTED

INTRODUCTION

This appeal seeks reversal of the Court of Claim's Opinion and Order granting summary disposition for the Defendant, the Board of Regents of the University of Michigan, thereby affording the University the authority to prohibit the possession of firearms on property owned and controlled by the University and relieving it of the burden of filing an answer, or participating in oral argument, neither of which occurred in this case.

STATEMENT OF FACTS

On June 9, 2015, Appellant Joshua Wade filed this action alleging that the Board of Regents violated Mich Constitution of 1963, Article I § 6 and US Constitution Amendment II when it passed Article X, which forbids any possession of firearms on any University Property. Appellant additionally alleges that Article X is invalid as it conflicts with the field preemption over firearms embodied in MCL 123.1101, *et seq.* and case law interpreting the statutory scheme.

Summary disposition was ultimately granted to the University in this manner. The University, by and through its governing Board of Regents, moved for summary disposition under MCR 2.116(c)(8), alleging that Plaintiff-appellant had failed to

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state a claim on which relief could be granted. In support of that motion, the University first claimed that the University's Article X did not violate the Second Amendment because no right to bear arms for self-defense in public spaces existed under *District of Columbia v. Heller*, 554 US 570 (2008). The University further argued that even if such a right existed, Article X passes constitutional muster and is valid under Mich Const 1963 Art I § 6. The University then claimed that the restrictions of MCL 123.1101, *et seq.* did not apply to the University, and if they did, the statute would violate the Michigan Constitution of 1963, Article VIII § 5. After briefing and oral argument, the Board of Regents' motion was granted.

ARGUMENT

The Regents' motion should have been denied because Plaintiff-Appellant did properly state a claim for which relief can be granted. Contrary to Defendant-Appellees' claims, *Heller* did not hold that there is no Second Amendment right to possess a firearm in places such as schools. As such, Defendant-Appellees' reliance on Heller in claiming that "a school prohibition on firearms possession cannot and does not violate [the Second Amendment]" was misplaced. Defendant-Appellees' claim that Article X was a reasonable use of plenary powers is not supported, as the Article VIII § 5 is not a grant of the State's plenary powers to the University. As stated in defendant's brief in support of summary disposition: "under Article VIII, § 5 of the 1963 Michigan Constitution, the Regents hold plenary 'authority over "the absolute management of the University."'" Def Brief Supp Summ J, p. 1. However, a ban on self-defense is not "management of the University" but management of

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private citizens with no connection to the University, such as plaintiff-appellant Joshua Wade.

Although Defendant-Appellees' claim that the University is not expressly listed among "local units of government" was technically correct, the claim failed to consider subsequent case law which has found an intent by the legislature to fully occupy the field of firearms regulation. Such field preemption extends the effect of MCL 123.1101, *et seq.* beyond the expressly listed units of government.

Plaintiff-Appellant respectfully requests that Defendant-Appellees' motion for summary judgment be reversed.

I. Grounds for Summary Disposition under MCR 2.116(c)(8)

A motion under MCR 2.116(c)(8) for summary disposition tests the legal sufficiency of the complaint. "All well-pleaded factual allegations are accepted as true and construed in a light most favorable to the non-movant. A motion under MCR 2.116(c)(8) may be granted only where the claims alleged are 'so clearly unenforceable as a matter of law that no factual development could possibly justify recovery.'" *Maiden v. Rozwood*, 461 Mich 109, 119-20; 597 NW2d 817 (1999) [internal citations omitted]. A court considers only the pleadings when deciding a motion under MCR 2.116(g)(5).

II. The Court of Claims erred in its application of the holdings of *District of Columbia v Heller* and *MacDonald v City of Chicago* to Article X.

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A. The Second Amendment right to keep and bear arms for self-defense is an enumerated fundamental right.

The Second Amendment 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." US Const Amd II. In 2008, the US Supreme Court held that the Second Amendment guaranteed to individuals the right to keep and bear arms for self-defense. *District of Columbia v Heller*, 554 US at 592, 599 (2008). The Supreme Court examined the historical background of the Second Amendment and concluded that the guarantees to an individual the "right to possess and carry weapons in case of confrontation." *Id.* at 592. As a result, the Supreme Court struck down the District of Columbia's blanket ban on the possession of handguns in the home. *Id.* at 622, 635. Michigan's Constitution also protects the people's right to possess firearms for their own defense. Mich Const 1963 Art I § 6.

Two years after *Heller*, the Supreme Court held that the Due Process Clause of the Fourteenth Amendment incorporated the Second Amendment and the Second Amendment is thus enforceable against the States. *MacDonald v. City of Chicago*, 561 US 742, 748 (2010). Specifically, the Supreme Court held that "the Framers and ratifiers of the Fourteenth Amendment counted the right to keep and bear arms as among those fundamental rights necessary to our system of ordered liberty." *Id.* at 778. As in *Heller*, the Supreme Court then struck down Chicago's handgun ban that was "similar to the District of Columbia's." *Id.* at 750.

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The *Heller* and *MacDonald* decisions make it clear that an individual may use the Second Amendment to challenge federal, state, and local gun laws, including local ordinances such as Article X and the District of Columbia's handgun policy.

B. The Court of Claims reads the *Heller* opinion too broadly and misapplies its holding to the facts of this case.

The Court of Claims emphasizes dicta from the *Heller* opinion in which the Court states that legislatures may reasonably restrict the exercise of Second Amendment rights: "the Court specifically recognized a. . . list of 'presumptively lawful regulatory measures': 'Nothing in our opinion should be taken to cast doubt on. . . laws forbidding the carrying of firearms in sensitive places such as schools.'" Court of Claims opinion p. 3, citing *Heller*, 554 US at 626-67. No party seriously disputes that such reasonable restrictions may exist.

The Court of Claims's reliance upon *Heller* is misplaced. The Court of Claims goes to great pains to describe how the University of Michigan, whose faculty, staff, and student body are nearly all at least eighteen years old and in full possession of their constitutional rights, is a school full of students. But if the Court of Claims and the Board of Regents wish to rely so heavily on defense of the University's educational mission, then they should act as though Article X is tailored toward education. But Article X is much broader in scope than academics; it is a categorical ban on the possession of any firearms—not merely handguns, which the Court of Claims says are a problem in "this Country [sic]"—on all University property. Court of Claims

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opinion, p. 3. A ban on weapon possession *within academic buildings* may or may not hypothetically pass constitutional muster, but Article X also applies to the streets, sidewalks, and public spaces of Ann Arbor which are under the Regents' control. Indeed, this is why the plaintiff came to court; his exercise of his constitutional rights was unreasonably abridged without due process of law as he walked through a public space. The Board of Regents may have a political agenda with regards to weapons if it wishes, but it cannot rely on a mere *ipse dixit* to strip adults of their constitutional rights as they walk down the street.

Such a reading of *Heller* immensely undermines the holding that possession of a firearm for self-defense in case of confrontation is a central element of the right to keep and bear arms.

The Court of Claims also cites to *Michigan Coalition of Responsible Gun Owners v City of Ferndale* to support its conclusion that the Board of Regents can abridge Second Amendment rights through some vague and unspecified plenary police power. Specifically, it draws on this quote: "the constitutional right to bear arms as conferred by Const 1963, Art I § 6 'is not absolute, but "may yield to a legislative enactment that represents a reasonable regulation by the state in the exercise of its police power."'" Court of Claims opinion p. 4, citing *Ferndale*, 256 Mich App 401, 405-06 (2003). This is cherry-picking of language by the Court of Claims, as the Court of Appeals actually struck down a local regulation like Article X in the *Ferndale* case. The *Ferndale* court's reasoning, which should remain undisturbed in this case, was that the Michigan Legislature has completely occupied the field of

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firearms regulation in the state of Michigan, and there was no police power left over for other governmental entities to so regulate. *Id.* at 418. The very quote that the Court of Claims chose contains language which defeats the Court of Claims's interpretation: the right to bear arms may yield "*to a legislative enactment* that represents a reasonable regulation *by the state* in the *exercise of its police power*" (emphasis added). The *Ferndale* court held that the *state Legislature*, which under the Michigan Constitution is the sole possessor of *police powers*, may regulate the right. The Board of Regents, which is a subordinate entity when it comes to legislative matters, may not regulate the right except within the narrow confines of defending the University's academic mission.

III. The Court of Claims erred in applying its own interpretation of MCL 123.1101 *et seq.* rather than using the constitutionally controlling interpretation of the Michigan Court of Appeals.

The Court of Claims and Defendant-Appellees correctly state that Second Amendment rights are not unlimited. Second Amendment rights may be subject to some reasonable regulations. See *Heller* at 626. On that basis alone, Article X may or may not be an allowable exercise of regulatory authority. However, the constitutionality of Article X, when examined in isolation, is not determinative of this case. The Court of Claims's failure was applying its own discretion to determine the constitutionality of Article X, rather than referring to controlling case law and to the Michigan Legislature's own explanation of what MCL 123.1101 means. Even if Article X is constitutional, the Michigan Legislature has closed off the field of

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firearms regulations by any other governmental actor, See *Capital Area District Library v. Michigan Open Carry, Inc.*, 298 Mich App 220; 826 NW2d 736 (2013). Article X's constitutionality, independent of a preemption framework, is not controlling in this case. The Court of Claims erred in acting as though it did.

A. The Court of Claims erred in ignoring previous findings as to the scope of the Regents' ability to ignore general public policy and the Michigan Legislature.

The Court of Claims stated that "the State Constitution grants to the University [sic] the autonomy to promulgate its own firearm regulations." The Court of Claims cites no basis in statutory law, case law, or anywhere else to support this claim. The Court of Claims cited case law which tends to make declarative statements that the Regents may govern the University's own affairs, but nothing which states that the University may defy the Legislature or that the University may constitutionally regulate firearms at all. See Court of Claims opinion, p. 5-9. The Court of Claims stated that "the Legislature may not interfere with the management and control of public universities when they are exercising their constitutional powers to supervise the institution [sic]." *Id.* at 9. This is true, but nowhere is it established that the Regents' "constitutional powers to supervise the institution" includes the ability to legislate on the same level as the Michigan Legislature, which, as its name would suggest, is the sole possessor of legislative authority in Michigan: "The legislative power of the State of Michigan is vested in a senate and a house of representatives," and nowhere else. Mich Const 1963 Art 4 § 1.

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Though the Michigan Constitution of 1963 grants broad powers to the regents over the supervision of University operations and expenditure of University funds, it would be an absurd result for the state constitution to tolerate the Regents exercising plenary legislative power to contradict the legislature's clearly-established and constitutionally-enacted policy of preemption. The Michigan Supreme Court has acknowledged as much:

> It is the opinion of this Court that the legislature can validly exercise its police power for the welfare of the people of this State, and a constitutional corporation such as the Board of Regents of the University of Michigan can lawfully be affected thereby. The University of Michigan is an independent branch of the government of the State of Michigan, but it is not an island. *Within the confines of the operation and the allocation of funds of the University, it is supreme. Without these confines, however, there is no reason to allow the Regents to use their independence to thwart the clearly established public policy of the people of Michigan.*

(Emphasis added). *Regents of the University of Michigan v. Michigan Employment Relations Commission*, 389 Mich 96,108 (1973).

As stated in defendant's brief in support of summary disposition: "under Article VIII, § 5 of the 1963 Michigan Constitution, the Regents hold plenary 'authority over "the absolute management of the University."" Def's Brief Supp Summ J p. 1.

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As a preliminary matter, Defendants cite nothing in statutory law, case law, or anywhere else to support the claim that the Regents hold "plenary authority" over anything. *Id.* However, a categorical ban on possession of firearms for self-defense is not "management of the University," but rather, it is management of private citizens with no connection to the University, such as Plaintiff Wade.

B. The Court of Claims erred in ignoring the holding of the Court of Appeals in *Capital Area District Library v. Michigan Open Carry* by reading MCL 123.1101 *et seq.* without reference to controlling case law or to MCL 123.1101 *et seq.*'s underlying legislative policy.

The Court of Claims opinion states that "The plain language of MCL 123.1102 unequivocally defines the scope of [Michigan field preemption for firearms law] and it does not evidence intent by the Legislature to completely occupy the field of firearms preemption." Court of Claims opinion p. 5. However, as both the defendant and the Court of Claims are aware, there is more to the law than the ink placed on the pages of statute books. The Court of Claims is in serious error for ignoring the case law which has interpreted MCL 123.1101 *et seq.*, and for refusing to be guided by legislative history, which describes with perfect clarity the Legislature's intent to completely occupy the field of firearms regulation under MCL 123.1101 *et seq.*

It has been unquestioned in the American judiciary for more than two centuries that "[i]t is emphatically the province and duty *of the judicial department to say what the law is*" (emphasis added). *Marbury v. Madison*, 5 U.S. 137, 177 (1803). As

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luck would have it, the judicial department has already said what the law is, and the law is that the Michigan Legislature has completely occupied the field of firearms regulation. The Michigan Court of Appeals—which owns controlling authority over the decisions of lower courts such as the Court of Claims—has stated unequivocally that the Michigan Legislature has occupied the field of firearms regulation: "The extent and specificity of this statutory scheme, coupled with the Legislature's 'clear policy choice [in MCL 123.1102] to remove from local units of government the authority to dictate where firearms may be taken,' *demonstrates that the Legislature has occupied the field of firearm regulation that the library's weapons policy attempts to regulate: the possession of firearms*" (emphasis added). *Capital Area District Library v. Michigan Open Carry, Inc.*, 298 Mich. App. 220, 239, citing *Michigan Coalition for Responsible Gun Owners v. City of Ferndale*, 256 Mich App 401, 414 (2003). The Court of Claims substituted its own non-controlling interpretation of MCL 123.1101 *et seq.* for the legally-binding interpretation of the Court of Appeals and therefore must be reversed.

The Court of Claims stated that the primary goal of statutory interpretation is to give effect to the intent of the Legislature, which is true, and which also makes it unfortunate that the Court of Claims made no effort to discern the intent of the Legislature beyond a cursory reading of the text of the statute. The very first page of the legislative history of MCL 123.1101 *et seq.* states that the bill was designed to address "concern that continued local authority to enact and enforce gun control ordinances may result in the establishment of a patchwork of ordinances." House

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Legislative Analysis, HB 5436, January 30, 1991, p. 1. By allowing the Regents to flout the state Legislature, the Court of Claims defeats the purpose which the Legislature specifically espoused in passing MCL 123.1101 *et seq.* —The Michigan Court of Appeals has established that the Legislature *has* occupied the field of firearms regulation and can "validly exercise its police power. . . and a constitutional corporation such as the Board of Regents. . . can lawfully be affected thereby." *Capital Area District Library*, 220 Mich App 239; *Mich Employment Relations Committee*, 389 Mich at 108.

