**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,

v.

UNIVERSITY OF MICHIGAN,

Defendant-Appellee.

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

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# BRIEF OF AMICI CURIAE

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## I. INTERESTS OF AMICI CURIAE

*Amici curiae* are social science researchers, physicians, and academics from leading research institutions who recognize the unique dangers of allowing firearms on college and university campuses based on the nature of their research. A complete list of *amici curiae* is included in the addendum to this brief.

*Amici* have conducted or are familiar with research on the dangers of unrestricted public gun possession and risks specific to adolescents and young adults, including research related to neuroscience, mental health, and public health. They have a strong interest in ensuring that the Court appropriately considers social science and public health evidence in its constitutional analysis. Based on their research and study, and the strong evidence provided by abundant research, *amici* believe that allowing firearms on college and university campuses is dangerous and unnecessary. They support the challenged regulation as a tailored and reasonable solution to achieve the government's interest in protecting public safety and support the fact that campuses are "sensitive places."[1]

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[1] All parties have consented to the filing of this amicus brief. Accordingly, this brief may be filed without leave of court under MCR 7.312(H).

*Amici* also certify that (1) this brief was authored entirely by counsel for *amici*, and not by counsel for any party, in whole or in part; (2) no party and no counsel for any party contributed money intended to fund preparing or submitting this brief; and (3) apart from *amici* and their counsel, no other person contributed money intended to fund preparing or submitting this brief.

## II. ARGUMENT

### A. At Each Stage of the Constitutional Analysis, Social Science and Neuroscience Research Support the University's Effort to Protect Its Students and Faculty Through Article X

In this appeal, the Appellant attacks Article X—the common-sense gun regulation that prohibits individuals from possessing firearms on university property. Though the Appellant is neither a student nor an employee of University of Michigan, he aims to make this case about himself, as an individual, and his allegedly unqualified right to individual self-defense with a gun in a place where he does not study, work, or reside. But under established Second Amendment jurisprudence, courts must take into account the need to protect the public in sensitive places—places just like the University of Michigan—when deciding the reach of the Second Amendment, rather than focusing on the purported rights of visitors to those locations at the expense of overall safety.

The constitutionality of a law regulating firearms first turns on whether the challenged law "regulates conduct that falls within the scope of the Second Amendment right as historically understood." *People v. Wilder*, 307 Mich App 546, 556, 861 NW2d 645 (2014). If it does not, then the activity is not protected and no further analysis is required. Even at this first stage, the United States Supreme Court has acknowledged that the public good can outweigh private interests, and has expressly recognized "laws forbidding the carrying of firearms in sensitive places such as schools and government buildings" as examples of regulations that fall outside the ambit of the Second Amendment. *District of Columbia v. Heller*, 554 US 570, 626-27 (2008).

However, even if the activity governed by the regulation does fall within the scope of the Second Amendment, the regulation must be upheld if it satisfies an intermediate level of constitutional scrutiny, which requires a showing of a "reasonable fit between the asserted interest or objective and the burden placed on an individual's Second Amendment right." *Wilder*, 307 Mich App at 556-57. At this stage, the Court must give appropriate latitude to governments—here, the University of Michigan, which is an arm of the government, Appellee's Brief 1—to protect the public interest, and must measure the constitutionality of the government's chosen

solution in relation to that public interest. While this appeal also presents the question of whether strict scrutiny should instead apply to Article X—a test that would require the Court to find a "compelling" government interest and a stricter degree of tailoring to that interest—strict scrutiny would by no means do away with the University's ability to enact reasonable firearms regulations that protect the public interest. Appellee's Brief 36, n.24.

As scholars specializing in the fields of health and human society, *amici* submit this brief to assist the Court with two points, both of which demonstrate why Article X appropriately upholds the University's interest in protecting the lives and safety of *all* who learn, work, and reside within its premises, consistent with the Second Amendment.

***First***, social science research is a pertinent and useful tool that courts commonly employ when assessing the constitutionality of firearms regulations under the tiers of scrutiny approach. *Stimmel v. Sessions*, 879 F3d 198, 208 (CA 6, 2018). Here, regardless of whether this Court applies intermediate or strict scrutiny, social science and neuroscience research demonstrates why Article X is a tailored and reasonable solution to achieve the goal of keeping Universities safe. This extensive body of research is also important to understanding the gravity and depth of the University's interests in protecting college and graduate students (as well as faculty, staff and campus visitors (which may include children)) from firearms violence on campus and the subsequent harms that result from that violence.

***Second***, the same social science research and data weighs heavily in favor of designating universities as "sensitive places" for the purposes of the first step of the Second Amendment analysis. Social science research is particularly useful here since the United States Supreme Court did not explain its exception regarding "sensitive places" such as schools and government buildings. In particular, social science and neuroscience research establishes that universities can and should be considered "sensitives places," both because of the specific psychological sensitivities that college-age adolescents face and the unique dangers posed by guns on the public campus of a university.

