Order

Michigan Supreme Court
Lansing, Michigan

November 10, 2022

Bridget M. McCormack,
Chief Justice

156150

Brian K. Zahra
David F. Viviano
Richard H. Bernstein
Elizabeth T. Clement
Megan K. Cavanagh
Elizabeth M. Welch,
Justices

JOSHUA WADE,
Plaintiff-Appellant,

v

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

UNIVERSITY OF MICHIGAN,
Defendant-Appellee.

_____/

By order of November 6, 2020, the application for leave to appeal the June 6, 2017 judgment of the Court of Appeals was granted. On order of the Court, and on the Court's own motion, we VACATE our order dated November 6, 2020, VACATE the June 6, 2017 judgment of the Court of Appeals, and REMAND this case to that court for consideration in light of *New York State Rifle & Pistol Ass'n, Inc, et al v Bruen*, 142 S Ct 2111 (2022).

We do not retain jurisdiction.

VIVIANO, J. (*concurring*).

The Court today remands to the Court of Appeals an important case concerning the constitutionality of the University of Michigan's prohibition of firearms on campus. The United States Supreme Court recently elucidated the structure of the required analysis in *New York State Rifle & Pistol Ass'n, Inc v Bruen*, 597 US ___; 142 S Ct 2111 (2022). I write to offer a few thoughts about how that analysis might apply here.

Presently, the University of Michigan bans firearms on campus unless, among a few other exceptions, the University's Director of Public Safety waives the prohibition for an individual "based on extraordinary circumstances." Plaintiff has challenged that ban on firearms as a violation of his Second Amendment right to bear arms. In rejecting his contentions, the Court of Appeals applied a two-part test: (1) "The threshold inquiry is whether the challenged regulation 'regulates conduct that falls within the scope of the Second Amendment right as historically understood,' " (2) and then, if the conduct is within the Second Amendment's scope, the court employs intermediate scrutiny to see whether there is " 'a reasonable fit between the asserted interest or objective and the burden

placed on an individual's Second Amendment right.' " *Wade v Univ of Mich*, 320 Mich App 1, 13 (2017) (citations omitted).

To support its threshold analysis, the Court of Appeals relied on the statement in *Dist of Columbia v Heller*, 554 US 570, 626-627 (2008), that the Second Amendment did not disturb "longstanding prohibitions on . . . laws forbidding the carrying of firearms in sensitive places such as schools and government buildings . . . ." In the present case, the Court of Appeals' entire "historical analysis" was to examine one dictionary from 1828 to determine whether universities were considered "school[s]" in 1868. *Wade*, 320 Mich App at 14.[1] Even if one concludes that the Court of Appeals reached the correct result, this paltry review of the main question is inadequate. Moreover, it is not at all apparent that *Heller*'s brief discussion of sensitive places was intended to establish a rule that all entities historically known as "schools" could permissibly ban firearms, meaning the only question that would remain for future cases is whether the entity at issue was considered a "school." Nor is it even clear that the Court meant to include universities and colleges in its reference to "schools," let alone to say that such locations can completely ban firearms. See Note, *Guns on Campus: Continuing Controversy*, 38 J C & U L 663, 667-668 (2012) (noting that *Heller* did not address guns on university campuses or define "schools" to include higher education).

In its recent decision on this topic, the Supreme Court rejected the two-part inquiry applied by the Court of Appeals and instead replaced it with an examination of "whether modern firearms regulations are consistent with the Second Amendment's text and historical understanding." *Bruen*, 597 US at ___; 142 S Ct at 2131. This test requires courts to examine any historical analogues of the modern regulation to determine how these types of regulations were viewed. *Id*. If there are no such analogues on the societal problem at issue, that historical silence "is relevant evidence that the challenged regulation is inconsistent with the Second Amendment." *Id*. "Likewise," the Court continued, "if earlier generations addressed the societal problem, but did so through materially different means, that also could be evidence that a modern regulation is unconstitutional." *Id.* Further, if regulations like the one at issue had been proposed and "rejected on constitutional grounds, that rejection surely would provide some probative evidence of unconstitutionality." *Id*. At base, the analysis requires "reasoning by analogy," which means the court must determine "whether a historical regulation is a proper analogue for a distinctly modern firearm regulation" by assessing "whether the two regulations are 'relevantly similar.' " *Id*. at ___; 142 S Ct at 2132 (citation omitted). In this assessment, two metrics are useful: "how and why the regulations burden a law-abiding citizen's right

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[1] The Court focused on 1868, when the Fourteenth Amendment was ratified, but as the Supreme Court in *Bruen* observed, there is some debate as to whether the relevant historical point is 1868 or instead 1791, when the Second Amendment was ratified. *Bruen*, 597 US at ___; 142 S Ct at 2138.

to armed self-defense." *Id*. at ___; 142 S Ct at 2133. But the modern regulation need not be "a dead ringer for historical precursors . . . ." *Id*.