Defendant-Appellees' claim that preemption under MCL 123.1101, *et seq.* does not apply to Defendant-Appellees is an overly narrow interpretation of the state's statutory scheme. See MCL 123.1101, *et seq.* The Michigan legislature made clear its intent to be the sole government actor regulating firearms, and courts must effectuate that intent. See *Capital Area Dist Library*, 298 Mich App at 239. The legislature's word choice in MCL 123.1101 is of little import to this case when the legal effect of the statutory scheme is to vest exclusive regulatory authority for the field of firearms possession with the state legislature. *Id.* The test for field preemption in *People v Llewellyn*, *infra.*, bears out this claim. Though the Michigan Constitution of 1963 grants broad powers to the regents over the supervision and expenditure of University funds, it would be an absurd result for the state constitution to tolerate the Regents exercising plenary legislative power to contradict the legislature's clearly-established and constitutionally-enacted policy of preemption. The Michigan Supreme Court has acknowledged as much:

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> It is the opinion of this Court that the legislature can validly exercise its police power for the welfare of the people of this State, and a constitutional corporation such as the Board of Regents of the University of Michigan can lawfully be affected thereby. The University of Michigan is an independent branch of the government of the State of Michigan, but it is not an island. Within the confines of the operation and the allocation of funds of the University, it is supreme. Without these confines, however, there is no reason to allow the Regents to use their independence to thwart the clearly established public policy of the people of Michigan.

Regents of the University of Michigan v. Michigan Employment Relations Commission, 389 Mich 96,108; 204 NW2d 218 (1973).

C. The Court of Claims erred in failing to recognize that the Michigan Legislature has occupied the field of firearms regulation.

Though it has escaped the notice of the Court of Claims, the principles of field preemption with regard to the firearms regulation are well-established in Michigan. *See generally, Capital Area Dist Library*, 298 Mich App 220; *People v Llewellyn*, 401 Mich 314; 257 NW 2d 902 (1977) (establishing common-law field preemption test for legislation in Michigan). The Michigan Supreme Court has established in *Llewellyn* that

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> A state statutory scheme preempts regulation by a lower-level [non-federal] governmental entity when either of two conditions exist:
>
> (1) the local regulation directly conflicts with the state statutory scheme, or
>
> (2) the state statutory scheme occupies the field of regulation that the lower-level government entity seeks to enter, "even where there is no direct conflict between the two schemes of regulation."

Capital Area Dist Library at 233, citing *Llewellyn* at 322.

Both of *Llewellyn's* tests for preemption are satisfied for this issue. No party claims that the Board of Regents is not a "lower-level government entity" than the state legislature when it comes to conflicts of legislative authority. Regulation by lower-level government entities is preempted because the state statutory scheme occupies the field of firearms regulation in Michigan. *Capital Area Dist Library*, at 239. Therefore a "lower-level government entity" must not legislate in the field of firearms possession.

The University of Michigan, despite its constitutional origins, should legally be considered a "lower-level government entity" than the state legislature when it comes to legislative matters. See Mich Const 1963 Art VIII § 5. The Michigan Constitution vests the power to legislate with the state Legislature, not with the universities: "the legislative power of the State of Michigan is vested in the senate and a house of representatives," and nowhere else. Mich Const 1963 Art 4 § 1.

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Furthermore, "the Supreme Court has recognized that the University *is a state agency within the executive branch* of the State government and that the regents thereof are state officers" (emphasis added). *Michigan Employment Relations Commission*, 389 Mich at 104-05. Like the district library in *Capital Area Dist Library*, the University is also a state agency charged with executing the laws passed by the legislature. The University does not receive some special exemption which allows it to shirk the responsibilities of being part of the executive branch: "the legislature can validly exercise its police power for the welfare of the people of this State, and *a constitutional corporation such as the Board of Regents…can lawfully be affected thereby*. The University of Michigan is an independent branch of the government of the State of Michigan, but it is not an island" (emphasis added). *Federated Publications, Inc. v. Board of Trustees of Michigan State University*, 460 Mich 75, 83; 594 NW2d 491 (1999). The legislature draws legitimacy from its plenary police powers, which are *not* granted to the University under the Michigan constitution. It is clear that the Board of Regents is powerful within the governance of the University itself, but it has no authority to attempt to usurp the Legislature's constitutionally-delegated role in the state government.

Since the Board of Regents is a lower-level government entity than the state legislature with regard to legislative matters, it is an ideal target for the *Llewellyn* field preemption analysis. The *Llewellyn* Court laid out a four-pronged test for determining whether the state legislature has completely occupied the field of regulation:

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1. Whether the state law expressly provides that the state's authority to regulate in a specified area of the law is to be exclusive;

2. Whether preemption of a field is implied in the legislative history of the statutory basis for preemption;

3. Whether the state has pervasively regulated the field in question; and

4. Whether the nature of the regulated subject matter demands exclusive state regulation to achieve uniformity necessary to serve the state's purpose or interest.

Llewellyn, 401 Mich at 323.

The *Capital Area District Library* court found that all four prongs of the Llewellyn test were satisfied with regards to firearms regulation, and there is no reason to find differently here. *Capital Area Dist Library*, 298 Mich App at 234-40.

The first prong of the *Llewellyn* test asks "whether the state law expressly provides that the state's authority to regulate in a specified area of the law is to be exclusive." Though MCL 123.1101 *et seq.* do not explicitly occupy the field, courts have found that the Michigan Legislature has established exclusive authority to regulate the field of firearms possession. The Michigan Court of Appeals decided this issue in Michigan *Coalition for Responsible Gun Owners v. Ferndale*, and emphasized that the city's autonomy to control its own property was not dispositive

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of the issue and that proponents of gun control ordinances were misreading the statutory scheme:

> Section 1102 provides that a local unit of government shall not enact an ordinance pertaining to the transportation or possession of firearms, but the city of Ferndale does just that. Despite the clear language of the Legislature, amicus curiae contends in a conclusory fashion that § 1102 should not preempt ordinances like the Ferndale ordinance because the Statute "is clearly aimed at municipal control of activities within the confines of its own public buildings." *However, the language of § 1102 is broad and all-encompassing*. A state statute that prohibits a local unit of government from enacting "any ordinance or regulation" or regulating "in any other manner" the transportation or possession of firearms cannot reasonably be interpreted to exclude local ordinances that address the carrying of firearms in municipal buildings.

(Emphasis added). *Mich Coalition for Responsible Gun Owners v. Ferndale,* 256 Mich App 401, 414-15; 662 NW2d 864 (2003).

The second prong of the *Llewellyn* test is "whether preemption of a field is implied in the legislative history of the statutory basis for preemption." The legislative history of Michigan's firearms preemption statutes states unequivocally that the legislature wanted to avoid inconsistent regulations on firearms possession which would cause undue confusion for firearm owners. The history for §123.1101 *et seq.*

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indicates that the bill was designed to address "concern that continued local authority to enact and enforce gun control ordinances may result in the establishment of a patchwork of ordinances." House Legislative Analysis, HB 5436, January 30, 1991, p.1. Such a "patchwork of ordinances" is precisely the reason that the parties have come to court in this case. *The Capital Area Dist Library* court had no difficulty in finding the clear intent of the legislature should overrule the narrow wording of the statute: "Although not included in the definition of 'local unit of government' set forth in MCL 123.1101(a), a district library is nevertheless a local unit of government. *Excluding a district library from the field of regulation…defies the purpose of the statute and would undoubtedly lead to patchwork regulation*" (emphasis added). *Capital Area Dist Library*, 298 Mich App at 236-37. In other words, it is consistent with the purpose of Michigan's firearms regulatory scheme to apply the field preemption statutes broadly to any state governmental agency, including the University. The Court of Claims erred in failing to recognize that its conclusion would defeat the purpose of the statute as it was unequivocally identified by the Michigan Legislature. See House Legislative Analysis, HB 5436, *supra*.

The third prong of the *Llewellyn* test is "whether the state has pervasively regulated the field in question." The Michigan legislature has already established a comprehensive scheme of statutes to control gun possession. It is duplicative and needlessly burdensome on the people of Michigan to allow multiple legislative authorities to tinker with the people's constitutional rights when the existing state statutory scheme already embodies a far-reaching and meticulously-detailed set of

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restrictions on that right. *See, e.g.*, MCL 750.234d(1) (prohibiting possession of firearms in "sensitive areas" like schools and sports arenas, but *not in public universities*), MCL 28.4250(1) (prohibiting possession of concealed pistols in certain areas even for those licensed to do so), MCL 750.224 (prohibiting possession of firearms designed to shoot multiple shots automatically with a single trigger press), MCL 750.224(b) (prohibiting possession of firearms by felons), MCL 750.226 (prohibiting possession of a firearms with the intent to use it illegally against another person), MCL 750.227 (prohibiting the carrying of a concealed firearms without a license to do so), MCL 750.227(b) (prohibiting possession of a firearm during the commission of a felony). MCL 750.227(c) (prohibiting possession of a firearm other than a pistol in or upon a sailboat or a motor vehicle, aircraft, motorboat, or any other vehicle propelled by mechanical means), MCL 750.227(d) (prohibiting possession of a firearm other than a pistol in or upon a motor vehicle or other self-propelled vehicle designed for land travel if the firearm is not inaccessible from the interior of the vehicle), MCL 750.234(f) (prohibiting possession of firearms in public by minors), MCL 750.237(1) (prohibiting the possession of a firearm while under the influence of alcohol and controlled substances), MCL 28.421(a) *et seq.* (establishing a comprehensive standardized system to apply for and qualify to possess a concealed pistol license).

The *Capital Area District Library* court recognized the legislature's pervasive regulation: "As can be gleaned from these numerous statutes included in the Legislature's statutory scheme regulating firearms, the statutory scheme includes 'a

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broad, detailed, and multifaceted attack' on the possession of firearms." *Capital Area Dist Library*, 298 Mich App at 239, citing *Llewellyn*, 401 Mich at 326. The Michigan legislature has already made many modifications to the right to keep and bear arms. It defies the purpose unambiguously stated in the legislative history of MCL 123.1101 *et seq.* to allow other units of state government to regulate the field contrary to the legislature; doing so will result in just the inconvenient and inconsistent "patchwork of regulations" that the legislature was trying to avoid. House Legislative Analysis, HB 5436, *supra*.

The fourth prong of the *Llewellyn* test is "whether the nature of the regulated subject matter demands exclusive state regulation to achieve uniformity necessary to serve the state's purpose or interest." Consistently with the results of the first three prongs, the regulated subject matter (firearms possession) does indeed "demand exclusive state regulation to achieve the uniformity necessary to serve the state's purpose or interest." *Llewellyn*, 401 Mich at 324. The *Capital Area District Library* court answers the question with a confident yes: "[t]he regulation of firearm possession undoubtedly calls for such exclusive state regulation." *Capital Area District Library*, 298 Mich App at 329. It was the legislature's hope that situations such as the one underlying Mr. Wade's complaint could be avoided by having a uniform and consistent system of firearms regulation. Instead, his rights were needlessly abridged by a "Balkanized patchwork of inconsistent local regulations." *City of Brighton v. Hamburg Twp*, 260 Mich App 345, 355; 677 NW2d 349 (2004).

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Thus, as measured by each metric the *Llewellyn* Court established, the legislature has occupied the field of regulation for firearms possession, within the State of Michigan. There is no reason to allow another part of the state government, especially one with as minor a role in governance as a state university, to challenge the legislature's constitutional authority. If Article X is permitted to stand, then the clear and unambiguous legislative policy choices of the Michigan Legislature will be defeated by a lesser body of the Michigan government's executive branch. Such a result is impermissible in our constitutional system.

D. It is appropriate to apply the same analysis to the Board of Regents as the Michigan Court of Appeals applied to a quasi-municipal corporation in the *Capital Area District Library* case.

Defendant-Appellees made much of the specific language of MCL 123.1101, which defines "local units of government," i.e. cities, villages, townships, or counties. However, as Defendants-Appellees and the Court of Claims refuse to acknowledge, the Michigan Court of Appeals has expanded the prohibition on local gun regulation to other entities not specifically named in the statute. MCL 123.1101; *Capital Area Dist Library*, 298 Mich App at 240-41.

The University of Michigan is integrated with the City of Ann Arbor and performs many non-educational functions for tens of thousands of people. Given the *Capital Area District Library* court's recognition that the state's regulation on virtually every aspect of firearms ownership and use has entirely occupied the field of

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firearms regulation in Michigan, it is logical to apply the same principles of preemption to the University as § 1102 would have us apply to a municipality. *See Capital Area Dist Library,* 298 Mich App at 239. Furthermore, if the Board of Regents wishes to lean so heavily on *Heller*'s exception for "sensitive areas" such as schools, then the Board of Regents should act like it is regulating a *school* (i.e., academic buildings) rather than the *streets and sidewalks of a municipality* like Article X does with Ann Arbor. Michigan courts have recognized that quasi-municipal corporations like the one in the *Capital Area District Library* case "are constitutionally or statutorily authorized to operate 'for and about the business of the State.'" *Jackson Dist Library v. Jackson County No. 1*, 146 Mich App 392, 396; 380 NW2d 112 (1985) [citing *Attorney General ex rel Kies v. Lowrey*, 131 Mich 639, 643 (1902)]. Furthermore, it is settled law that "the state universities are organically part of the state government and . . . *all university property is state property* held in trust for the public purpose of the university"; and "the University *is a state agency within the executive branch* of the State government and that *the regents thereof are state officers*" (emphasis added). *W Michigan Univ Bd of Control v State*, 455 Mich 531, 540-41 (1997); *Michigan Employment Relations Commission*, 389 Mich at 104-05. It is logical to apply the same analysis to the Board of Regents that would apply to a municipality or quasi-municipal corporation. Like a quasi-municipal corporation, the Board of Regents (a constitutional corporation, staffed with state officers, in the executive branch) is bound by the Legislature's constitutional exercise of its plenary police powers. *See Michigan Employment*

Relations Commission, 389 Mich at 108. The Board of Regents, an executive agency of state officers, is regulating state property (the sidewalks and streets of Ann Arbor) in a way which directly conflicts with state law. How can it be constitutionally permissible for an agency of the state's executive branch to make its own legislation over how state property can be used when the Legislature has explicitly told the agency not to legislate?