### B. Social Science Research Demonstrates That Gun Prohibitions Improve Campus Safety and Are Justified by the Unique Characteristics of College-Aged Adolescents and Young Adults

The University correctly argues that, if the Court reaches the second stage of the Second Amendment analysis, intermediate scrutiny should apply. Appellee's Brief 24-36. In applying this level of scrutiny, courts routinely consider empirical evidence such as social science research and data. *See Stimmel*, 879 F3d at 208 (recognizing that the court may rely on "empirical evidence" when evaluating constitutionality of law disarming misdemeanants convicted of domestic abuse); *Ass'n of NJ Rifle & Pistol Clubs v. Attorney General NJ*, 910 F3d 106, 118-21 (CA 3, 2018) (upholding large capacity magazine regulation based on data from mass shootings regarding the dangers present and efficacy of the challenged regulation); *Jackson v. City & Co of San Francisco.*, 746 F3d 953, 966, 964 (CA 9, 2014) (upholding safe-storage law based on legislative studies of death and injury statistics "that storing handguns in a locked container reduces the risk of both accidental and intentional handgun-related deaths" and that "gun safe[s] may be opened quickly" enough to enable lawful self-defense).

*Amici* agree with the University that intermediate scrutiny is appropriate here. However, social science is a useful tool regardless of the level of scrutiny that is ultimately adopted. Under intermediate scrutiny, a court must uphold a regulation if (1) the challenged regulation "serves an important, substantial, or significant" interest and (2) there is a "reasonable fit between the asserted interest or objective and the burden placed on an individual's Second Amendment right." *Wilder*, 307 Mich App at 556-57.

Although strict scrutiny is "stricter" in the sense that it demands a "compelling" government interest and a "narrowly tailored" solution, *see, e.g.*, *Phillips v. Mirac, Inc*, 470 Mich 415, 432-33, 685 NW2d 174, 185 (2004), the structure of the analysis is the same: the Court must first understand the gravity of the government interest asserted, and then assess the chosen solution with respect to this interest. Accordingly, social science and neuroscience research are important here both to help the Court understand the University's deep interests in protecting its students, staff, faculty, and campus visitors, and also to show why Article X is the appropriate means of

achieving that interest.

### 1. Social Science Research Confirms the Safety Benefits of Restricting Guns in Sensitive Places

Empirical research shows that civilian gun restrictions are effective: firearm restrictions and prohibitions are associated with reductions in violent crime. Conversely, this research also shows, deregulating firearms and allowing more people to carry loaded guns in public increases rates of firearm violence (including homicide). In addition, and crucially, social science data shows why the Court should reject Appellant's premise that Article X unduly burdens his individual right to self-defense. Even if Appellant could plausibly allege that he faces danger on the University's campus (where he does not live, work, or reside)—and he has not plausibly alleged that he does face such danger—research shows that guns are rarely effectively used in self-defense, further, that the increased availability of guns in public spaces needlessly escalates confrontations or even puts gun carriers themselves at greater risk of harm. In light of this evidence suggesting that (1) prohibiting firearms enhances safety and (2) does not actually compromise self-defense, the University is justified in eliminating the presence of guns on its campus. Article X's prohibition is appropriately tailored to the University's aim of maintaining peace, safety, and security.

***First***, there is a growing body of social science research strongly supporting the conclusion that laws restricting the carrying of firearms in public are likely to reduce violent crime, gun thefts, and other gun-related injuries. Among that research is a 2019 study led by Stanford professor John Donohue that showed persistent increases in rates of violent assaults and violent crimes in states with the most lenient concealed carry licensing laws,[2] known as "right to carry" laws.[3] The study

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[2] John J. Donahue et al., *Right-to-Carry Laws and Violent Crime: A Comprehensive Assessment Using Panel Data and a State-Level Synthetic Control Analysis*, 16 J of Empirical Legal Studies 198, 200 (2019).

[3] "Right-to-carry" or "shall-issue" licensing laws require officials to grant handgun carry permits if applicants satisfy basic criteria (*e.g.*, no felony convictions), as opposed to applying more rigorous or discretionary standards.

examines 33 states that adopted right-to-carry laws between 1981 and 2007 using a state-level synthetic control analysis, a leading method for evaluating policy choices that cannot be evaluated in a randomized trial.[4] The model controlled for numerous factors that influence crime—such as policing, incarceration, income and unemployment, and the influence of the crack cocaine epidemic—to gauge whether the results are likely to be a true causal effect of the right-to-carry law.[5]

The synthetic control model revealed that "the net effect of state adoption of [right-to-carry] laws is a substantial increase in violent crime."[6] The researchers found that passage of lax public carry laws increased violent crime rates by 13 to 15 percent compared to what the rates otherwise would have been. This pernicious effect increased over time: "the longer the [right-to-carry] law is in effect," the study notes, "the greater the cost in terms of increased violent crime."[7] Conversely, "[t]here is not even the slightest hint in the data" that right-to-carry laws "reduce violent crime."[8] While there was a nationwide decline in violent crime over the nearly 40-year period analyzed, states that never adopted right-to-carry laws (and therefore had stronger restrictions on public concealed carry in place throughout the study) experienced a decline in violent crime that was nearly *ten times greater* than states that did adopt such laws.[9]

Other researchers have focused on the impact public carry policies have on homicides, and they too observed increases in states with relaxed standards authorizing the carry of concealed

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[4] Susan Athey & Guido Imbens, *The State of Applied Econometrics: Causality and Policy Evaluation*, 31 J Economic Perspectives 3, 9 (2017) (synthetic control method "arguably the most important innovation in the policy evaluation literature in the last 15 years").

[5] Donohue et al., *supra* note 2, at 215-16.

[6] *Id.* at 240. Professor Donohue's study also evaluated the impact of right-to-carry laws using a panel data analysis, another traditional approach, and reached the same conclusion: violent crime was elevated in states allowing guns to be more freely carried in public. *Id.* at 222.