In the present case, I believe there are at least two historical investigations needed to determine whether the University of Michigan's firearm regulation is constitutional. First, the Court of Appeals should consider whether there were any analogous firearm regulations on university and college campuses in the relevant historical period. In my own initial review of historical laws concerning campus carry, I have come across a few that contain partial restrictions of guns on campus.[2] The secondary literature notes the prevalence of gun restrictions on campus in the colonial and early republic periods, but like the laws just mentioned, none seems to have been a campuswide ban generally prohibiting open or concealed carry.[3]

In addition to more thoroughly researching historical restrictions in this context, the parties and the Court of Appeals should assess whether the more limited regulations noted

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[2] See 1878 Miss Laws, ch 46, § 4 ("[A]ny student of any university, college or school, who shall carry concealed, in whole or in part, any weapon of the kind or description in the first section of this Act described, or any teacher, instructor, or professor who shall, knowingly, suffer or permit any such weapon to be carried by any student or pupil, shall be deemed guilty of a misdemeanor, and, on conviction, be fined not exceeding three hundred dollars, and if the fine and costs are not paid, condemned to hard labor under the direction of the board of supervisors or of the court."); 1879 Mo RS, ch 24, § 1276 (prohibiting the discharge of a firearm "in the immediate vicinity of . . . [a] building used for school or college purposes"); 2 1883 Wis Sess Laws 841, ch 184, tit 12, § 162 (amending the city charter of Neenah to prohibit individuals within a "school house" or any "building" within the city from firing a gun); see also 1890 Okla Territorial Statutes, ch 25, art 47, § 7 ("It shall be unlawful for any person, except a peace officer, to carry into any church or religious assembly, any school room or other place where persons are assembled for public worship, for amusement, or for educational or scientific purposes, or into any circus, show or public exhibition of any kind, or into any ball room, or to any social party or social gathering, or to any election, or to any place where intoxicating liquors are sold, or to any political convention, or to any other public assembly, any of the weapons designated in sections one and two of this article.").

[3] See Kopel & Greenlee, *The "Sensitive Places" Doctrine: Locational Limits on the Right to Bear Arms*, 13 Charleston L Rev 205, 249-252 (2018) (noting nineteenth-century campus firearms restrictions and arguing that none of them supported the designation of campuses as sensitive places where arms could be banned); see also Rostron, *The Second Amendment on Campus*, 14 Geo J L & Pub Pol'y 245, 255-257 (2016); Brady, *"Campus-Carry" Laws on Public College Campuses: Can Social Science Research Inform State Legislative Decision-Making?*, 350 Ed Law Rep 1, 6 (2018).

above are nonetheless historically analogous to the modern regulation at issue here. Do they burden the right to self-defense in the same manner and for the same purposes? *Bruen*, 597 US at ___; 142 S Ct at 2134. And of course, any relevant historical discussion of these regulations, or the broader right of college-aged adults to bear firearms, should be examined. See, e.g., *Firearms Policy Coalition, Inc v McCraw*, ___ F Supp 3d ___ (ND Tex, 2022) (Case No 4:21-cv-1245-P) (examining the text and history of the Second Amendment and holding unconstitutional a prohibition on 18- to 20-year-olds from carrying a handgun outside the home for self-defense).

I believe a second historical inquiry is required in this case. Even if certain restrictions were historically permitted on college campuses, another important question arises: are large modern campuses like the University of Michigan's so dispersed and multifaceted that a total campus ban would now cover areas that historically would not have had any restrictions? In other words, are historical campuses the best analogy for the modern campus? It appears that campuses have always contained expansive outdoor settings. See Olin, *The Campus: An American Landscape*, 8 SiteLINES: A Journal of Place 3, 3 (Spring 2013) (noting that early American colleges were "simply a set of Georgian buildings placed in the open" and "set off by relatively level or gently sloping areas of turf and trees"). And some early schools, like the College of Philadelphia (1754), might have had a more modern feel, with "buildings scattered amid ordinary city blocks[.]" *Id*. at 4.