These cases establish that powers granted under the Michigan Constitution may be reasonably limited by the legislature's exercises of its police powers for the welfare of the state. If, indeed, the University of Michigan's "property is state property held in trust for the public purpose of the university," then the Regents of the university should not have power to defy the rest of the state government. *W Michigan Univ Bd of Control* at 540-41. This is especially true when the Regents' exercise of power has nothing to do with the "public purpose of the university," i.e., educating citizens of Michigan, rather than picking away at their constitutional rights as they walk down the street.

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REQUEST FOR RELIEF

For all the forgoing reasons, Appellant requests that this court reverse the Court of Claims Order Granting the Defendant-Appellees' Motion for Summary Disposition and proceed with oral arguments.

Respectfully Submitted,

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Dated: 1/4/16

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EXHIBIT 7

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KeyCite Yellow Flag - Negative Treatment
Appeal Granted by Wade v. University of Michigan, Mich., November 6, 2020

320 Mich.App. 1
Court of Appeals of Michigan.

Joshua WADE, Plaintiff–Appellant,
v.
UNIVERSITY OF MICHIGAN,
Defendant–Appellee.

No. 330555
|
Submitted March 8, 2017, at Lansing.
|
Decided June 6, 2017, 9:00 a.m.

Synopsis
Background: Plaintiff brought action against university, alleging that ordinance banning all firearms from university property was unconstitutional and preempted. The Court of Claims, No. 15-000129-MZ, Cynthia D. Stephens, J., granted university's motion for summary disposition. Plaintiff appealed.

Holdings: The Court of Appeals, Cavanagh, P.J., held that:

[1] ordinance did not violate Second Amendment, and

[2] statute restricting regulation of firearms by local government units did not preempt university's ordinance.

Affirmed.

Sawyer, J., filed dissenting opinion.

Procedural Posture(s): On Appeal; Motion for Summary Judgment.

West Headnotes (10)

[1] Appeal and Error Particular Cases and Contexts

Plaintiff waived for appellate review his claim that public university's ordinance banning firearms on its property violated Michigan constitution; plaintiff's argument on appeal focused solely on his rights under the Second Amendment. U.S. Const. Amend. 2; Mich. Const. art. 1, § 6.

[2] Appeal and Error De novo review

Court of Appeals reviews de novo a court's decision on a motion for summary disposition.

[3] Appeal and Error Administrative law; regulations

A challenge to the constitutionality of a regulation presents a question of law that the Court of Appeals reviews de novo on appeal.

[4] Weapons Violation of right to bear arms

Threshold inquiry in a Second Amendment challenge to a firearm regulation is whether the challenged regulation regulates conduct that falls within the scope of the Second Amendment right as historically understood. U.S. Const. Amend. 2.

[5] Weapons Violation of right to bear arms

If conduct regulated by a firearm regulation has historically been outside the scope of Second Amendment protection, the activity is not

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protected and no further analysis is required. U.S. Const. Amend. 2.

[6] **Weapons**🔑Violation of right to bear arms

If conduct regulated by a firearm regulation 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. U.S. Const. Amend. 2.

[7] **Weapons**🔑Violation of right to bear arms
Weapons🔑Place

Public university ordinance banning all firearms from university property did not violate Second Amendment, as ordinance did not regulate conduct that was understood to have been protected by the Second Amendment when Fourteenth Amendment was ratified; universities were understood during historically relevant period to be "schools," which were sensitive places to which Second Amendment protections did not extend. U.S. Const. Amends. 2, 14.

[8] **Education**🔑Regulation of campus; conduct of visitors
Weapons🔑Power to regulate

Statute restricting regulation of firearms by local government units did not preempt public university's ordinance banning all firearms from university property; statute expressly applied to cities, villages, townships, and counties, which university was not, since university was not created by two local units of government, but was instead a constitutional corporate body that was co-equal with legislature, and statute did not indicate legislative intent to completely preempt field of firearm regulation. Mich. Const. art. 8, § 5; Mich. Comp. Laws Ann. § 123.1102.

[9] **Education**🔑Powers, duties, and liabilities

Constitutional status of governing board of public university is that of highest form of juristic person known to law, constitutional corporation of independent authority, which, within scope of its functions, is co-ordinate with and equal to that of legislature. Mich. Const. art. 8, § 5.

[10] **Education**🔑Nature and status in general

Legislature can validly exercise its police power for the welfare of the people of the state, and a constitutional corporation such as the board of regents of the state university can lawfully be affected thereby; the state university is an independent branch of the government of the state government, but it is not an island. Mich. Const. art. 8, § 5.

****440** Court of Claims, LC No. 15-000129-MZ, Cynthia D. Stephens, J.

Attorneys and Law Firms

The Law Offices of Steven W. Dulan, PLC (by Steven W. Dulan), for Joshua Wade.

Honigman Miller Schwartz & Cohn LLP (by Leonard M. Niehoff, John D. Pirich, and John J. Rolecki) and Timothy G. Lynch for the University of Michigan.

Before: Cavanagh, P.J., and Sawyer and Servitto, JJ.

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Opinion

Cavanagh, P.J.

***5** Plaintiff, Joshua Wade, appeals as of right an 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. We affirm.

***6** In February 2001, the University revised the weapons provision, Article X, of its "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" ****441** and made all properties owned, leased, or controlled by the University weapons-free. Article X, titled "Weapons," provides:

> **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 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. Exceptions**
>
> (1) Except to the extent regulated under Subparagraph (2), the prohibitions in this Article X do not apply:
>
> ***7** (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.

Subsequently, plaintiff sought a waiver of the prohibition as set forth in § 4(1)(f) of Article X. After his request was denied, plaintiff filed this action. In Count I, plaintiff alleged that the ban on firearms violates his federal and state constitutional rights to keep and bear arms as set forth in the Second Amendment of the United States Constitution and Article 1, § 6, of the Michigan Constitution. In Count II, ****442** plaintiff alleged that Article X is invalid because MCL 123.1102, which ***8** prohibits local units of government from establishing their own limitations on the purchase, sale, or possession of firearms, preempts the ordinance. Plaintiff requested the Court of Claims to declare that Article X is

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unconstitutional and preempted by MCL 123.1102, and that defendant was enjoined from its enforcement.

The University responded to plaintiff's complaint with a motion for summary disposition under MCR 2.116(C)(8). The University argued that the Second Amendment does not reach "sensitive places," which includes schools like the University property.[1] But even if the Second Amendment applied, Article X did not violate it because the ordinance was substantially related to important governmental interests, including maintaining a safe educational environment for its students, faculty, staff, and visitors as well as fostering an environment in which ideas—even controversial ideas—can be freely and openly exchanged without fear of reprisal. The University further argued that Article X did not violate the Michigan Constitution because Article X is a reasonable exercise of the University's authority under Article 8, § 5, of the Michigan Constitution to control its property, maintain safety on that property, and to cultivate a learning environment. Moreover, MCL 123.1102 did not apply to the University because the University is not a "local unit of government"; rather, it is a constitutional corporation that is coordinate with and equal to the Legislature. Therefore, the University has the exclusive authority to manage and control its property, including the day-to-day operations of the institution with regard to the issue of firearm possession on its property. Accordingly, the University argued, plaintiff's complaint ***9** failed to state a claim upon which relief could be granted and should be dismissed.

[1] See *Dist. of Columbia v. Heller*, 554 U.S. 570, 626–627, 128 S.Ct. 2783, 171 L.Ed.2d 637 (2008).

Plaintiff responded to the University's motion for summary disposition, arguing that Article X violates the Second Amendment of the United States Constitution, which, as explained in *Dist. of Columbia v. Heller*, 554 U.S. 570, 592, 595, 128 S.Ct. 2783, 171 L.Ed.2d 637 (2008), guarantees to individuals the right to keep and bear arms for self-defense. And contrary to the University's claim, the University is not a "sensitive place" under *Heller* because it is "not a school as that word is commonly understood. It is a community where people live and work, just as any community." Further, plaintiff argued, even if Article X is not unconstitutional, the Michigan Legislature "has closed off the field of firearms to regulations by any other governmental actor...." That is, the ordinance is preempted by MCL 123.1102 because the same principles of preemption apply to the University as apply to a municipality or quasi-municipal corporation. And the University is a "lower-level government entity" than the state legislature when it comes to conflicts of legislative authority." Accordingly, plaintiff argued, the University's motion for summary disposition should be denied.

The Court of Claims agreed with the University. First, the court held that the University is a public educational institution—a school—and, thus, a "sensitive place" as contemplated by the *Heller* Court. Regulations restricting firearms in such places are presumptively legal; consequently, the University's "ordinance does not fall within the scope of the right conferred by the Second Amendment or ****443**Const. 1963, Art. 1, § 6." Therefore, Count I of plaintiff's complaint was dismissed for failure to state a claim. Second, the court held that MCL 123.1102 plainly applies only to a ***10** "local unit of government," which is defined by MCL 123.1101(b) as "a city, village, township, or county." Because the University is not a "local unit of government," the prohibitions set forth in MCL 123.1102 do not apply to it. However, even if the University was considered a "local unit of government," the court held, MCL 123.1102 specifically provides that such governmental units may enact regulations "as otherwise provided by federal law or a law of this state." Because the Michigan Constitution, pursuant to Article 8, § 5, grants the University "general supervision of its institution," the University had the right to promulgate firearm regulations for the safety of its students, staff, and faculty consistent with its right to educational autonomy and its mission to educate. Therefore, Count II of plaintiff's complaint was also dismissed. Accordingly, the University's motion for summary disposition was granted. This appeal followed.

[1]Plaintiff argues that the Court of Claims erred when it ruled that the complete ban of firearms on University property in Article X did not violate his Second Amendment rights.[2] We disagree.

[2] Plaintiff's argument on appeal focuses solely on his rights under the Second Amendment; therefore, we consider any claim premised on the Michigan Constitution abandoned. See *Mitcham v. Detroit*, 355 Mich. 182, 203, 94 N.W.2d 388 (1959).

[2][3]We review de novo a court's decision on a motion for summary disposition. *Kyocera Corp. v. Hemlock Semiconductor, LLC*, 313 Mich.App. 437, 445, 886 N.W.2d 445 (2015). A motion brought under "MCR 2.116(C)(8) tests the legal sufficiency of the claim on the pleadings alone to determine whether the plaintiff has stated a claim on which relief may be granted." *Id.* (quotation marks and citation omitted). A challenge to the

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constitutionality of a regulation presents a question of law that this ***11** Court also reviews de novo on appeal. *McDougall v. Schanz*, 461 Mich. 15, 23, 597 N.W.2d 148 (1999).

The Second Amendment of the United States Constitution 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." In *Heller*, 554 U.S. 570, 128 S.Ct. 2783, the United States Supreme Court undertook, for the first time, an in-depth examination of the scope of Second Amendment rights, primarily determining whether the amendment guaranteed individual or collective rights. At issue was the District of Columbia's handgun ban, which criminalized the registration of handguns and permitted possession of such guns only upon the chief of police's approval of a one-year license. *Id.* at 574–575, 128 S.Ct. 2783. The law also required that lawfully owned guns, such as registered long guns, be rendered inoperable while in the home. *Id.* at 575, 128 S.Ct. 2783. In determining that the Second Amendment guaranteed individual rights, the *Heller* Court focused on the original meaning of the Second Amendment, relying on historical materials to discern how the public understood the amendment at the time of its ratification, *id.* at 595–600, 128 S.Ct. 2783, and noting that "[c]onstitutional rights are enshrined with the scope they were understood to have when the people adopted them," *Id.* at 634–635, 128 S.Ct. 2783. Review of these materials led the *Heller* Court to conclude that the Second Amendment codified a preexisting right to bear arms, that the right was not limited to the militia, and that the central component of this right was self-defense, primarily in ****444** one's own home. *Id.* at 595, 599–600, 128 S.Ct. 2783.

With regard to the District of Columbia's handgun ban, the *Heller* Court held that the Second Amendment precludes the "absolute prohibition of handguns held and used for self-defense in the home." *Id.* at 636, 128 S.Ct. 2783. And ***12** with regard to the District's requirement that firearms in the home be kept inoperable, the *Heller* Court stated, "This makes it impossible for citizens to use them for the core lawful purpose of self-defense and is hence unconstitutional." *Id.* at 630, 128 S.Ct. 2783. However, the *Heller* Court also clarified that "the right secured by the Second Amendment is not unlimited" and that individuals may not ''keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose." *Id.* at 626, 128 S.Ct. 2783. The *Heller* Court then identified a nonexhaustive list of "presumptively lawful regulatory measures," stating:

> 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, 627 n. 26, 128 S.Ct. 2783.[3]]

In other words, the Court recognized that the scope of the right did not, historically, extend to certain individuals or to certain places.

[3] Plaintiff's attempt to characterize this passage as dicta is unpersuasive. As defendant points out, this language is an explanation of what the Court held and did not hold in *Heller*.

The United States Supreme Court considered the Second Amendment again in *McDonald v. Chicago*, 561 U.S. 742, 750, 130 S.Ct. 3020, 177 L.Ed.2d 894 (2010), in which it considered the validity of a handgun ban, similar to that in *Heller*, in the cities of Chicago and Oak Park. The cities argued that the ban was constitutional because the Second Amendment did not apply to the states. *Id.* The *McDonald* Court disagreed, ***13** declaring that the Second Amendment applies to the states by virtue of the Fourteenth Amendment. *Id.* at 778, 130 S.Ct. 3020. The *McDonald* Court reiterated that laws forbidding the carrying of firearms in sensitive places are presumptively lawful regulatory measures. *Id.* at 786, 130 S.Ct. 3020. Further, in analyzing whether the cities' handgun bans were within the scope of the Second Amendment's protected activity, the Court again considered the historical and traditional understanding of the Second Amendment at the time the Fourteenth Amendment was adopted. *Id.* at 768–778, 130 S.Ct. 3020. Thus, "*McDonald* confirms that if the claim concerns a state or local law, the 'scope' question asks how the right was publicly understood when the Fourteenth Amendment was proposed and ratified." *Ezell v. Chicago*, 651 F.3d 684, 702 (C.A. 7, 2011).