[7] *Id.* at 232.

[8] *Id.* at 240.

[9] *Id.* at 213-14 & fig. 1.

firearms. A 2017 study from Boston University and Duke, led by Dr. Michael Siegel, found that between 1991 and 2015, right-to-carry laws were significantly associated with 6.5 percent higher total homicide rates, 8.6 percent higher firearm homicide rates, and 10.6 percent higher handgun homicide rates.[10] The increases in homicides were driven entirely by firearm homicides; non-gun homicide rates did not increase.[11] This result was corroborated by Dr. Siegel and co-authors in two subsequent papers using different methodologies and research designs.[12]

***Second***, social science research supplies no proof for the contention that allowing individuals to carry guns in public enables them to effectively defend themselves from harm—and points instead in the opposite direction. National surveys suggest that firearms are relatively rarely used in self-defense and, when used, do not reduce the defender's risk of injury—whereas other protective actions do.[13] Further demonstrating that guns are unlikely to protect those who carry them from assault, a 2009 study demonstrated that people carrying a gun may actually be more than four times more likely to be shot in an assault than those not in possession.[14] The study, published in the American Journal of Public Health, analyzed 677 shootings and a population random sample comparison group of 684 control individuals in Philadelphia over a two-and-a-half-year period, and found that civilians possessing a gun were more than four times more likely to be shot in an assault than those not in possession.[15] This result is consistent with the observation

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[10] Michael Siegel et al., *Easiness of Legal Access to Concealed Firearm Permits and Homicide Rates in the United States*, 107 Am J Pub Health 1923, 1923-24 (2017).

[11] *Id.*

[12] Michael Siegel et al., *The Impact of State Firearm Laws on Homicide and Suicide Deaths in the USA, 1991–2016: A Panel Study*, 34 J Gen Internal Med 2021, 2021–28 (2019); Anita Knopov et al., *The Impact of State Firearm Laws on Homicide Rates among Black and White Populations in the United States, 1991–2016*, 44 Health & Social Work 232, 232–40 (2019).

[13] See David Hemenway & Sara Solnick, *The Epidemiology of Self-Defense Gun Use: Evidence from the National Crime Victimization Surveys 2007–2011*, 79 Preventive Med 22, 23 (2015).

[14] Charles Branas et al., *Investigating the Link Between Gun Possession and Gun Assault*, 99 Am J Pub Health 2034, 2034 (2009).

[15] *Id.*

that "[a] gun may falsely empower its possessor to overreact, instigating and losing otherwise tractable conflicts with similarly armed persons."[16] Another critical body of research reveals the falsity of the notion that prohibiting guns will attract criminal shooters while depriving the law-abiding public of the means of self-defense. FBI data in fact demonstrates that it is unarmed people, not armed people, who have been more likely to stop an active shooter,[17] and there is "little evidence that mass shooting perpetrators seek out 'gun-free zones' for their attacks."[18] A study conducted by Dr. Louis Klarevas, a professor at Teachers College, Columbia University, reviewed 111 high-fatality mass shootings that have taken place since 1966 and found that 84 percent of these massacres occurred in areas where civilian firearms were not prohibited.[19]

One likely explanation for the ineffectiveness of armed civilian intervention is the fact that successfully neutralizing an active shooter threat requires a "high level of familiarity with tactics and the ability to manage stress under intense pressure."[21] Even trained police have an extremely low accuracy rate when exchanging fire with a suspect, and therefore, armed civilians cannot be expected to intervene with greater success in stressful tactical situations.[22] This disjunct between the fantasy of armed civilians being able to heroically stop an active shooter and the reality of civilian ineffectiveness is even more stark in the university context—where most of the civilians

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[16] *Id.* at 2037.

[17] Daniel Webster et al., *Firearms on College Campuses: Research Evidence and Policy Implications*, Johns Hopkins Bloomberg School of Public Health (October 15, 2016) p. 11.

[18] *Id.*

[19] Louis Klarevas, *Rampage Nation: Securing America from Mass Shootings* (Prometheus Books, 2016) p. 161.

[21] Webster, *supra* note 17, at 11.

[22] A report on the nation's largest police force, the New York City police department, found that between 1998 and 2006, officers experiencing return fire hit their target an average of only 18 percent of the time, and officers in situations in which fire was not returned hit their target only 30 percent of the time. *See* Bernard D. Rostker et al., RAND Ctr on Quality Policing, *Evaluation of the New York City Police Department Firearm Training and Firearm-Discharge Review Process*, 14 (2008).

are college-age students, who are more prone to impulsive decision-making and issues with mental health, such as depression, anxiety, and suicidality (*see infra* subsection 2).

Considering the above research and analyses, the University's prohibition on firearms on campus is a sensible approach to reducing the risk of serious violence on the University's campus. Rationales for permitting concealed weapons on campus rely on faulty assumptions both about how perpetrators of violent crime perceive the presence of more firearms and how civilians act in dangerous situations when armed. Instead, allowing guns on campus is likely to lead to even greater harm and introduce a culture of violence on campus in both tangible and psychological ways.[23]

### 2. College Age Adolescents and Young Adults Are at Increased Risk of Using Firearms Impulsively, Making a Campus Gun Prohibition Even More Justified

In Michigan, concealed carry permits are available to residents age 21 years or older and licensing authorities are required to issue a permit if basic qualifications, like the absence of a felony conviction, are met. *See* MCL 28.425b(7). Overturning Article X would not only allow the public and employees to carry guns on campus, but could allow students and their visitors who are at least 21 to possess firearms in dormitories, classrooms, and elsewhere on campus. It would also give younger students easier access to guns even if they are not lawfully authorized to carry them.