Nonetheless, it seems apparent that large, modern university campuses differ from their historical antecedents. Many are involved in urban planning with mixed-use projects that include shops and nonstudent residences. See, e.g., *id*. at 8-9 (discussing the University of Pennsylvania's experience in the late 1990s and early 2000s and noting that many other universities have employed similar models); Matthew Dalbey et al, *Communities of Opportunity: Smart Growth Strategies for Colleges and Universities*, National Association of College and University Business Officers (2007), pp 1-3 (noting that in 2006 $14.4 billion of construction on campuses occurred and advocating for mixed-use developments of shops, offices, housing, and schools). The University of Michigan itself occupies nearly one-tenth of Ann Arbor. Many areas on campus, such as roadways, open areas, shopping districts, or restaurants, might not fit the "sensitive place" model suggested by *Heller*—they may instead be more historically analogous to other locations that did not have gun restrictions. And because the campus is so entwined with the surrounding community, the ban might also burden carrying rights on locations outside campus, as many individuals will regularly go from campus to off-campus environments,

even in a single trip; because they cannot bring a gun on campus, they will not feasibly be able to bring the gun to the off-campus locations either.[4]

I believe that these considerations are necessary in the present case when applying the governing framework from *Bruen*. Because they require careful analysis of historical materials, I agree that a remand is appropriate.

BERNSTEIN, J., did not participate.

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[4] See, e.g., Note, *Rethinking the Nevada Campus Protection Act: Future Challenges & Reaching a Legislative Compromise*, 15 Nev L J 389, 421-422 (2014) ("Current laws and university policies that prohibit any degree of campus carry leave [carrying a concealed firearm] permit holders defenseless anywhere between college campuses and home. The professor that stops for groceries after work; the student that stops for gas across the street from campus; these are the real and unfortunately less documented dangers of 'no permission to campus carry' states."); *id*. at 425 ("The line that separates some universities from public property is fuzzy, and attempting to classify universities as a 'sensitive place' poses a significant problem. Universities are typically intermingled with other services and public property."); *Guns on Campus*, 38 J C & U L at 675 ("Additionally, some colleges and universities do not have the clearly defined perimeters that high schools, middle schools, and elementary schools usually have. Some colleges and universities span across city-scapes and mix with metropolitan areas. The physical layout of some colleges and universities can easily create confusion for individuals trying to determine if they are on campus or off campus at any given point. For example, public roads often run through college campuses. Could a public road be considered a sensitive school area subject to a reasonable regulation, or would the street merely be part of the public landscape where the same regulation would be unreasonable?").

SEAL OF THE MICHIGAN SUPREME COURT · DISCITE JUSTITIAM MONITI · LANSING ·

I, Larry S. Royster, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

November 10, 2022

Clerk

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STATE OF MICHIGAN

COURT OF APPEALS

JOSHUA WADE, Plaintiff-Appellant, v UNIVERSITY OF MICHIGAN, Defendant-Appellee.	FOR PUBLICATION June 6, 2017 9:00 a.m. No. 330555 Court of Claims LC No. 15-000129-MZ

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

CAVANAGH, P.J.

Plaintiff, Joshua Wade, appeals as of right an order granting summary disposition in favor of defendant, University of Michigan, and dismissing plaintiff's complaint seeking declaratory and injunctive relief from a University ordinance which prohibits firearms on any University property. We affirm.

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," 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. <u>Exceptions</u>

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

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

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

(c) when someone possess [sic] or use 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, plaintiff alleged that Article X is invalid because MCL 123.1102, which 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 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 it is a reasonable exercise of the University's authority under Article VIII, § 5 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 it is not a "local unit of government;" rather, it is a constitutional corporation that is coordinate and equal to that of the Legislature. Thus, 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 failed to state a claim upon which relief could be granted and should be dismissed.

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 *District of Columbia v Heller*, 554 US 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 regulation 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 governmental 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.

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

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 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 "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 VIII, § 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.