[4][5][6]The holdings in *Heller* and *McDonald* have led to the application of a two-part test with respect to Second

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Amendment challenges to firearm regulations. The threshold inquiry is whether the challenged regulation "regulates conduct that falls within the scope of the Second Amendment right as historically understood." *People v. Wilder*, 307 Mich.App. 546, 556, 861 N.W.2d 645 (2014), quoting *People v. Deroche*, 299 Mich.App. 301, 308–309, 829 N.W.2d 891 (2013) (quotation ****445** marks and citation omitted). 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. *Wilder*, 307 Mich.App. at 556, 861 N.W.2d 645. 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." *Id.* at 556–557, 861 N.W.2d 645.

***14**[7]In this case, plaintiff's complaint alleged that the complete ban of firearms on University property in Article X violates his Second Amendment rights. The relevant question in light of plaintiff's complaint and the applicable analytical framework is whether Article X regulates conduct that was historically understood to be protected by the Second Amendment at the time of the Fourteenth Amendment's ratification, i.e., 1868. See *Ezell*, 651 F.3d at 702–703. While the Supreme Court in *Heller* indicated that certain "sensitive places," including schools, are categorically unprotected, we must consider whether a "university" was considered a "school" in 1868.[4] And it appears to have been so. That is, Webster's an American Dictionary of the English Language (1828) defines "university" as:

> An assemblage of colleges established in any place, with professors for instructing students in the sciences and other branches of learning, and where degrees are conferred. A university is properly a universal school, in which are taught all branches of learning, or the four faculties of theology, medicine, law and the sciences and arts. [Webster's Dictionary 1828 Online Edition, <http://websterdictionary1828.com/Dictionary/university [https://perma.cc/S29K-F88X].]

Likewise, the term "school" in 1828 was defined, in part, to include "universities":

> A place of education, or collection of pupils, of any kind; as the schools of the prophets. In modern usage, the word school comprehends every place of education, as university, college, academy, common or primary schools, dancing schools, riding schools, etc.; but ordinarily the word is applied to seminaries inferior to universities and colleges. [Webster's Dictionary 1828 Online Edition, <http://websterdictionary1828.com/Dictionary/school ***15** [https://perma.cc/L4U3-BUFC].]

[4] The Court of Claims did not consider the historical meaning of "university" and whether it was understood as a "sensitive place."

Given that at the historically relevant period, universities were understood to be schools and, further, that *Heller* recognized that schools were sensitive places to which Second Amendment protections did not extend, we conclude as a matter of law that Article X does not burden conduct protected by the Second Amendment. Therefore, no further analysis is required. Stated differently, Article X does not infringe on Second Amendment rights. No factual development could change this result. Because plaintiff has not made a cognizable Second Amendment claim, summary disposition under MCR 2.116(C)(8) was proper.

[8][9]Next, plaintiff argues that the Court of Claims erred by concluding that MCL 123.1102 did not preempt the University's ordinance that banned all firearms from University property. After reviewing this question of statutory interpretation de novo, we disagree. See ****446***Ter Beek v. City of Wyoming*, 495 Mich. 1, 8, 846 N.W.2d 531 (2014).

> Article 8, § 5 of the 1963 Constitution provides, in relevant part: The regents of the University of Michigan and their successors in

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> office shall constitute a body corporate known as the Regents of the University of Michigan[.]... [The Regents] shall have general supervision of its institution and the control and direction of all expenditures from the institution's funds.

The Board of Regents of the University of Michigan 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 ***16** 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 *Brooks*, 224 Mich. at 48, 194 N.W. 602 (recognizing that the University is a state agency within the executive branch of state government).

[10]Given the unique character of the University Board of Regents and its exclusive authority over the management and control of its institution, we generally first consider whether the conduct being regulated is within the exclusive power of the University or whether it is properly the province of the Legislature. As this Court held in *Branum v. Regents of Univ. of Mich.*, 5 Mich.App. 134,138–139, 145 N.W.2d 860 (1966):

> [T]he legislature can validly exercise its police power for the welfare of the people of this State, and a constitutional corporation such as the board of regents of the University of Michigan can lawfully be affected thereby. The University of Michigan is an independent branch of the government of the State of Michigan, but it is not an island.

Thus, for example, matters involving the University's management and control of its institution or property are properly within the Board of Regents' exclusive ***17** authority, and the Legislature may not interfere; the Legislature's promulgated laws must yield to the University's authority. See, e.g., *Federated Publications,Inc.*, 460 Mich. at 88, 594 N.W.2d 491 (holding that Michigan's Open Meetings Act, MCL 15.261 et seq., is inapplicable to the internal operations of the University in selecting a president because it infringes on the University's constitutional power to supervise the institution). Conversely, matters outside the confines of the University's exclusive authority to manage and control its property are the province of the Legislature, and the University may be affected thereby. See, e.g., *Regents of Univ. of Mich. v. Employment Relations Comm.*, 389 Mich. 96, 108–110, 204 N.W.2d 218 (1973) (holding that the Michigan public employment relations act, MCL 423.201 et seq., applies to the University and does not infringe on its constitutional autonomy so long as the scope of public-employee bargaining under the Act does not infringe on the University's autonomy in the educational sphere); ****447** see also *W.T. Andrew Co., Inc. v. Mid–State Surety Corp.*, 450 Mich. 655, 662, 668, 545 N.W.2d 351 (1996) (holding that the public works bond statute, MCL 129.201 et seq., applied to the University as a valid "exercise of the Legislature's police power to protect the interests of contractors and materialmen in the public sector" and promoted the state's general welfare).

Plaintiff contends that Article X has nothing to do with the management or control of university property or the promotion of the University's objectives, but instead "pick[s] away" at the constitutional rights of Michigan's citizens "as they walk down the street." Plaintiff cites no authority in support of this claim, and his complaint makes no allegation in this regard. That is, plaintiff did not claim that the University exceeded its constitutional authority in promulgating Article X. ***18** Instead, plaintiff's complaint makes a claim based on preemption pursuant to MCL 123.1102; thus, we turn to that matter.

Chapter 123 of the Michigan Complied Laws relates to local governmental affairs and "governs everything from the power of municipalities to operate a system of public recreation and playgrounds to their authority to establish and maintain garbage systems and waste plants." *Capital Area Dist. Library (CADL) v. Mich. Open Carry, Inc.*,

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298 Mich.App. 220, 230, 826 N.W.2d 736 (2012) (CADL). Beginning in 1990, Chapter 123 was amended to also govern the regulation of firearms. Specifically, MCL 123.1102 provides:

> A local unit of government shall not impose special taxation on, enact or enforce any ordinance or regulation pertaining to, or regulate in any other manner the ownership, registration, purchase, sale, transfer, transportation, or possession of pistols, other firearms, or pneumatic guns, ammunition for pistols or other firearms, or components of pistols or other firearms, except as otherwise provided by federal law or a law of this state.

MCL 123.1101(b) defines "local unit of government" as "a city, village, township, or county." When a statute defines a term, that definition controls. *Haynes v. Neshewat*, 477 Mich. 29, 35, 729 N.W.2d 488 (2007). Plainly, a "university," as that term is commonly understood, is not a city, village, township, or county. The Legislature's intent is clearly expressed and, thus, must be enforced as written. *Koontz v. Ameritech Servs., Inc.*, 466 Mich. 304, 312, 645 N.W.2d 34 (2002). Therefore, as the Court of Claims held, the statute is not applicable to the University and, thus, does not preempt Article X.

But, plaintiff argues, the Court of Claims erred by failing to follow caselaw holding that the Legislature ***19** fully occupied the field of firearms regulation under MCL 123.1102. For example, plaintiff notes, in *Mich. Coalition for Responsible Gun Owners v. City of Ferndale*, 256 Mich.App. 401, 403, 662 N.W.2d 864 (2003), this Court considered an ordinance of the city of Ferndale that prohibited "the possession or concealment of weapons in all buildings located in Ferndale that are owned or controlled by the city." This Court held that MCL 123.1102 "stripped local units of government of all authority to regulate firearms by ordinance or otherwise ... except as particularly provided in other provisions of the act and unless federal or state law provided otherwise." *Id.* at 413, 662 N.W.2d 864. But clearly that case involved an ordinance of the city of Ferndale that regulated firearms—a local governmental unit encompassed by the plain terms of MCL 123.1101(b); it did not involve an ordinance of a constitutional corporate body that is coequal with the Legislature and an agency of the state.

****448** The same analysis applies to plaintiff's reliance on *CADL*, 298 Mich.App. at 220, 826 N.W.2d 736. There, the Capital Area District Library (CADL) was jointly established by the city of Lansing and Ingham County, and its operating board enacted a weapons policy banning all weapons from the library premises. *Id.* at 224–225, 826 N.W.2d 736. This Court held that "field preemption bars CADL's regulation of firearms." *Id.* at 230, 826 N.W.2d 736. In doing so, this Court acknowledged that the library did not fit within the definition of "local unit of government." *Id.* at 231, 826 N.W.2d 736. However, because the CADL was a quasi-municipal corporation created by two local units of government, this Court concluded that the library is a lower-level governmental entity subject to the principles of preemption with regard to the regulation of firearms. *Id.* at 231–233, 241, 826 N.W.2d 736. Plaintiff argues that the definition of a ''local unit of government" should similarly be expanded to include ***20** the University. This argument ignores that the University was not created by two local units of government but finds its origins in the Constitution as a corporate body that is coequal with the Legislature and an agency of the State.[5]

[5] We note and reject our dissenting colleague's mischaracterization of the holding in *CADL* as "binding precedent" that we have "ignore[d]" in violation of MCR 7.215(J)(1). The district library at issue in that case was considered an "inferior level of government" and a "quasi-municipal corporation" which could only exercise powers " 'expressly conferred by the Legislature.' " See *CADL*, 298 Mich.App. at 231–233, 826 N.W.2d 736 (citations omitted). But, as discussed in our opinion, the University is not remotely similar to a district library created by two municipalities that specifically come within the ambit of MCL 123.1102. Moreover, contrary to the dissent's position, we do not consider the University's autonomy with regard to its regulation of dangerous weapons as tantamount to having the "authority to enact criminal laws." Rather, like numerous other regulations the University enacts pursuant to its constitutional mandate of "general supervision," the objective of Article X is to create a safe environment for its students in furtherance of its educational mission.

Further, in *Mich. Gun Owners, Inc. v. Ann Arbor Pub. Sch.*, 318 Mich.App. 338, 341–343, 897 N.W.2d 768 (2016), this Court recently rejected a similar claim that MCL 123.1102 applied to the Ann Arbor Public Schools

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and prevented their policies banning the possession of firearms on school property as set forth in *CADL*, 298 Mich.App. 220, 826 N.W.2d 736. This Court noted that MCL 123.1102 only applies to a "local unit of government," which is defined under MCL 123.1101(b) as "a city, village, township, or county." *Mich. Gun Owners, Inc.*, 318 Mich.App. at 348, 897 N.W.2d 768. And unlike the district library that was established by "two local units of government" in the *CADL* case, school districts, like the Ann Arbor Public Schools, "are not formed, organized, or operated by cities, villages, townships, or counties; school districts exist independently of those bodies." *Id.* Likewise, the University of Michigan is not formed, organized, or ***21** operated by a city, village, township, or county; the University exists independently of those bodies.

We conclude, again, that the Legislature clearly limited the reach of MCL 123.1102 to firearm regulations enacted by cities, villages, townships, and counties. MCL 123.1101(b). The University is not similarly situated to these entities; rather, it is a state-level, not a lower-level or inferior-level, governmental entity. More specifically, it is "a constitutional corporation of independent authority...." *Federated Publications, Inc.*, 460 Mich. at 84 n. 8, 594 N.W.2d 491 (quotation marks and citation omitted). Plaintiff has failed to cite to a single case holding that the Board of Regents ****449** of the University of Michigan is a "lower-level governmental entity" or an "inferior level of government" subject to state-law preemption. See *CADL*, 298 Mich.App. at 233, 826 N.W.2d 736. Therefore, contrary to plaintiff's argument on appeal, this case is not "an ideal target" for the preemption analysis set forth in *People v. Llewellyn*, 401 Mich. 314, 257 N.W.2d 902 (1977)—that test presupposes that a "lower-level governmental entity" has enacted or seeks to enact a regulation in an area of law that the Legislature has regulated. See *CADL*, 298 Mich.App. at 233, 826 N.W.2d 736. But even if the University Board of Regents was subject to state-law preemption, in *Mich. Gun Owners, Inc.*, 318 Mich.App. at 349–354, 897 N.W.2d 768, this Court considered the *Llewellyn* factors and rejected the claim "that MCL 123.1102 impliedly preempts any school-district-generated firearm policy because the statute fully occupies the regulatory field." While in that case the regulations were promulgated by a public school district and in this case the regulations were promulgated by the University Board of Regents, the analysis of the *Llewellyn* factors would be sufficiently similar to reach the same result—the Legislature did not intend to completely preempt the field of firearm regulation.

***22** In summary, MCL 123.1102 does not prohibit the University from regulating the possession of firearms on University property through the enactment of Article X; thus, Count II of plaintiff's complaint was properly dismissed for failure to state a cognizable claim for relief. Accordingly, the Court of Claims properly granted defendant's motion for summary disposition under MCR 2.116(C)(8) and dismissed plaintiff's entire complaint.

Affirmed. In light of the public question involved, defendant—although the prevailing party—may not tax costs. See MCR 7.219(A).

Servitto, J., concurred with Cavanagh, P.J.

Sawyer, J. (dissenting).

I respectfully dissent.

First, I do not believe it necessary to reach the constitutional question presented in this case because I believe it can be resolved on the preemption issue. Accordingly, I will focus solely on the preemption issue. Additionally, I wish to make clear that my opinion only relates to the specific question before the Court: the authority of defendant to regulate the possession of firearms by members of the general public who are legally carrying the firearm under the provisions of state law in areas of defendant's campus that are open to the general public. I leave for another case the questions of defendant's authority to regulate the possession of firearms by its students or employees, or in areas to which the general public is prohibited access.

I do not disagree with the majority that this case is not strictly controlled by the preemption provision in MCL 123.1102. That statute bans local units of government from enacting their own laws regulating firearms. ***23** But, as the majority points out, "local unit of government" is defined under MCL 123.1101(b) as "a city, village, township, or county." And, of course, defendant is none of those. But that does not end the analysis. Rather, in looking to this Court's decision in *Capital Area Dist. Library v. Mich. Open Carry, Inc. (CADL)*,[1] I conclude that both the trial court and the majority misapprehend the effect of field preemption in resolving this case.