Neuroscience and social science data support the conclusion that allowing students, staff, faculty, and members of the public greater access to firearms creates the risk of increased danger and violence on campus, harming both the campus community and the public at large. The heightened risk created by introducing firearms into a student population is due to three principal factors: (1) college age adolescents' and young adults' still developing cognitive systems, which

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[23] *See also* Matthew Miller et al., *Guns and Gun Threats at College*, 51 J of Am College Health 57, 59 (2002) (finding that students who reported possessing firearms on campus disproportionately reported engaging in riskier behaviors such as driving while drunk, vandalizing property, and getting in trouble with police).

increases their risk of impulsive behavior; (2) the onset of mental illness during emerging adulthood, which is correlated with self-harm and suicide attempts; and (3) the frequency of binge drinking during emerging adulthood and the violence that stems from that drinking.[24]

***First***, college age adolescents and young adults are at an increased risk of violence and misuse of firearms because adolescence and emerging adulthood is a time of tremendous change in the biological systems that support decision-making, emotional and behavioral regulation, and motivation.[25] Indeed, the brain's higher association areas continue to develop well into the third decade of life.[26] One of the last parts of the brain to mature—and which continues to develop into the mid-twenties—is the prefrontal cortex, which supports self-control, including judgment, impulse control and inhibition, and long-range planning.[27] The limbic system, which controls basic emotions like anger, pleasure, and fear develops well before the prefrontal cortex, meaning that until the cerebral cortexes can catch up with the limbic system, the desire for rewards and social pressures can, at times, lead to an overriding of rational thinking.[28] Moreover, adolescents and young adults are uniquely prone to negative emotional states, and their responses to these "frequent" negative states "tend to be more intense, variable and subject to extremes relative to adults."[29]

As a result of the limbic system developing faster than the cerebral cortex, adolescents and

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[24] *See* Webster, *supra* note 17, at 3.

[25] *See generally* Jay N. Giedd et al., *Brain development during childhood and adolescence: a longitudinal MRI study*, 2 Nature Neuroscience 861 (1999).

[26] BJ Casey et al., *The Adolescent Brain*, 1124 Annals of the NY Academy of Sciences 111, 120 (2008).

[27] Mariam Arain et al., *Maturation of the Adolescent Brain*, 9 Neuropsychiatric Disease & Treatment 449, 453, 456 (2013).

[28] *Id.* at 453.

[29] Leah H. Somerville et al., *A Time of Change: Behavioral and Neural Correlates of Adolescent Sensitivity to Appetitive and Aversive Environmental Cues*, 72 Brain & Cognition 124, 125 (2010).

young adults in their early- to mid-twenties may be more likely to act on negative emotions such as stress or rage and are therefore more prone to using firearms impulsively and dangerously.[30] Thus, members of this age group may be "neurodevelopmentally predisposed to being all gasoline, no brakes, and no steering wheel."[31] Studies confirm that members of this age group typically have lower self-control and react more impulsively to perceived threats than do their younger counterparts and older adults.[32] This explains some adolescents' and young adults' proclivity towards more risky and violent behavior, and confirms that introducing guns into the university setting creates a heightened risk to public safety.

Access to firearms increases the potential for adolescents' impulsive behavior to cause significant harm, including to their romantic partners, classmates, and members of the broader university community. For example, research confirms that access to firearms substantially exacerbates the dangers of intimate partner violence. Even in the general population, access to a firearm increases the risk of homicide of the female partner by 400 percent.[33] The risks may be compounded for college age adolescents and adults given evidence that they have a greater propensity toward impulsive, violent behavior. This propensity poses risks beyond intimate partner violence as well: in the last five years alone, there have been numerous reports of

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[30] *Id.*

[31] Carl C. Bell & Dominicana F. McBride, *Affect Regulation and Prevention of Risky Behaviors*, 304 J of Am Med Ass'n 565, 566 (2010).

[32] *See, e.g.*, Michael Dreyfuss et al., *Teens impulsively react rather than retreat from threat*, Dev Neuroscience 220, 227 (2014) (finding that adolescents—particularly males—were more likely to react impulsively to threat cues than their older and younger peers); Laurence Steinberg et al., *Age differences in sensation seeking and impulsivity as indexed by behavior and self-report: Evidence for a dual systems model*, 44 Dev Psych 1764, 1766 (finding that adolescents are vulnerable to risk taking because of a combination of higher inclination to seek excitement and immature capacities for self-control).