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

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 NW2d 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 constitutionality of a regulation presents a question of law that this Court also reviews de novo on appeal. *McDougall v Schanz*, 461 Mich 15, 23; 597 NW2d 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 US at 570, the United States Supreme Court undertook, for the first time, an in-depth examination of the scope of Second Amendment rights, primarily related to 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. The law also required that lawfully owned guns, such as registered long-arms, be rendered inoperable while in the home. *Id*. at 575. 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

[2] Plaintiff's argument on appeal focuses solely on his rights under the Second Amendment; thus, we consider any claim premised on the Michigan Constitution abandoned. See *Mitcham v Detroit*, 355 Mich 182, 203; 94 NW2d 388 (1959).

understood the amendment at the time of its ratification, *id*. at 595-600, 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. Review of these materials led the *Heller* Court to conclude that the Second Amendment codified a pre-existing 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 one's own home. *Id*. at 595, 599-600.

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. And 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. 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. The *Heller* Court then identified a non-exhaustive 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, and n 26.[3]]

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

The United States Supreme Court considered the Second Amendment again in *McDonald v Chicago*, 561 US 742, 750; 130 S Ct 3020; 177 L Ed 2d 894 (2010), where 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, declaring that the Second Amendment applies to the states by virtue of the Fourteenth Amendment. *Id*. at 778. The *McDonald* Court reiterated that laws forbidding the carrying of firearms in sensitive places are presumptively lawful regulatory measures. *Id.* at 786. 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. 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 (CA 7, 2011).

[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 holdings in *Heller* and *McDonald* have led to the application of a two-part test with respect to Second 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 NW2d 645 (2014), quoting *People v Deroche*, 299 Mich App 301, 308-309; 829 NW2d 891 (2013) (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 (citation omitted). 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.

Here, plaintiff's complaint alleged that Article X's complete ban of firearms on University property 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 1828 Dictionary 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 1828 Dictionary online, <http://webstersdictionary1828.com/Dictionary/university (emphasis added).]

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 1828 Dictionary online, <http://webstersdictionary1828.com/Dictionary/school.]

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

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

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.

Next, plaintiff argues that the Court of Claims erred by concluding that MCL 123.1102 did not preempt the University's ordinance which banned all firearms from University property. After de novo review of this question of statutory interpretation, we disagree. See *Ter Beek v City of Wyoming*, 495 Mich 1, 8; 846 NW2d 531 (2014).

> Article VIII, Section 5 of the 1963 Constitution provides, in relevant part:
> The regents of the University of Michigan and their successors in office shall constitute a body corporate known as the Regents of the University of Michigan . . . . [The 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 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 NW 602 (1923). Although the University Board of Regents have 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 NW2d 491 (1999), quoting *Regents of Univ of Mich v Auditor General*, 167 Mich 444, 450; 132 NW 1037 (1911); see also *Brooks*, 224 Mich at 48 (recognizing that the University is a state agency within the executive branch of state government).

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; 145 NW2d 860 (1966):

> [T]he 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 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. [*Id*. at 138-139.]

Thus, for example, matters involving the University's management and control of its institution or property are properly within the Board of Regent's exclusive authority and the Legislature may not interfere; its promulgated laws must yield to the University's authority. See, e.g., *Federated Publications, Inc*, 460 Mich at 88 (holding that Michigan's Open Meetings Act 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 Mich Employment Relations Comm*, 389 Mich 96, 108-110; 204 NW2d 218 (1973) (holding that the Michigan Public Employment Relations Act 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); see also *WT Andrew Co Inc v Mid-State Surety Corp*, 450 Mich 655, 662, 668; 545 NW2d 351 (1996) (holding that the public works bond statute applied to the University as a valid "exercise of the Legislature's police power to protect 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 individual's constitutional rights "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. 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 government 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*, 298 Mich App 220, 230; 826 NW2d 736 (2012). 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 NW2d 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 NW2d 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 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 NW2d 864 (2003), this Court considered the City of Ferndale's ordinance which 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. 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 co-equal with the Legislature and an agency of the State.

The same analysis applies to plaintiff's reliance on *CADL*, 298 Mich App at 220. There, the Capital Area District Library 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. This Court held that "field preemption bars CADL's regulation of firearms." *Id*. at 230. In doing so, this Court acknowledged that the library did not fit within the definition of "local unit of government." *Id*. at 231. 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. Plaintiff argues that the definition of "a local unit of government" should similarly be expanded to include 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 co-equal with the Legislature and an agency of the State.[5]

Further, in *Mich Gun Owners, Inc v Ann Arbor Pub Sch*, ___ Mich App ___; ___ NW2d ___ (2016) (Docket No. 329632), this Court recently rejected a similar claim that MCL 123.1102 applied to the Ann Arbor Public Schools and prevented their policies banning the possession of firearms on school property as set forth in *CADL*, 298 Mich App at 220. See *id*.; slip op at 1-2. 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." *Id*.; slip op at 5. 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, but exist independently of those bodies." *Id*.; slip op at 5-6. Likewise, the University of Michigan is not formed, organized or operated by a city, village, township or county, but exists independently of those bodies.