[1] 298 Mich.App. 220, 826 N.W.2d 736 (2012).

****450** In *CADL*, this Court rejected the direct application of the preemption provisions of MCL 123.1102 because a

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district library was not contained within the definition of a "local unit of government" under MCL 123.1101(a).[2] The opinion then goes on to provide a detailed analysis of the applicability of field preemption and the application of the factors under *People v. Llewellyn*.[3] I need not extensively review the issue of field preemption here; the *CADL* opinion does an admirable job of doing just that. I need only refer to its ultimate conclusion: "the pervasiveness of the Legislature's regulation of firearms, and the need for exclusive, uniform state regulation of firearm possession as compared to a patchwork of inconsistent local regulations indicate that the Legislature has completely occupied the field that CADL seeks to enter."[4] I would only add that this conclusion is strengthened with respect to colleges and universities inasmuch as the Legislature, in the concealed-pistol-license statute, has addressed the issue of concealed firearms on college campuses. Specifically, MCL 28.425*o*(1)(h) prohibits, with some exceptions, individuals with a concealed ***24** pistol license from carrying a concealed pistol in a college or university dormitory or classroom. This fact further reflects the Legislature's intent to preempt this field of regulation, even with respect to colleges and universities.

[2] 298 Mich.App. at 231, 826 N.W.2d 736.

[3] 401 Mich. 314, 257 N.W.2d 902 (1977).

[4] *CADL*, 298 Mich.App. at 241, 826 N.W.2d 736.

The majority attempts to distinguish *CADL* on the basis that CADL relied on the fact that a district library is created by two local units of government, as defined in MCL 123.1101(b), and defendant here was not created by two local units of government. The majority relies on this Court's decision in *Mich. Gun Owners, Inc. v. Ann Arbor Pub. Sch.*,[5] to reject the field preemption argument. I respectfully submit that both the majority in this case and the Court in *Mich. Gun Owners* ignore the binding precedent of *CADL* and violate the requirements of MCR 7.215(J)(1). As discussed earlier, this Court in *CADL* concluded that the Legislature intended to completely occupy the field of the regulation of firearm possession and prevent a patchwork of local regulations in the state. The fact that CADL was established by two local units of government establishes that it was itself a governmental agency subject to preemption.[6] It does not, however, limit the application of the field-preemption doctrine to only those governmental entities created by two local units of government.

[5] 318 Mich.App. 338, 897 N.W.2d 768 (2016), lv app. pending.

[6] *CADL*, 298 Mich.App. at 231–232, 826 N.W.2d 736.

That is, once a court reaches the conclusion that field preemption applies, then field preemption applies to all units of government that attempt to invade the Legislature's regulation of that field. Indeed, the entire concept of field preemption is that it demands "exclusive state regulation to achieve the uniformity necessary ***25** to serve the state's purpose or interest."[7] It is patently absurd to conclude that the Legislature intended to preempt an entire field of regulation, yet it only applies to some, but not all, governmental entities. That is, if certain governmental entities are allowed to impose their own regulations, then the field is not actually ****451** preempted and the Legislature's interest in establishing uniformity is defeated.

[7] *Llewellyn*, 401 Mich. at 324, 257 N.W.2d 902.

Accordingly, I conclude that our decision in *CADL* compels the conclusion that the Legislature has preempted the regulation of the field of firearm possession and that that decision applies to all units of government in Michigan subject to being preempted by state law. Thus, the question that must be decided in this case is whether the University of Michigan, because of its special constitutional status, is subject to preemption at all.[8]

[8] I note that this is a different question than whether public schools are exempt from preemption. Therefore, even if we were to conclude that the University of Michigan is not subject to preemption, *Mich. Gun Owners* was nevertheless incorrectly decided because it failed to follow the binding precedent of *CADL*.

The special status of the three "constitutional universities"[9] has been considered by the courts many times, including in *Federated Publications, Inc. v. Mich. Univ. Bd. of Trustees*.[10] In *Federated Publications*, the Court considered whether the Open Meetings Act[11] applied to Michigan State University's (MSU) presidential search committee or whether, because of MSU's special constitutional status, it was exempt from

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the legislation. The Court concluded that only the formal ***26** trustees meeting at which the board ultimately voted on the selection of the president was subject to the Open Meetings Act.[12] The Court explained that while the Constitution grants a certain degree of autonomy to the universities, the universities are not exempt from all legislative enactments:

> This Court has long recognized that Const. 1963, art. 8, § 5 and the analogous provisions of our previous constitutions limit the Legislature's power. "The Legislature may not interfere with the management and control of" universities. [*Regents of Univ. of Mich. v. Michigan*, 395 Mich. 52, 65, 235 N.W.2d 1 (1975).] The constitution grants the governing boards authority over "the absolute management of the University, and the exclusive control of all funds received for its use." [*State Bd. of Agriculture v. Auditor General*, 226 Mich. 417, 424, 197 N.W. 160 (1924).] This Court has "jealously guarded" these powers from legislative interference. *Bd. of Control of Eastern Michigan Univ. v. Labor Mediation Bd.*, 384 Mich. 561, 565, 184 N.W.2d 921 (1971).
>
> This Court has not, however, held that universities are exempt from all regulation. In *Regents of the Univ. of Michigan v. Employment Relations Comm.*, 389 Mich. 96, 108, 204 N.W.2d 218 (1973), we quoted *Branum v. Bd. of Regents of the Univ. of Michigan*, 5 Mich.App. 134, 138–139, 145 N.W.2d 860 (1966):
>
> > It is the opinion of this Court that the legislature can validly exercise its police power for the welfare of the people of this State, and a constitutional corporation such as the board of regents of the University of Michigan can lawfully be affected thereby. The University of Michigan is an independent branch of the government of the State of Michigan, but it is not an island. Within the confines of the operation and the allocation of funds of the University, it is supreme. Without those confines, ***27** however, there is no reason to allow the regents to use their independence to ****452** thwart the clearly established public policy of the people of Michigan.
> >
> > Legislative regulation that clearly infringes on the university's educational or financial autonomy must, therefore, yield to the university's constitutional power.[13]

The Court then goes on to consider its earlier decision in the *Regents*[14] case. The *Regents* case considered whether the University was subject to the public employees relations act (PERA)[15] with respect to medical employees who formed a union. The *Federated Publications* opinion[16] offered the following observation of the *Regents* case:

> Thus, although a university is subject to the public employees relations act, MCL 423.201 *et seq.*; MSA 17.455(1) *et seq.*, the regulation cannot extend into the university's sphere of educational authority:
>
> > Because of the unique nature of the University of Michigan ... the scope of bargaining by [an association of interns, residents, and post-doctoral fellows] may be limited if the subject matter falls clearly within the educational sphere. Some conditions of employment may not be subject to collective bargaining because those particular facets of employment would interfere with the autonomy of the Regents. [*Regents*, 389 Mich. at 109, 204 N.W.2d 218.][17]

The *Regents* decision itself used the example that PERA would require the University to negotiate the salaries of the unionized employees, but the University would not be required to negotiate whether interns ***28** could be required to work in the pathology department if the University determined that spending time in the pathology department was necessary to the interns' education.[18] The former does not invade the University's educational autonomy, while the latter does.

9 University of Michigan, Michigan State University, and Wayne State University. See Const. 1963, art. 8, § 5.

10 460 Mich. 75, 594 N.W.2d 491 (1999).

11 MCL 15.261 *et seq.*

12 *Federated Publications*, 460 Mich. at 92, 594 N.W.2d 491.

13 *Federated Publications*, 460 Mich. at 86-87, 594 N.W.2d 491 (citation omitted).

14 389 Mich. 96, 204 N.W.2d 218.

15 MCL 423.201 *et seq.*

[16] *Federated Publications*, 460 Mich at 87-88, 594 N.W.2d 491.

[17] *Alterations by the Federated Publications* Court.

[18] *Regents*, 389 Mich. at 109, 204 N.W.2d 218.

Clearly, the decisions of our courts on this topic do not support a proposition that defendant has free rein to determine which enactments of the Legislature it chooses to follow and which it chooses to ignore. Nor do these decisions grant the University the authority to enact criminal laws. Turning to the issue at hand, I do not view applying preemption to the issue of firearm possession as invading either the University's educational or financial autonomy. That is, by recognizing the Legislature's decision to preempt the field of firearm possession and keep to itself the enactment of those regulations, there is no invasion of the University's autonomy. This is not, for example, a case of the Legislature mandating that all University students must take a course in firearm safety in order to be awarded a degree. Nor has the Legislature mandated that the University expend money on such training for students who wish it.

For these reasons, I would reverse the trial court and hold that defendant exceeded its authority by enacting the restrictions on the possession of firearms on its campus.

All Citations

320 Mich.App. 1, 905 N.W.2d 439, 350 Ed. Law Rep. 883

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EXHIBIT 8

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2009 WL 4110204
Only the Westlaw citation is currently available.
United States District Court,
S.D. Georgia,
Statesboro Division.

Benjamin BLOEDORN, Plaintiff,
v.
Dr. Bruce GRUBE, Dr. Teresa Thompson, Susan Nelson, Kenneth Brown, Corporal George Hemm, Defendants.

No. 609CV055.
|
Nov. 24, 2009.

West KeySummary

1 **Civil Rights**🔑Education
Constitutional Law🔑Outside persons or organizations
Education🔑Regulation of campus; conduct of visitors

A preacher was not entitled to an injunction against a state university to prevent the university from applying its speech policy to him and his religious message. The university was a limited public form and its policy which required uninvited non-campus speakers to apply for a permit furthered the university's goal of maintaining a safe and efficient educational environment for its students. The time, place, and manner of the speech restrictions was content-neutral, narrowly-tailored to serve a significant government interest, and left open ample alternative channels of communication. U.S.C.A. Const.Amend. 1; 42 U.S.C.A. § 1983.

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ORDER

B. AVANT EDENFIELD, District Judge.

I. *Introduction*

***1** Plaintiff Benjamin Bloedorn filed this 42 U.S.C §§ 1983 and 1988 complaint based on his claim that the Defendants, employees of Georgia Southern University (hereinafter, "the University"), applied a University speech policy, which allegedly deprived him of his right to free speech and due process, and his right to be free from unreasonable seizure. Ostensibly, Bloedorn, a traveling evangelist, was denied the opportunity to preach freely on the campus without having to first apply for and be granted permission under the University's speech policy. He also contests certain provisions within the University's permitting scheme, as well as particular restrictions placed by the University on the time, place, and manner of a permitted speaker's speech. Presently before the Court is Bloedorn's motion for preliminary injunction.

II. *Background*

Georgia Southern University, located in Statesboro, Georgia, is a state-funded public university and a member of the University System of Georgia. Doc.1 at 4; 19 at 2. Several city streets and their adjoining sidewalks extend through and/or alongside the campus. Doc. # 3–6 at 3. There are no fences or other barricades separating the campus from the city of Statesboro, and members of the public may access the campus to walk on its sidewalks and grassy areas or to visit various on-campus facilities that are open to the public, such as a botanical garden, a

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museum, and a performing arts center. Doc. # 1 at 5.

The University adheres to a speech policy that distinguishes between speakers who are members of the university community or are invited by members of the university community, and "outside" speakers who are not invited by a campus organization. Doc. # 3–5 at 1–2 (University policy regarding "Speakers"). According to the pertinent terms of the speech policy:

> It is the policy of Georgia Southern to permit the use of facilities by the general community in a manner which does not compete with the ongoing programs of the University. Speakers who are not sponsored by a campus organization may request permission to initiate a gathering on campus .....
>
> If a non-campus speaker is approved, the University reserves the right to assign space and designate time frequency and length of the proposed activity. A typical length of time for a speaker is one and a half hours. Frequency should be no more than once a month under normal circumstances.... (Members of the same group or organization dealing with the same general topic will be considered one speaker for the purpose of scheduling stipulation.)

Id. The speech policy then outlines the following "General Policies":

> A hearing may be called if it is determined that a speaker or speech will constitute or create a substantial likelihood of material interference with the normal orderly decisions and processes of the University or with the requirements of appropriate discipline. A hearing committee composed of two faculty members appointed by the President, two students appointed by Student Government, and the Vice President of Student Affairs will convene to review the speakers [sic] application. If a request is denied, the organization or the speaker may appeal to the President of the University, whose decision will be final. A hearing will be called if a speaker or speech advocates a call to action for any of the following:
>
> ***2** [1] [t]he overthrow of any government; [2] the willful damage or destruction of property; [3][t]he disruption of the University's regularly scheduled functions; [4][t]he physical harm, coercion, or intimidation of the University's faculty, staff or students; [5][o]ther campus disorder of a violent nature.
>
> A speaker will be stopped and escorted off campus by the University Police, if evidence of a call to action to accomplish any of the above becomes manifest during a speech.
>
> Failure to comply with any of these specified procedures will result in immediate removal from campus.

Id. at 2.

The "request form" seeks the following information from applicants: "name of requester," "organization represented (if applicable)," "permanent mailing address," "telephone no.(s)," "format of requested activity (meeting, speech, rally, etc.)," "preferred date(s), hour(s), and duration of requested activity," "primary topic of presentation or purpose of requested activity," "equipment, literature, and sound enhancement devices to be used during requested event," "proof of liability insurance (if applicable)," and a signature affirming that the applicant has read and agrees to abide by the University's policy governing use of campus facilities. Doc. # 3–4 ("Application for Use of Georgia Southern University Facilities").