[33] Campbell JC et al., *Risk Factors for Femicide in Abusive relationships: Results From a Multisite Case Control Study*, 93 Am J Pub Health 1089, 1092 (2003).

adolescents and young adults harming others with firearms on college campuses.[34] According to one study of 85 incidents of shootings or undesirable discharges of firearms on U.S. college campuses between January 2013 and June 2016, the most common situations involved interpersonal disputes escalating into gun violence.[35] This suggests that gun violence on campuses may be fueled by impulsive emotional responses, in conjunction with increased access to firearms. Recognizing this risk, military academies serving this age group—which arguably admit only highly responsible young adults and train students to use firearms—have enacted firearms

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[34] *See, e.g.*, Tom Steele et al., *North Lake College gunman was stalking the woman he killed, her family says*, Dallas News (May 4, 2017) <https://www.dallasnews.com/news/2017/05/04/north-lake-college-gunman-was-stalking-the-woman-he-killed-her-family-says/> (accessed February 28, 2021) (20-year-old North Lake College student shot and killed by 21-year-old on campus); Ellen Eldrgidge, *2 injured in campus shooting at South Georgia university*, AJC (Nov. 13, 2017) <https://www.ajc.com/news/local/injured-campus-shooting-south-georgia-university/sg07rfU6WFNQsh8OI01SkO/> (accessed February 28, 2021) (two students shot on the Albany State University campus by a 20-year old adolescent); Andrew Blankstein & Corky Siemaszko, *Student sought in killing of parents at Central Michigan University in custody*, NBC News (Mar. 3, 2018) <https://www.nbcnews.com/news/us-news/central-michigan-university-shooting-leaves-two-wounded-gunman-loose-n852611> (accessed February 28. 2021) (19-year-old Central Michigan University student shot and killed parents on campus); Mary Grace Eppes, *JSU student shot on campus*, MS News Now (Mar. 8, 2018) <https://web.archive.org/web/20180727110414/http://www.msnewsnow.com/story/37671537/jsu-student-shot-on-campus> (accessed February 28, 2021) (Jackson State University student shot on campus); Lauren Foreman, *Cops: Double shooting on Georgia State's campus started with drug deal*, AJC (Feb. 8, 2017) <https://www.ajc.com/news/crime--law/cops-double-shooting-georgia-state-campus-started-with-drug-deal/dSWKBoLlC5K6KGOXn0ySQN/> (accessed February 28, 2021) (18-year-old Georgia Student University and 19-year-old shot each other on campus); *Winston-Salem State University football player dies after being shot at event at Wake Forest University*, FOX8 (Jan. 21, 2018) <https://myfox8.com/news/winston-salem-state-university-student-dies-after-being-shot-at-event-at-wake-forest-university/> (accessed February 28, 2021) (Winston-Salem State University football player died after being shot on campus by 21-year old); Natalie Alund, *Tennessee State University student dies after found with gunshot wound on campus*, Tennessean (Oct. 14, 2019) <https://www.tennessean.com/story/news/crime/2019/10/13/fatal-shooting-tennessee-state-university-campus/3971617002/> (accessed February 28, 2021) (19-year-old Tennessee State University student shot and killed on campus by fellow student); John Garcia, *WIU-Macomb students return to class shaken after dorm shooting; Kevin Poplous charged with attempted murder*, ABC7 (Sept. 17, 2020) <https://abc7chicago.com/western-illinois-university-shooting-kavion-poplous-student-shot/6431184/> (accessed February 28, 2021) (18-year-old Western Illinois University student shot roommate in dorm room after dispute).

[35] *See* Webster, *supra* note 17, at 3.

regulations in accordance with this risk.[36]

***Second***, regulating access to firearms on campus is important because, apart from posing a threat to each other, adolescents and young adults are also prone to harming *themselves* when given access to firearms, given their particular vulnerability to a range of mental health issues. The stresses associated with the life transitions inherent in college attendance—leaving home, developing new peer groups, managing challenging coursework and extracurricular activities, and exploring new social identities—places adolescents and young adults at an increased risk of conditions like depression and anxiety.[37] According to a 2019 study conducted across two large national datasets of U.S. college students from 2007 to 2018, about 41 percent of college students exhibited symptoms for moderate to severe depression and about 34 percent exhibited symptoms of moderate to severe anxiety.[38] Further, many major psychiatric conditions unrelated to life transitions also first develop in adolescence.[39] And despite the high prevalence of mental health issues among college age adolescents, many go untreated.[40] One study conducted through online surveys in 2007 and 2009 of random samples of students on 26 U.S. campuses found that, on average, only 36 percent of students who had one or more mental illnesses had received treatment

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[36] *See, e.g.*, U.S. Military Academy Regulation 190-3 § II.1-6(b)(1) ("No pistols or handguns may be registered or carried by anyone under the age of twenty-one (21) to include Cadets.") (on file with counsel).

[37] *See* Justin Hunt & Daniel Eisenberg, *Mental Health Problems and Help-Seeking Behavior Among College Students*, 46 J Adolescent Health 3, 5 (2010).

[38] Mary E. Duffy et al., *Trends in Mood and Anxiety Symptoms and Suicide-Related Outcomes Among U.S. Undergraduates, 2007–2018: Evidence From Two National Surveys*, 65 J Adolescent Health 590, 593.

[39] Tomáš Paus et al., *Why do many psychiatric disorders emerge during adolescence?*, 9 Nature Revs Neuroscience 947, 952 (2008) ("Anxiety disorders, bipolar disorder, depression, eating disorder, psychosis including schizophrenia and substance abuse all most commonly emerge during adolescence.").