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[5] We note and reject our dissenting colleague's mischaracterization of the holding in *CADL* as "binding precedent" that we have "ignored" 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. 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.

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. Plaintiff has failed to cite to a single case which held that the Board of Regents 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. Thus, 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 NW2d 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. But even if the University Board of Regents was subject to state law preemption, in *Mich Gun Owners, Inc*, ___ Mich App at ___; slip op at 6-9, 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.

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 may not tax costs although the prevailing party. See MCR 7.219(A).

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

STATE OF MICHIGAN

COURT OF APPEALS

JOSHUA WADE,

Plaintiff-Appellant,

v

UNIVERSITY OF MICHIGAN,

Defendant-Appellee.

FOR PUBLICATION
June 6, 2017

No. 330555
Court of Claims
LC No. 15-000129-MZ

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

SAWYER, J. (*dissenting*).

I respectfully dissent.

First, I do not believe it necessary to reach the constitutional question presented in this case as 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 in which the general public are 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. 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,*[1] I conclude that both the trial court and the majority misapprehend the effect of field preemption in resolving this case.

In *CADL*, this Court rejected the direct application of the preemption provisions of MCL 123.1102 because a district library was not contained within the definition of a "local unit of

[1] 298 Mich App 220; 826 NW2d 736 (2012).

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 as 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 28.425o(1)(h) prohibits, with some exceptions, individuals with a concealed 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.

The majority attempts to distinguish *CADL* on the basis that it relied upon the fact that a district library is created by two local units of government, as defined in MCL 123.1101(1) 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 Public Schools*,[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 above, 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.

That is, once a court reaches the conclusion that field preemption applies, then it 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 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

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[2] 298 Mich App at 231.

[3] 401 Mich 314; 257 NW2d 902 (1977).

[4] 298 Mich App at 241.

[5] ___ Mich App ___; ___ NW2d ___ (2016), (Docket No. 329632, decided 12/15/2016), lv app pending.

[6] 298 Mich App at 231-232.

[7] *Llewellyn*, 401 Mich at 324.

allowed to impose their own regulations, then the field is not actually preempted and the Legislature's interest in establishing uniformity is defeated.

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 which 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]

The special status of the three "constitutional universities"[9] has been considered by the courts many times, including in *Federated Publications, Inc v Board of Trustees of Michigan State University*.[10] In *Federated Publications*, the Court considered whether the Open Meetings Act[11] applied to Michigan State University's presidential search committee or whether, because of MSU's special constitutional status, it was exempt from the legislation. The Court concluded that only the formal 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 the Univ of Michigan v Michigan*, 395 Mich 52, 65; 235 NW2d 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 NW2d 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 NW2d 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 NW2d 218 (1973), we quoted *Branum v Bd of Regents of the Univ of Michigan,* 5 Mich App 134, 138-139; 145 NW2d 860 (1966):

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[8] I note that this is a different question than whether public schools are exempt from preemption. Thus, 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*.

[9] University of Michigan, Michigan State University, and Wayne State University.

[10] 460 Mich 75; 594 NW2d 491 (1999).

[11] MCL 15.261 *et seq*.

[12] 460 Mich at 92.

> "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, 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."
>
> Legislative regulation that clearly infringes on the university's educational or financial autonomy must, therefore, yield to the university's constitutional power.

The Court then goes on to consider its earlier decision in the *Regents*[13] case. The *Regents* case considered whether the University was subject to the Public Employees Relations Act[14] with respect to medical employees who formed a union. The *Federated Publications* opinion 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.]

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 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.[15] The former does not invade the University's education autonomy, while the latter does.

Clearly, the decisions of our courts on this topic do not support a proposition that defendant has free reign to determine which enactments of the Legislature it chooses to follow and which it chooses to ignore. Nor does it grant the University the authority to enact criminal

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[13] 389 Mich 96.

[14] MCL 423.201 *et seq*.

[15] *Regents*, 389 Mich at 109.

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 in enacting the restrictions on the possession of firearms on its campus.

/s/ David H. Sawyer