Plaintiff Benjamin Bloedorn is a traveling Christian evangelist who frequently seeks out busy areas on college campuses in order to preach his Christian message to students and other passersby. Doc. # 1 at 3. Bloedorn has preached on over one-hundred different college campuses all over the country. *Id.* Bloedorn states that during his campus visits, he does not attempt to solicit funds or membership in any organization. *Id.* When he visits a campus, Bloedorn usually preaches for four to six hours "to generate interest in his topic." *Id.* at 4. He frequently returns to campus the next day for "follow-up," and often visits a campus two to three days in a row. *Id.*

On March 28, 2008, Bloedorn, joined by several companions, visited the University's campus in order to preach his message. Doc. # 3–2 at 2 (Bloedorn affidavit). This was Bloedorn's first time visiting the University campus. *Id.* He positioned himself "in the grassy knoll beside the Russell Union Student Center pedestrian mall and rotunda, while some of [his] colleagues stood in the pedestrian mall itself." *Id.* at 3. According to Bloedorn, the Russell Center is "a focal point of student activity," and the surrounding areas "are excellent locations for [his] message." *Id.* at 3–4. He began speaking to some of the students in the area. *Id.* at 4. Shortly thereafter, an unidentified university official approached Bloedorn and indicated to him that he must submit a form to the University requesting permission to speak. *Id* . The official provided Bloedorn with a copy of the request form. *Id.* Bloedorn, however, "was not willing to go through the permit process" because he considered it "an affront to [his] religious beliefs" and because it "goes

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against [his] understanding of constitutional freedoms." *Id.* He also "was troubled and intimidated by the request for personal information and the topic of [his] speech." *Id.* After Bloedorn resumed preaching, he was approached by a campus police officer, who reiterated that Bloedorn could not speak on campus without a permit. *Id.* Bloedorn continued preaching despite the officer's warning that he needed to either request a permit or leave campus, or he would be arrested for trespass. *Id.* The University official then returned to the scene, and requested for a second time that Bloedorn complete and submit a request form. *Id.* at 5. According to Bloedorn, the official stated that the area where Bloedorn was preaching was the "free speech area," but that Bloedorn nonetheless needed authorization to speak there. *Id.* Bloedorn again refused to comply and instead continued preaching, whereupon he was arrested by the campus police officer. *Id.* The trespass charge against him was eventually dropped. *Id.*

***3** As a result, Bloedorn filed the instant lawsuit. Doc. # 1. He states that "[e]ver since the arrest, [he has] wanted to got [sic] back to [the University] campus and speak with students," but that he has "refrained because [he does] not want to get arrested again." Doc. # 3–2 at 5. In particular, he contests the fact that, under the University's speech policy, (1) he is required to get permission to speak on campus, (2) permission is not automatically granted because the University reserves the right to reject any request without any objective guidelines being supplied in the policy, (3) he is required to disclose his name and contact information when applying for permission, (4) the University can designate the location and time of the speech, and (5) the University can limit the length of time and frequency of the speech, even when there is no conflict with any other speech. Doc. # 1 at 9–11. He requests that the Court grant him the following relief: (1) declare the University's speech policy unconstitutional (both on its face and as applied to his expression), (2) enter a preliminary and permanent injunction enjoining the University from applying the speech policy, (3) award him actual and/or nominal damages, and (4) award him attorney's fees and costs. *Id.* at 12.

Presently before the Court is Bloedorn's motion for preliminary injunction, doc. # 3, to which Defendants have filed a response, doc. # 19.

III. ***Analysis***

A. Preliminary Injunction

Bloedorn moves the Court to direct Defendants to stop applying the University speech policy to him and his religious message. Doc. # 3 at 1. Under the University's speech policy, an uninvited non-campus speaker must apply for and be granted a permit before he may present his speech anywhere on the campus. Doc. # 3–5 at 1. Before the University may deny an applicant a permit, a hearing must be held. *Id.* at 2. The policy lists the grounds upon which a hearing may or must be held. *Id.* Once the University grants a speaker permission to speak on campus, the University may limit or assign the speaker a specific time and location, and may limit the frequency and duration of his speech. The University stated in its response to the preliminary injunction motion that "[p]ersons or groups not affiliated with the university are only assigned to the Free Speech area." Doc. # 19 at 5.

In his motion for preliminary injunction, Bloedorn claims that he "wished to speak in any open accessible areas located on the campus ... where students could be found...." Doc. # 3–6 at 4–5. He only claims, however, to have actually attempted to speak at "the grassy knoll area beside the Russell Union Student Center pedestrian mall and rotunda." *Id.* at 5.

"The First Amendment provides that 'Congress shall make no law ... abridging the freedom of speech....' U.S. Const. amend. I. This prohibition on laws abridging the freedom of speech has been incorporated into the Fourteenth Amendment so that it also applies to state governments." *Weaver v. Bonner*, 309 F.3d 1312, 1318 (11th Cir.2002). The freedom is not absolute; some regulation has always been accepted (e.g., one cannot falsely shout "fire!" in a crowded theater, nor incite riots). When government regulation goes too far, however, the aggrieved speaker may ask a court to enjoin a regulator. To be entitled to a preliminary injunction,

> ***4** plaintiffs must demonstrate that (1) they have a substantial likelihood of success on the merits, (2) they will suffer irreparable injury unless the injunction issues, (3) the threatened injury to them outweighs the damage that the injunction would have on the opposing parties, and (4) if issued, the injunction would not disserve the public interest.

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This That and the Other Gift & Tobacco, Inc. v. Cobb County, 285 F.3d 1319, 1321–22 (11th Cir.2002).

1. Likelihood of Success on the Merits

When a First Amendment claim is asserted, the Court must first determine whether the plaintiff has engaged in "protected speech." *Cornelius v. NAACP Legal Def. & Educ. Fund, Inc.*, 473 U.S. 788, 797, 105 S.Ct. 3439, 87 L.Ed.2d 567 (1985). If so, the Court "must identify the nature of the forum [at issue for the speech], because the extent to which the Government may limit access depends on whether the forum is public or nonpublic." *Id.* After identifying the type of forum, the Court "must assess whether the justifications for exclusion from the relevant forum satisfy the requisite standard." *Id.*

(a) Whether the Speech is Protected

Neither party disputes the fact that religious speech of the type in which Bloedorn wishes to engage is protected speech under the First Amendment.

(b) Forum Classification

"State colleges and universities are not enclaves immune from the sweep of the First Amendment." *Healy v. James*, 408 U.S. 169, 180, 92 S.Ct. 2338, 33 L.Ed.2d 266 (1972). Nonetheless, "the First Amendment does not guarantee access to property simply because it is owned or controlled by the government." *Perry Educ. Ass'n. v. Perry Local Educators' Ass'n*, 460 U.S. 37, 46, 103 S.Ct. 948, 74 L.Ed.2d 794 (1983) (internal quotations omitted). "[T]he State, no less than a private owner of property, has power to preserve the property under its control for the use to which it is lawfully dedicated," and "[t]he existence of a right of access to public property and the standard by which limitations upon such a right must be evaluated differ depending on the character of the property at issue." *Id.* at 44, 46.

The Supreme Court has defined several kinds of government-owned property for First Amendment purposes: the traditional public forum, the designated public forum, and the nonpublic forum. *Id.* at 45–46. The Eleventh Circuit has elaborated,

> Traditional public fora generally include public streets and parks. Designated public fora are created when the government opens property to the public for expressive activity and are subject to the same standards as traditional public fora. In traditional or designated public fora, the state may "enforce regulations of the time, place, and manner of expression which are content-neutral, are narrowly tailored to serve a significant government interest, and leave open ample alternative channels for communication." *Perry*, 460 U.S. at 45–46; *Sentinel Communications Co. v. Watts*, 936 F.2d 1189, 1201, 1202 (11th Cir.1991). A nonpublic forum is "[p]ublic property which is not by tradition or designation a forum for public communication," and limits on access to such a forum must meet only a reasonableness standard. *Perry*, 460 U.S. at 46.

***5** *Crowder v. Housing Auth. of Atlanta*, 990 F.2d 586, 590–91 (11th Cir.1993).

One subset within the "designated public forum" category is the "*limited* public forum." *Id.* at 591 (citing *Perry*, 460 U.S. at 46). "A limited public forum is a forum for certain groups of speakers or for the discussion of certain subjects." *Id.* at 591. A state's reservation of a public forum to certain groups will be upheld if the restriction is content-neutral and reasonable in light of the purpose of the forum. *Good News Club v. Milford Cent. Sch.*, 533 U.S. 98, 106–07, 121 S.Ct. 2093, 150 L.Ed.2d 151 (2001).

Bloedorn seeks access to a variety of open, outdoor areas of the University campus. In particular, he urges that the sidewalks adjacent to public streets that run alongside and through the campus, as well as the pedestrian mall and rotunda outside of the Russell Student Center are traditional public fora. According to Bloedorn, the campus sidewalks at issue should be so classified because they resemble city sidewalks, which enjoy a "presumptive" traditional public forum status. Doc. # 3–6 at 10–11. As for the pedestrian mall and rotunda outside of the Russell Student Center, Bloedorn urges that these areas are compatible with expression and they "share the same physical objective characteristics with parks off campus," which, like sidewalks, "generally are considered, *without more*, to be public forums." *Id.* at 11–12 (quoting and adding emphasis to *U.S. v. Grace*, 461 U.S. 171, 177, 103 S.Ct. 1702, 75 L.Ed.2d 736 (1983)). Finally, Bloedorn avers that the grassy knoll area outside of the Russell Student Center is "at least a designated public forum," since the University has designated it a "free speech area." He claims he falls into the class of speakers for which the free speech area has been designated, and that the Court, in scrutinizing the

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restrictions at issue here, should therefore consider the area as equivalent to a traditional public forum.

The University, on the other hand, argues that the campus areas at issue are all limited public fora, since "[t]he University has not adopted a policy generally opening its outdoor areas for public speech," and "[t]he public has not been, by tradition or policy, permitted to come to the University campus and engage in public discourse without restriction or limitation," and since the limited facilities that the University has opened to non-speakers may be used only "in a manner which does not compete with the ongoing programs of the University." Doc. # 19 at 12, 16. Notably, in its response to the motion for preliminary injunction, the University states that outsiders given approval to speak on campus are only assigned to the "free speech area." Doc. # 19 at 5.

Despite Bloedorn's desire to have the Court undertake a piecemeal forum categorization of each of the campus areas he has referenced, the Court finds it more appropriate to address and categorize the campus as a whole, since outsiders must utilize and abide by the at-issue speech policy in order to access *any* part of the campus for purposes of public speech. *See* doc. # 3–5 at 1 (The speech policy states, "Speakers who are not sponsored by a campus organization may request permission to initiate a gathering on campus....[T]he University reserves the right to assign space ... [for] the proposed activity."); *see also Gilles v. Torgersen*, 71 F.3d 497, 501 (4th Cir.1995) (explaining that the campus' sponsorship requirement for outside speakers "addresses the question of campus access generally; it is not framed as a condition on access to the drillfield alone (or any other specific facility)," and that being granted sponsorship by the University therefore merely granted plaintiff "threshold access to the campus," with any specific location designations or restrictions being applied thereafter).

***6** Clearly neither the campus, nor any particular part of it, qualifies as a traditional public forum. Bloedorn focuses most of his arguments on the physical characteristics of the areas, and how they resemble parks and sidewalks that—when positioned within cities—are usually considered traditional public fora. Unfortunately for Bloedorn, however, "the Supreme Court has held that '[t]he mere physical characteristics of the property cannot dictate forum analysis.' " *Sentinel Commc'ns Co. v. Watts*, 936 F.2d 1189, 1204 (11th Cir.1991) (quoting *U.S. v. Kokinda*, 497 U.S. 720, 727, 110 S.Ct. 3115, 111 L.Ed.2d 571 (1990)). The Supreme Court has also noted that college campuses "differ[ ] in significant respects from public forums such as streets or parks or even municipal theaters." *Widmar v. Vincent*, 454 U.S. 263, 267 n. 5, 102 S.Ct. 269, 70 L.Ed.2d 440 (1981). In *Widmar*, the Supreme Court explained,

> [a] university's mission is education, and decisions of this Court have never denied a university's authority to impose reasonable regulations compatible with that mission upon the use of its campus and facilities. We have not held, for example, that a campus must make all of its facilities equally available to students and non-students alike, or that a university must grant free access to all of its grounds or buildings.

Id. Moreover, Bloedorn has not presented any evidence showing that the University "intend[ed] to open the forum to the same panoply of activity permitted" in city sidewalks and parks. *Sentinel Commc'ns Co.*, 936 F.2d at 1204. Nor has he shown that the University has since dedicated—or even enabled the use of—any portion of its campus as a traditional public forum.

Based on all these considerations, the Court finds that the University campus in general is a limited public forum, since access to outsiders is restricted. That is, only speakers who are members of the University community (or their invitees) appear to have automatic access to any of the campus' sub-fora (i.e., they can generally utilize the campus' public fora without a permit). Outsiders, on the other hand, must get a permit to speak publicly *anywhere* on the campus.

The Court, having deemed the campus a limited public forum, must now determine the proper standard under which to analyze the at-issue provisions of the University's speech policy.

(c) Standards for Regulating the Forum

"[T]he government may restrict access to limited public fora by content-neutral conditions for the time, place, and manner of access, all of which must be narrowly tailored to serve a significant government interest," and it must "leave open ample alternative channels of

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communication." *Crowder*, 990 F.2d at 591 (citing *Perry*, 460 U.S. at 45–46). "In addition to time, place, and manner regulations, the [government] may reserve the forum for its intended purposes, communicative or otherwise, as long as the regulation on speech is reasonable and not an effort to suppress expression merely because public officials oppose the speaker's view." *Perry*, 460 U.S. at 46. To put it another way, "[t]he restriction must not discriminate against speech on the basis of viewpoint, ... and the restriction must be 'reasonable in light of the purpose served by the forum.' " *Good News Club*, 533 U.S. at 106–07 (citing *Rosenberger v. Rector and Visitors of Univ. of Va.*, 515 U.S. 819, 829, 115 S.Ct. 2510, 132 L.Ed.2d 700 (1995) and *Cornelius*, 473 U.S. at 806).

***7** To clarify (because the parties vehemently argued for the application of conflicting standards here),[1] in defining the boundaries of the limited public forum here, the University is limited only by reasonableness and viewpoint neutrality requirements. Here, "reasonableness" requires that the limitation on the class of speakers be reasonable in light of the University's purpose or mission, which is education. However, after establishing reasonable and viewpoint-neutral limitations as to the *types of speakers* allowed to use the forum (here, members of the University community, their invitees, and—the category at issue here—outsiders granted permission after submitting a request form), the University may then impose restrictions on the time, place, and manner of those speakers' use of the forum, so long as those time, place, and manner restrictions are content-neutral, and narrowly tailored to serve a significant government interest, and as long as they leave open ample alternative channels of communication.

[1] *Compare* doc. # 19 at 16 (The University states that, "[because] the University has retained the campus as a limited public forum ... it may enact viewpoint neutral restrictions that are reasonable in light of its educational mission."), *with* doc. # 25 at 4 (Bloedorn urges that "[b]oth this Court and the Eleventh Circuit have recognized that regulations in a limited public forum are subject to the same scrutiny as that applied in a traditional public forum.").

The Court will thus proceed to apply the standards to the relevant provisions at issue.