[40] *See* Daniel Eisenberg et al., *Mental health service utilization among college students in the United States*, 199 J Nervous & Mental Diseases 301-8 (2011).

in the previous year.[41]

The combination of impulsivity, low emotional regulation, and the onset of mental illness contributes to high rates of suicide and suicide attempts among college age adolescents. In fact, suicide is the second leading cause of death in the U.S. among this age group.[42] In the American College Health Association's National College Health Assessment for Spring 2019, which surveyed 54,497 undergraduate students, 9.3 percent of students reported "seriously considering suicide" and 1.6 percent reported attempting suicide within the previous 12 months.[43] Suicide attempts resulting in death or hospital treatment "remains high through age 25,"[44] which means suicide is a serious risk for older or graduate students in addition to adolescents. Taken as a whole, these statistics are of particular relevance to the present case because firearms are the most common means of suicide in the United States.[45]

As the American Public Health Association—a 145-year old voice for public health advocacy—recognizes: Access to firearms is a key risk factor for suicide.[46] Notably, a cross-sectional study conducted between 2007 and 2014 based on suicidal acts resulting in an emergency room visit, a hospitalization, or death, found that about 90 percent of suicide attempts with a firearm during that period resulted in a fatality compared to 4 percent of all attempts not involving

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[41] *See id.*

[42] Melonie Heron, *Deaths: Leading Causes for 2017*, 68 Nat'l Vital Stats Reps 1, 11 (June 24, 2019).

[43] Am Coll Health Ass'n, *National College Health Assessment Executive Summary: Undergraduate Student Reference Group* (Spring 2019).

[44] Webster, *supra* note 17, at 3.

[45] Suicide Prevention Resource Ctr, *Means of Suicide* <https://sprc.org/scope/means-suicide> (accessed February 28, 2021).

[46] Am Pub Health Ass'n, *Reducing Suicides by Firearms* (2018) <https://www.apha.org/policies-and-advocacy/public-health-policy-statements/policy-database/2019/01/28/reducing-suicides-by-firearms> (accessed February 28, 2021).

a firearm.[47] As scholars have noted, "[s]uicide attempters often have second thoughts, but when a method like a gun works so effectively, there's no opportunity to reconsider."[48] Therefore, access to firearms during a suicide attempt often determines whether an attempter will die or recover. Further, the rate of firearm suicide among college age adolescents has *increased* significantly over the past decade.[49] The propensity of college age adolescents and young adults to attempt suicide and the use of firearms in such attempts strongly supports the conclusion that increased access to firearms on college campuses will lead to a corresponding increase in suicide attempts and death in this vulnerable group.

***Third***, college students are known to drink heavily at a more frequent rate than other groups, and there is a close association between alcohol use and violence.[50] According to a 2019 national survey of approximately 34,000 college age students from across the U.S., almost 53 percent of college students ages 18 to 22 reported drinking alcohol in the past month and about 33 percent engaged in binge drinking during the same time frame.[51] Further, scholars who looked at data from the National Highway Traffic Safety Administration, the Centers for Disease Control and Prevention, national coroner studies, census and college enrollment data for 18 to 24-year-olds,

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[47] Andrew Conner et al., *Suicide Case-Fatality Rates in the United States, 2007 to 2014: A Nationwide Population-Based Study*, 172 Annals of Internal Med 885, 890 (2019).

[48] Jane E. Brody, *After a Suicide Attempt, the Risk of Another Try*, N.Y. Times (Nov. 7, 2016) <https://www.nytimes.com/2016/11/08/well/live/after-a-suicide-attempt-the-risk-of-another-try.html> (accessed February 28, 2021).

[49] *See* Ctrs for Disease Control & Prevention, Nat'l Ctr for Injury Prevention & Control, *Web-based Injury Statistics Query and Reporting System (WISQARS) Fatal Injury Reports* <https://www.cdc.gov/injury/wisqars/fatal.html> (last accessed February 28, 2021).

[50] *See* Charles C. Branas et al., *Alcohol Use and Firearm Violence*, 38 Epidemiologic Revs 32, 43–44 (2016) (Alcohol and firearm use "studies consistently reported that alcohol use was significantly associated with the possession of firearms, the ownership of firearms, and the use of firearm as a suicide means, and that the association was stronger for heavy alcohol use.").

[51] Substance Abuse & Mental Health Servs Admin (SAMHSA), *Results from the 2019 National Survey on Drug Use and Health: Percentages, 2018 and 2019* <https://www.samhsa.gov/data/sites/default/files/reports/rpt29394/NSDUHDetailedTabs2019/NSDUHDetTabsSect6pe2019.htm#tab6-21b> (last accessed February 28, 2021).

the National Household Survey on Drug Abuse, and the Harvard College Alcohol Survey, estimated that, over a three-year period, more than 600,000 students aged 18 to 24 had been assaulted by another student who had been drinking.[52] The Bureau of Justice Statistics, which is the primary statistical agency of the Department of Justice, reported that in a year-long period, alcohol was involved in 41 percent of on-campus acts of violence for students living on campus, and 18 percent of on-campus acts of violence for students living off campus.[53] Off-campus acts of violence involving students were shown to have a similarly high association with alcohol use: 37 percent for students living on campus, and 31 percent for students living off campus.[54]

As this neuroscience and social science data show, college age adolescents and young adults are more prone to dangerous and violent behavior and self-harm, a risk that is further exacerbated on a college campus, where alcohol misuse and other risk factors are prevalent.

Government's "most basic task" is to protect the public safety. *Kolbe v. Hogan*, 849 F3d 114, 150 (CA 4, 2017) (Wilkinson, J., concurring). And the neuroscience and social science research demonstrates that the gravity of this interest is heightened in the context of the University's responsibility to protect the safety and security of the students who live and learn on its campus, and the safety and security of the people who work and visit there.