(d) Permit Requirement

Because the requirement that uninvited outsiders apply for and receive a permit in order to speak on campus is a restriction limiting the class of speakers granted access to the forum, it is subject only to the requirement that it must be viewpoint-neutral and reasonable in light of the purpose served by the forum.

First, the requirement is clearly viewpoint-neutral. In order to speak on campus, *any* outside speaker who is not sponsored by a University group must apply for and receive a permit. Nothing in the University's speech policy limits or excludes speakers from being eligible for a permit based on their particular viewpoint.[2] And Bloedorn has not presented any evidence tending to show that the University applies some unwritten policy against granting permits to speakers with particular viewpoints. Next, the limitation that unsponsored outsiders may only speak on campus if they have submitted a request form and been given permission is especially reasonable in light of the University's educational mission. Having such persons submit request forms serves to alert University administrators that an outside speaker (or a group of speakers) intends to set up on campus at a particular time.[3] This enables the administrator to gather contact and other information for an otherwise unidentifiable individual or group, in order to make any necessary preparations to the area of campus that the speaker will use, to arrange security officials to ensure the safety of the speakers and any bystanders, and to coordinate multiple uses of the area in the event that more than one speaker or group of speakers intends to visit the campus on a particular day. Maintaining safety, efficiency, and order on campus are crucial to the furtherance of the University's mission of providing a proper educational environment. Therefore, the University's requirement that an outside speaker notify the University of his desire to set up on campus and that a University administrator sign off on this request is reasonable in light of the University's mission.

[2] In fact, the permitting scheme is virtually *content*-neutral, save for some limitations on speech that advocates violence, destruction, or the overthrow of government. *See* doc. # 3–5 at 2.

[3] Notably, members of the University community must complete and submit the same exact request form in order to reserve facilities on campus. Doc. # 19 at 5. This further evidences that the University uses the form not to review and restrain certain types of speech (or outsider speech in general), but that the form is used for practical purposes, primarily facilitating the use of

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campus resources by multiple speakers or groups.

***8** Bloedorn has additionally challenged the fact that the University retains the right to reject any outside speaker's request to speak on campus, a discretionary decision which he claims is unguided by any meaningful standards. Doc. # 3–6 at 15–16. Contrary to Bloedorn's assertions, however, the permitting scheme is not administered in an improper way that restrains speech. First, University officials are not given overly broad discretion in granting or denying permission. Under the terms of the policy, permission is never denied outright; before permission can be denied, a hearing is called to determine whether the particular speech should be permitted on campus despite some particular concern. Doc. # 3–5 at 2. The speech policy lists specific grounds upon which a hearing *may* be called (if the administration determines that the speech "will constitute or create a substantial likelihood of material interference with the normal orderly decisions and processes of the University"), and also grounds upon which a hearing *must* be called (for instance, if the speaker advocates the overthrow of any government, or campus disorder of a violent nature). *Id.* These grounds pass constitutional muster, as they are "reasonably specific and objective, and do not leave the decision [of whether to grant or deny a permit] to the 'whim of the administrator,' " *Thomas v. Chicago Park Dist.*, 534 U.S. 316, 324, 122 S.Ct. 775, 151 L.Ed.2d 783 (2002) (quoting *Forsyth County v. Nationalist Movement*, 505 U.S. 123, 133, 112 S.Ct. 2395, 120 L.Ed.2d 101 (1992)), and since they are " 'narrowly drawn, reasonable and definite standards' to guide the [administrator's] determination." *Id.* Moreover, if a speaker is denied access by the hearing committee, he may appeal to the President of the University. Doc. # 3–5 at 2. Thus, the policy provides for meaningful review of an initial permit refusal. For the foregoing reasons, the discretion granted to the University in administering the permitting scheme does not render it unconstitutional.

Finally, Bloedorn urges that, in order to apply for a permit, he is improperly required to divulge his name, contact information, and the primary topic or purpose of his intended activity on campus in the request form. The Court likewise assesses this requirement under the "reasonable and viewpoint-neutral" standard, as it is part of the scheme by which the University limits the class of speakers who may access the campus. This requirement, however, is—like the permit requirement itself—both viewpoint-neutral and reasonable. As noted above, the University has an interest in maintaining campus safety in order to support its educational mission. Providing such contact information holds a speaker accountable in the event that any injuries or property damage occur while the speech is taking place. Moreover, it serves an important administrative purpose, as it allows the University to contact the speaker or the speaker's group to make initial arrangements for the speaker's speech, or to contact the speaker in the event that alterations must be made to the initial arrangements (for instance, if the particular area of campus to which the speaker was assigned has been double-booked). Finally, it allows the administration to properly assess the level of security that may be necessary. For instance, less security would likely be deemed necessary for a speaker who will be speaking or leafleting on a rather innocuous topic such as debt relief, than if the speaker were planning to speak on a traditionally more inflammatory topic such as abortion or homosexuality. As a result, it is reasonable for the University to seek such information, as it furthers the goal of maintaining a safe and efficient educational environment for its students.

***9** For the forgoing reasons, the Court finds that the permit requirement and the challenged policies within it are reasonable in light of the University's educational mission.[4]

[4] The Court further notes that the requirement that an outside speaker seek and be given a permit seems far less onerous than other frequently-challenged (and frequently-upheld) restraints on speech at other campuses. For instance, in *Gilles v. Hodge*, the Southern District of Ohio upheld a Miami University policy requiring that an outside speaker be *sponsored* by a student organization in order to speak anywhere on campus. 2007 WL 1202706, at *8. The Court there commented that the sponsorship requirement furthers Miami University's educational mission "because speech is thereby limited to matters in which at least one group of students is interested." *Id.* In contrast, the Georgia Southern University policy at issue here generally allows any outside speaker to speak on campus, regardless of whether any students or student groups have previously expressed interest in the topic, so long as the speaker's message does not fall into one of the limited categories requiring a hearing.

(e) Time, Place, and Manner Restrictions

As previously explained, the time, place, and manner

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restrictions that the University places on its permitted classes of speakers must be content-neutral, narrowly-tailored to serve a significant government interest, and must leave open ample alternative channels of communication.

Bloedorn challenges the University's reservation of the right to designate the location and time of a permitted outside-speaker's speech, even where there is not a conflict with another speaker in the desired space at the requested time period. Relatedly, Bloedorn also challenges the University's limits on the length of time and frequency of a permitted outside-speaker's speech,[5] even where the speaker's speech does not conflict with the use of campus resources by other speakers.

[5] In its speech policy, the University states that "[a] typical length of time for a speaker is one and a half hours [and] [f]requency should be no more than once a month under normal circumstances." Doc. # 3–5 at 1.

First, the University's reservation of such control over the time, place, and manner of an outsider's speech is content-neutral, as nothing in the speech policy itself (nor any evidence presented by Bloedorn) indicates that the University applies these requirements differently (or not at all) depending on the content of the speaker's message.[6]

[6] Although the University stated that outside speakers were only assigned to speak in the "free speech area," and although Bloedorn listed several specific areas of campus where he desired to speak, the Court declines to address the propriety of this specific unwritten policy, as it is not currently at issue since Bloedorn did not submit a request form at all, much less did he submit a form requesting to speak in any particular area (and, in fact, he only actually attempted to speak in the "free speech area").

The Court thus must next assess whether these restrictions are narrowly tailored to serve a significant government interest and whether they preserve ample alternative channels of communication. The issue of alternative channels of communication has not been a focus by the parties here, likely since they exist in abundance in the form of city streets and sidewalks that run through and around the campus. (In fact, Bloedorn himself has described some of the University sidewalks and the city sidewalks as "indistinguishable" from one another. Doc. # 3–6 at 2.). Likewise, the issue of significant government interests is not subject to much debate here. The primary interest identified by the University is protecting the University's ability to engage in its mission of providing education. Doc. # 19 at 16. The Supreme Court has long recognized that a university's mission is education and that universities therefore have a right to regulate and restrict the use of their facilities in furtherance of that mission. *See Widmar,* 454 U.S. at 267 n. 5 (1981) ("A university's mission is education, and a decision of this Court has never denied a university's authority to impose reasonable regulations compatible with that mission upon the use of its campus and facilities."). The University has identified several ways in which its regulations on the time, place, and manner of permitted outsiders' speech furthers its significant educational purpose: preventing persons not affiliated with the University from monopolizing the space for days at a time; allowing the University to schedule adequate security personnel to ensure the safety of speakers and students; and allowing students to encounter the views of others while minimizing disruptions of the educational setting, and allowing for the coordination of use of University property. Doc. # 19 at 19–20.

***10** Thus, the question that remains is whether the ordinance is narrowly tailored. Notably, in order to be narrowly tailored, a regulation need not be the least restrictive means of regulation; it must simply further the government interest in a way that would be achieved less effectively without the regulation. *See Ward v. Rock Against Racism,* 491 U.S. 781, 798–99, 109 S.Ct. 2746, 105 L.Ed.2d 661 (1989). The Court finds that the restrictions at issue are sufficiently narrowly tailored to serve the University's significant interest in furthering its educational purpose. As the learned Judge Posner explained in *Gilles v. Blanchard,* if a university cannot place certain areas of its campus "completely off limits to uninvited outsiders ... without violating the Constitution, public universities cannot control their property.... Letting [outsiders] into the middle of campus would disrupt the campus atmosphere." 477 F.3d 466, 471 (7th Cir.2007). For the same reasons, the University must be able to limit the time of day, length of time, and frequency of an outsider's speech on its campus. To be sure, the restrictions may mean that, from time to time, an outside speaker will not be permitted to speak at his time or place of choice, or for his desired length of time or with his desired level of frequency. It is only logical, however, that the University has the final word in the time, place, and manner of speech on its property. In the absence of any evidence that the University abuses this authority and applies this policy in a way that stifles speech, the Court finds that these restrictions satisfy the applicable constitutional standards.

The Court, having found that Bloedorn is not likely to succeed on the merits of his claim, need not proceed with an examination of the remaining factors for a preliminary injunction. *See Church v. City of Huntsville,* 30 F.3d 1332, 1341–45 (11th Cir.1994) (explaining that a movant will not be granted a preliminary injunction unless he "clearly carries the burden of persuasion as to the *four* prerequisites," and overturning the district court's grant of a preliminary injunction simply because the movant had not met the first prerequisite by showing a likelihood of success on the merits) (emphasis added).

As a result, Bloedorn's request for a preliminary injunction is ***DENIED.*** Doc. # 3.

This day of 23 November 2009.

All Citations

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EXHIBIT 9

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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

Adopted January 1995
Revised April 2001
Maintained by the Office of the Vice President and Secretary of the University of Michigan

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An Ordinance to Regulate Parking and Traffic and to Regulate the Use and Protection of the Buidlings and Property of the Regents of the University of Michigan

WHEREAS, Article VIII, Section 5 of the Michigan Constitution of 1963 provides that The Regents of The University of Michigan and their successors in office shall constitute a body corporate and vests therein the general supervision of said University; and

WHEREAS, Section 5 of Public Act 151 of 1851, as amended (Michigan Compiled Laws Annotated, Section 390.5), provides that the said Regents shall have power to enact ordinances, by-laws, and regulations for the government of said University; and

WHEREAS, Section 3 of Public Act 151 of 1851, as amended (Michigan Compiled Laws Annotated, Section 390.3), provides that the government of the University is vested in said Regents; and

WHEREAS, Section 1 of Public Act 80 of 1905, as amended (Michigan Compiled Laws Annotated, Section 19.141), provides that the said Regents shall have authority to make and prescribe rules and regulations for the care, preservation, and protection of buildings and property dedicated and appropriated to the public use, over which the said Regents have jurisdiction or power of control and the conduct of those coming upon the property thereof, which may be necessary for the maintenance of good order and the protection of said state property, and further provides that the said Regents shall have authority to enforce such rules and regulations; and

WHEREAS, Section 1 of Public Act 291 of 1967 (Michigan Compiled Laws Annotated, Section 390.891), authorizes said Regents to enact parking, traffic, and pedestrian ordinances for the government and control
of its campuses, and to provide fines for violations of such ordinances; and Section 3 of that Act permits said Regents to establish a Parking Violations Bureau as an exclusive agency to accept admissions of responsibility in cases of civil infraction violations of any parking
ordinance and to collect and retain fines and costs as prescribed in the ordinance for such violations; and

WHEREAS, pursuant to the above-designated authority, and in
discharge of the responsibility imposed thereby, The Regents of The University of Michigan deem it necessary to adopt an ordinance and rules and regulations for the care, preservation, protection, and government of University property; for the conduct of persons coming upon said property; for the regulation of the driving and parking of motor vehicles, vehicles and bicycles upon said property; for the removal and impoundment of motor vehicles, vehicles and bicycles abandoned thereon; for the maintenance of good order; and for the promotion of public health, safety, and general welfare in and upon said property;

NOW, THEREFORE, THE REGENTS OF THE UNIVERSITY OF MICHIGAN HEREBY ORDAIN AS FOLLOWS:

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must be promptly exhibited to a requesting University representative. The appropriate Dean, Director, Department Head or Building Director may either uniformly prohibit such sales and solicitations or uniformly regulate the time, place and manner of such in order to provide for the maintenance of good order and the protection of University property.

Section 2. University Grounds

Except as otherwise provided in the Bylaws of the Board of Regents, sales and solicitations of sales of items and solicitations of contributions on University grounds may take place only with the prior written permission of the Executive Vice President and Chief Financial Officer or the Executive Vice President's written designee, which written permission must be promptly exhibited to a requesting University representative. The Executive Vice President and Chief Financial Officer or the Executive Vice President's written designee may either uniformly prohibit such sales and solicitations or uniformly regulate the time, place and manner of such in order to provide for the maintenance of good order and the protection of University property.

Section 3. Violation Penalty

A violation of this Article IX shall constitute a civil infraction and shall be punishable by a fine of not more than fifty dollars ($50.00).

Article X: Weapons

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 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.

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Section 4. Exceptions

(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 pursuant to Standard Practice Guide 201.94;

(b) to non-University law enforcement officers of legally established law enforcement agencies or to other non-University employees who, in either situation, are authorized by their employer to possess or use such a device during the time the employee is engaged In work requiring such a device;

(c) when someone possess or uses such a device as part of a military or similar uniform or costume In connection with a public ceremony or parade or theatrical performance;

(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 or uses such a device for recreational hunting on property which has been designated for such activity by the University provided such possession and use is in strict compliance with applicable law; 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.