### C. Social Science Also Demonstrates Why the University Is a Sensitive Place Under Step One of the Constitutional Analysis

Although social science research is most typically consulted when courts apply the tiers of scrutiny in assessing the constitutionality of a challenged regulation under the Second Amendment, it is equally useful at the first step of the Second Amendment analysis; whether the University should be considered a "sensitive place" under *Heller*. In fact, social science is *particularly* useful

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[52] *See* Ralph Hingson et al., *Magnitude Of Alcohol-Related Mortality And Morbidity Among U.S. College Students Ages 18-24: Changes from 1998 to 2001*, 26 Annual Rev of Pub Health 259, 260 (2005).

[53] Lawrence A. Greenfeld, *Alcohol and Crime: An Analysis of National Data on the Prevalence of Alcohol Involvement in Crime*, U.S. Dep't of Just Bureau of Just Stats (1998).

[54] *Id.*

for this analysis given the relative absence of clear jurisprudential guidance regarding how to define and apply this exception. Without such guidance, the Court of Appeals relied on "dictionary definitions from the time of the Fourteenth Amendment's ratification," Appellee's Brief 17, while the Appellant relies on cherry-picked definitions in inapposite statutes and dictionaries from the time of the *Heller* opinion, Appellant's Brief 12-13. Beyond these linguistic disputes, social science demonstrates the real and practical reasons why universities should be considered a "sensitive place" for purposes of the Second Amendment analysis.

For one, college campuses are "sensitive" because college age adolescents and young adults are inherently more susceptible to the risks and dangers presented when given access to firearms. As explained above, neuroscience shows that this age group is more susceptible to making emotion-driven and impulsive decisions. *Supra* 10-16. Accordingly, to the extent that guns may be regulated in K-12 schools because of the unique vulnerabilities of students in these institutions, science demonstrates why universities should not be treated as an exception to the general category of "schools" that benefit from the *Heller* exception.

Additionally, college campuses are "sensitive" because of the nature of the campuses themselves. As detailed above, college campuses present numerous conditions that exacerbate the risks involved in granting students access to firearms. University undergraduates are presented with numerous stressors, including those associated with the life transitions inherent in college attendance—leaving home (often for the first time), developing new peer groups, managing challenging coursework and extracurricular activities, and exploring new social identities—and some of these stressors are associated with graduate student life as well. *Supra* 14-16. In addition, students must contend with the wide availability of alcohol on campus, which again increases the likelihood of violence. *Supra* 17-18. Each of these risk factors multiplies the danger in increasing access to firearms on university campuses, including the risk that students will use firearms to harm each other, and themselves.

Finally, and relatedly, firearms may be regulated in sensitive places such as the "schools and government buildings" identified in *Heller* because of the need for official security personnel

and protocol. For example, the University has recognized its responsibility to provide for official and effective forms of ensuring the safety of its students, faculty, and visitors. Appellee's Brief 2. Neuroscience and the social science data demonstrate that college campuses are exactly the sort of places where university administrators should be able to enforce such official public security regulation, instead of abdicating such responsibility to private forms of self-defense that in fact make the problem worse. There is no proof that arming students, employees, or the public will lead to their increased safety on the University of Michigan campus, and the available research instead shows that allowing people to take defense into their own hands is likely to result in graver collateral damage. *Supra* 8-10.

## III. CONCLUSION

Neuroscience and social science research confirm that the University's interest in protecting the safety and security of individuals on its campus is sharpened given the unique sensitivities of the student population. The available data also demonstrate why Article X is a reasonable and narrowly-tailored solution to addressing that interest, and social science research confirms that universities are "sensitive places" as recognized under *Heller*.

*Amici* urge this Court to uphold the University's Article X.

Dated: March 1, 2021

Respectfully submitted,

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## APPENDIX

## *AMICI CURIAE* SIGNATORIES

**Charles Branas, PhD,** is the Gelman Endowed Professor and Chair of the Department of Epidemiology at the Columbia University Mailman School of Public Health, and an Adjunct Professor of Epidemiology at the University of Pennsylvania Perelman School of Medicine. Dr. Branas has conducted research that extends from urban and rural areas in the US to communities across the globe, incorporating place-based interventions and human geography. He has led win-win science that generates new knowledge while simultaneously creating positive, real-world changes and providing health-enhancing resources for local communities. His research on the geography and factors underpinning gun violence has been cited by landmark Supreme Court decisions, Congress, and the NIH Director. Dr. Branas has also led large-scale scientific work to transform thousands of vacant lots, abandoned buildings and other blighted spaces in improving the health and safety of entire communities. These are the first citywide randomized controlled trials of urban blight remediation and have shown this intervention to be a cost-effective solution to persistent urban health problems like gun violence.

Education:

BA (Mathematics) Franklin And Marshall College, 1990.

MS (School Of Technology) Drexel University, 1993.

PhD (School Of Public Health) Johns Hopkins University, 1998.

Post-Doc (School Of Public Health) University Of California, Berkeley, 2000.

**John J. Donohue III, PhD**, is C. Wendell and Edith M. Carlsmith Professor of Law at Stanford Law School. Professor Donohue has been one of the leading empirical researchers in the legal academy over the past 25 years. Professor Donohue is an economist as well as a lawyer and is well known for using empirical analysis to determine the impact of law and public policy in a wide range of areas, including civil rights and antidiscrimination law, employment discrimination, crime and criminal justice, and school funding. Professor Donohue previously was a member of the law school faculty from 1995–2004. Before rejoining the Stanford Law School faculty in 2010, Professor Donohue was the Leighton Homer Surbeck Professor of Law at Yale Law School. Earlier in his career, he was a law professor at Northwestern University as well as a research fellow with the American Bar Foundation. Additionally, he clerked with Chief Justice T. Emmet Clarie, of the U.S. District Court of Hartford, Connecticut. He is a member of the American Academy of Arts and Sciences, and the former editor of the American Law and Economics Review and president of the American Law and Economics Association.

Education:

BA, Hamilton College, 1974.

JD, Harvard Law School, 1977.

PhD (Economics) Yale University, 1986.

**David Hemenway, PhD,** Professor of Health Policy, is Director of the Harvard Injury Control Research Center. He formerly spent a week each year at the University of Vermont as a James Marsh Visiting Professor-at-Large. Dr. Hemenway teaches classes on injury and on economics. At the Harvard T.H. Chan School of Public Health he has won ten teaching awards as well as the inaugural community engagement award. Dr. Hemenway has written widely on injury prevention, including articles on firearms, violence, suicide, child abuse, motor vehicle crashes, fires, falls and fractures. He headed the pilot for the National Violent Death Reporting System, which provides detailed and comparable information on suicide and homicide. In 2012 he was recognized by the Centers for Disease Control & Prevention as one of the "twenty most influential injury and violence professionals over the past twenty years."

Education:

PhD, Harvard University, 1974.

BA, Harvard University, 1966.

**Peter T. Masiakos, MD, MS, FACS, FAAP,** is a pediatric general and thoracic surgeon at Massachusetts General Hospital and associate professor at Harvard Medical School. He is the director of the pediatric trauma surgery service at Mass General Hospital and director of the Mass General Hospital Center for Gun Violence Prevention. Dr. Masiakos was trained at the Boston City Hospital and Hospital for Sick Children (Toronto), where he developed a clinical interest in pediatric trauma care and injury prevention. As an injury-prevention advocate, Dr. Masiakos has been involved in successfully educating the Massachusetts legislature and the US Congress on the inherent risks that certain products pose to children and has aided in the development and passage of several forward-thinking injury prevention laws. Dr. Masiakos is a Governor of the American College of Surgeons and serves on many injury prevention committees including the Massachusetts State Trauma Committee and as the Chairman of the Policy and Advocacy committee of the Surgical Section of the American Academy of Pediatrics.

Education:

MD, Boston University Medical Center.

MD, Boson University School of Medicine.

**Sonali Rajan, EdD,** is an Associate Professor of Health Education in the Department of Health and Behavior Studies at Teachers College, Columbia University. She also holds a secondary faculty appointment in the Department of Epidemiology at the Mailman School of Public Health. Dr. Rajan is a school violence prevention expert, who studies gun violence and adverse childhood experiences. For the past several years, Dr. Rajan has worked on the implementation and evaluation of health education and behavioral health initiatives aimed to mitigate youth engagement in high-risk behaviors and promote positive youth development, primarily in NYC public schools, but also in other hospital and community-based settings.

Education:

BS, Cornell University (Biomedical Engineering), 2005

MS, Teachers College, Columbia University (Applied Statistics), 2011

EdD, Teachers College, Columbia University (Health Education), 2010

**Michael Siegel, MD, MPH,** is an epidemiologist and Professor in the Department of Community Health Sciences, Boston University School of Public Health. Dr. Siegel is an author of more than 160 manuscripts published in peer-reviewed journals, including 29 papers on gun violence, published in top journals including the American Journal of Public Health, JAMA Pediatrics, BMJ, Annals of Internal Medicine, the Journal of General Internal Medicine, and the Boston University Law Review. He has been Principal Investigator or co-Principal Investigator on 10 grants funded by the National Institutes of Health (NIH), National Institute of Justice (NIJ), state agencies, and private foundations. He is author of a public health textbook entitled Marketing Public Health: Strategies to Promote Social Change. He has won 18 teaching awards, including an award for the top teacher at the Boston University School of Public Health. He was recently given a lifetime achievement award by the Alcohol, Tobacco, & Other Drugs section of the American Public Health Association.

Education:

BA (Environmental Studies) Brown University, 1986.

MPH, University of California, Berkeley, 1992.

MD, Yale University, 1990.

**April M. Zeoli, PhD, MPH,** is a leading expert on the intersection of intimate partner violence and gun violence. Her interdisciplinary research—which aims to bring together the fields of public health, criminology, and criminal justice—is focused on the impact of state-level firearm laws on homicide, particularly intimate partner homicide, and the implementation of those policies at the local level. She is primarily interested in firearm policies that restrict high-risk individuals from purchase and possession of guns and those that facilitate the implementation of firearm restriction policies. An associate professor in the School of Criminal Justice at Michigan State University, April is on the editorial boards of the scholarly journals Injury Prevention and Criminology & Public Policy and has served as the research expert for the National Domestic Violence and Firearms Resource Center. She has earned national recognition for her research, on which she was invited to give a TEDMED Talk.

Education:

PhD, John Hopkins University, 2007

MPH, The University of Michigan, 2000

BA, The University of Michigan, 1998

**CERTIFICATE OF SERVICE**

I hereby certify that on March 1, 2021, I electronically filed the foregoing using the MiFile System, which will send notification of this filing to all registered counsel of record.

Dated: March 1, 2021

Respectfully submitted,

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