Article XI: University of Michigan Identification Cards and Parking Permits

Section 1. Possession or Display

No person shall possess or display any University student, staff or faculty identification card or University parking permit that is altered, fraudulent or that has been issued to another person. University staff who handle University identification cards or parking permits as a requirement of their job are exempt from this section where they are handling such identification cards or parking permits in the performance of their official duties.

EXHIBIT 10

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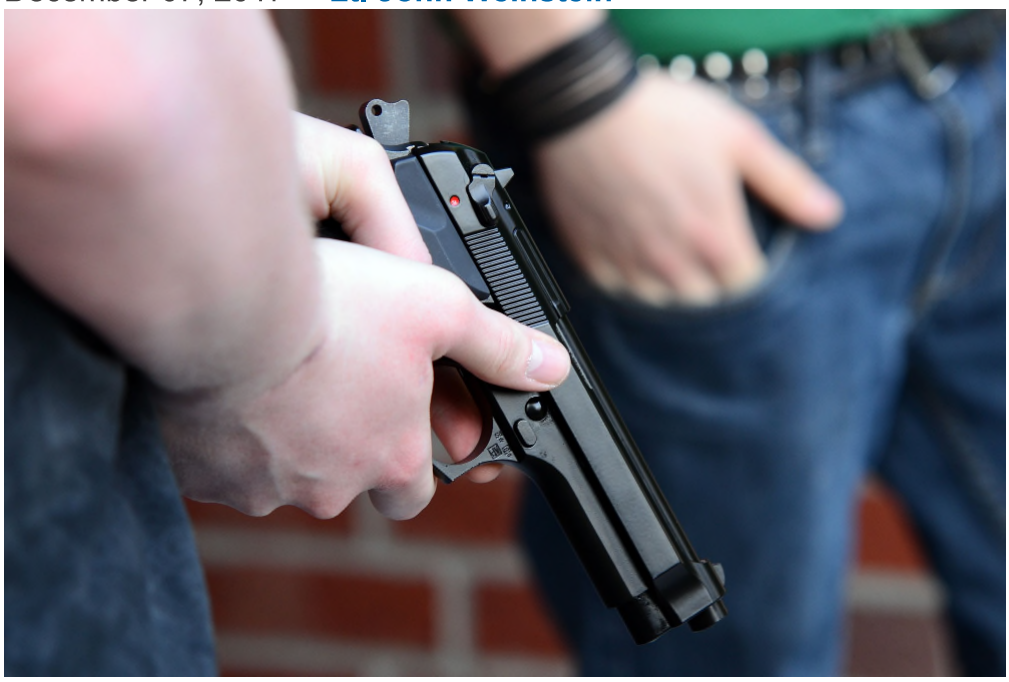
Should We Allow CCP Holders to Carry Guns on Campus? 11 Reservations of a 'Gun Guy'

Before deciding to endorse a protective role for armed citizens on campus, school administrators must address these issues.

December 07, 2017 **Lt. John Weinstein**



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I'm a "gun guy." Always have been; always will be. I am an NRA member. I am a cop and a certified firearms instructor. I have taught boatloads of officers to shoot over the years. I have taught firearms safety, marksmanship and tactics to civilians, many of whom eventually obtained a concealed carry permit (CCP). I am a certified active shooter tactical response trainer, responsible for teaching tactics to patrol officers. I am a firm believer in Robert Heinlein's quote "an armed society is a polite society." I have more guns than my wife has pocketbooks (but not shoes, sadly). I once even gave my ex-wife a rifle I particularly wanted for our anniversary, which explains in part, at least, why she's an ex-wife.

I support the Second Amendment. People have a right to defend themselves against deadly force, especially since police arrive in minutes when seconds count. I am also a big supporter of CCPs. The pages of American Rifleman, a monthly NRA members' magazine, are replete with accounts of citizens effectively defending themselves and others. There is something very American about individuals protecting themselves and others. I also believe that CCP holders likely have a deterrent effect on potential wrongdoers. An evildoer planning violence might reconsider his or her plans if there is a realistic expectation of meeting up with an armed citizen.

The recent spate of active shooter incidents has once again focused attention on the discussion of allowing armed citizens, whether faculty, students, or staff, onto our college campuses and into our classrooms. My chief asked for my views on the subject, and I quickly mentioned several arguments that support allowing CCP holders on campus: the right of people to protect themselves; the vulnerability of "gun-free zones," whose proscriptions against weapons are disregarded by criminals who have weapons; the inability of police to be immediately at the scene of a crime; and examples of successful CCP holder interventions saving lives.

However, despite my inclination to support the idea, something nagged at me. It occurred to me there is a significant difference between an individual citizen acting to defend himself and that citizen assuming an official role, blessed by a government agency to, in effect, assume police responsibilities. These concerns were driven home by an experience I had the following weekend.

A Scary Scenario

As a certified active shooter response trainer, I was asked by a friend to observe a church security team going through their active shooter response drills. The members of the team are all CCP holders. The majority are military combat veterans. All the team members train regularly at the range. The team members had attended active shooter response training conducted by local police and individual trainers.

On the day of their scenarios, fully aware of what was to come and therefore, "leaning forward in the foxhole," the team members went through relatively simple scenarios. During various scenarios, innocent civilians were shot as were police (actors) responding to the scene. Team members crossed in front of other members' aimed weapons. In short, it was a nightmare, not to mention a gigantic potential liability for the church.

Upon observing the team's performance in these straightforward scenarios, my opinion changed on the desirability of an institution endorsing armed CCP holders in classes to deter and, if deterrence fails, respond to an active shooter on campus. Ultimately, I came to the conclusion that the possession of a CCP and even firearms training received by many in the military do not ensure the ability to appropriately use firearms to protect life and limb in a college setting.

Allowing CCP holders to be armed on campus creates a false sense of security, potentially opens the college to significant liability and could result in unintended shootings/killings. This is not to say there aren't many serious and capable CCP holders who have adequate training. The point is there is no assessment protocol, short of having colleges and universities assess individual CCP citizens.

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This article will not address the need for School Resource Officers (SROs) in public elementary and high schools, although I support the SRO mission fully. It will also not address whether faculty and staff CCP holders in these schools should be allowed to be armed while in their schools, although the arguments below are also germane to these individuals. Here are 11 reasons why administrators should have significant concerns about allowing CCP holders to carry their firearms on campus.

1. Military training often doesn't apply to institutions of higher education. Most individuals who have received firearms training in the military, and even those who have been deployed to combat zones, have been trained on the M-16 carbine; not handguns. There are many capable operators in the military who are expert in handguns. However, the majority of veterans have been trained in the use of the rifle. Knowing how to deploy and shoot long guns does not necessarily translate into handgun proficiency. One could argue military bases implicitly recognize this gap in training by not allowing service personnel with CCPs to carry their weapons on the military reservation. They recognize the arguments that follow.

2. CCP qualification standards are not particularly demanding and don't address key capabilities. In Northern Virginia, police recruits receive almost 70 hours of structured one-on-one training at the range, along with significant classroom training. These recruits fire 1,500-2,000 rounds under the watchful eye of an instructor to ensure they are ready and able to employ deadly force if ever required. During the course of their careers, officers are trained on "shoot/don't shoot" scenarios, low light conditions and a host of situations they could encounter in a deadly force scenario.

However, it is possible to receive a CCP in Virginia without actually demonstrating live fire proficiency. Virginia requires CCP applicants to show evidence of a course or training and certification that one knows how to handle a gun safely. This certification can be a hunter safety course that does not have a range component. A military DD-214 separation/discharge notice can also serve as evidence of firearms proficiency. By virtue of having been in the military, as evidenced by the latter document, it is presumed an individual knows how to handle a firearm. However, as noted above, the holder may have neverlearned how to handle a handgun. Further, one can apply and receive a CCP using a DD-214 as a proficiency certification years after leaving the military, even if he or she hasn't touched a firearm in the intervening period. Furthermore, other key skills required in an armed confrontation are not required and may not be assessed in many states. For instance, in Virginia, CCP applicants have no requirement to demonstrate weapon retention skills or proficiency in de-escalating a toxic situation in which a handgun has been drawn but not used; nor are they required to know about ballistics of different calibers. Some rounds may or may not penetrate sheet rock or wood, depending on the caliber, the type of bullet (i.e., hollow point or full metal jacket), the amount of power in the round, etc. Over-penetration of the shooter or rounds passing through walls could injure innocents. (In New Jersey and many states, citizens are not allowed to possess hollow point ammunition. However, full metal jacketed bullets are more likely to penetrate soft tissue and walls, and hit others in their path.)

3. There are no requirements to demonstrate continuing proficiency. In Virginia, at least, once granted a CCP, the holder needs to do nothing more to maintain it. It is renewed upon request every five years as long as the applicant has not violated the rules (e.g., been convicted of domestic violence or a felony). There is no recurring requirement to demonstrate proficiency. Even if there were such a requirement, it would have to go beyond safe gun handling and marksmanship, and demonstrate proficiency under realistic armed combat scenarios. (This statement pertains to Virginia. Other states may require periodic certification, but here too, the issue is whether the evaluation is limited to safe gun handling and
marksmanship.)

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4. Even CCP holders who practice at a firearms range may not be well prepared to use a firearm in a life or death situation. The firearms range is my home away from home, and I have observed hundreds if not thousands of CCP holders training. I contend most firearms training is not realistic and does not prepare the shooter for armed conflict. First, most ranges don't allow shooters to draw from holsters, both on the hip and concealed. Second, most ranges do not allow shooting and moving, an essential firearms combat skill. There are numerous tactical issues in the effective use of a handgun (e.g., shoot/don't shoot; shooting from behind barricades), and the vast majority of CCP holders do not have the opportunity to acquire these skills. Third, just because someone spends hours at the range, there is no assurance he or she has honed good skills. It is possible that absent working with a competent trainer, one's practice may only instill bad habits. Fourth, many concealed carry holders do not carry their weapons in hip holsters, especially in warmer months, due to the likelihood of revealing the presence of a weapon. Instead, weapons are carried in ankle holsters, pockets and pocketbooks, in-the-waistband holsters, backpacks, and other places. As noted above, ranges do not permit realistic drawing from these holsters, so most CCP holders will not be proficient in deploying their handgun in the mode they are likely to be carrying their weapon when the need for an armed response arises. In short, their time at the range notwithstanding, many CCP holders are not trained and proficient in deploying their handguns safely and effectively in a combat situation they are likely to encounter.

5. Firearms proficiency is a perishable skill. Assuming one has good firearms skills, that person still must practice no less than once every two weeks to sustain those skills. Additionally, as noted above, bad skills, practiced regularly, could make the CCP holder more dangerous.

6. Concealed weapons, by virtue of their smaller size, are inherently less accurate than larger weapons. Small handguns with shorter barrels lack the greater distance between front and back sights founds on larger weapons with longer barrels. Shorter sight radius translates to less accurate fire. Further, weapons designed to be concealed have heavier trigger pulls to prevent accidental/negligent discharges while being retrieved (often in the blind) from concealment. Heavier trigger pulls, by virtue of requiring greater force to actuate, introduce gun shake and are, as a result, less accurate.

7.The ability to hit targets at the range does not ensure tactical proficiency. Even police officers who train regularly on firearms have dismal hit rates (approximately 30 percent) in actual gunfights at distances of 15 feet and less. A partial explanation of this poor performance is the loss of fine motor skills necessary for trigger control and sight alignment in a combat situation. In these encounters, adrenalin is dumped into the bloodstream, peripheral vision decreases, auditory exclusion increases, etc. As problematic as these developments are for a trained officer, they will be more debilitating for a relatively untrained CCP holder and likely to increase the risk of gunshot injuries to innocent civilian bystanders. In other words, when involved in a deadly force situation, a shooter is least capable due to the adrenalin dump. One is forced to resort to one's training, which may or may not be up to the task as noted above.

8. CCP holders may be subject to the Law of the Instrument. The "law" states: give a boy a hammer and one finds everything he encounters needs banging. There is no psychological screening of CCP holders, beyond not having been judged mentally incompetent by a qualified individual or agency. Furthermore, there is no assessment of judgment of CCP holders as a requirement for receiving the permit. There are documented instances in which CCP holders, feeling the urgency to defend others, deploy their weapons.

9. There are liabilities associated with CCPs. There are numerous laws governing concealed carry and significant liabilities associated therewith. The gun magazines are replete with articles about CCP holders who used deadly force and were then charged with serious crimes or faced expensive civil litigation. In many states, CCP applicants are not tested on these laws initially and certainly aren't upon reapplication for their CCP. Further, schools would need to determine if permitting CCP holders

to carry on campus makes them implied agents of the school and therefore exposes the institution to charges of liability resulting from a CCP holder's misuse of his or her weapons and the wounding/death of innocents.

10. One of the greatest dangers revealed by force-on-force training is friendly fire. As noted in my observation of the church security team, arriving police officers, who may be in plain clothes, may be shot by an armed citizen who fails to recognize the "good guys." Similarly, arriving officers, with adrenalin pumping, may not recognize the CCP holder as a citizen trying to help. That citizen, without a badge, is viewed as a potential suspect with a gun at a scene where shots have already been fired. The potential for injury or death from friendly fire is high.

11. Allowing CCP holders to attend classes would likely create undue administrative burdens for college police. Even the most assiduous CCP holder's weapons may be visible, on occasion. A weapon may be seen in an ankle holster when a pant leg rises, someone may see a weapon in the cafeteria when a pocketbook is opened, etc. Today, especially in the environment when active shooter incidents are occurring and being reported, campus citizens would react fearfully upon seeing evidence of a concealed weapon. Police would be called, officers from neighboring jurisdictions would be called, buildings would be evacuated and classes would be disrupted. Upon finding someone with a CCP on campus, police would be required to confirm the person was a member of the college community and had a valid CCP.

Undoubtedly, there are CCP holders for whom these reservations are not valid, just like there are armed police officers who are only marginally proficient, despite holding state certification. However, before deciding to endorse a protective role for armed citizens on campus, school administrators must address the concerns identified above.

So, what's a college to do, and what can be done to calm the legitimate fears of helpless campus residents? Recommendations, such as better training for campus officers to include joint training with local jurisdictions; building design; and outreach to campus citizens to inform them about active shooter response options are among solutions that merit an in-depth review.

Note: The views expressed by guest bloggers and contributors are those of the authors and do not necessarily represent the views of, and should not be attributed to, Campus Safety magazine.

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