STATE OF MICHIGAN
IN THE SUPREME COURT

JOSHUA WADE,

Plaintiff-Appellant,

v.

THE BOARD OF REGENTS OF
THE UNIVERSITY OF MICHIGAN,

Defendant-Appellee.

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

BRIEF OF *AMICI CURIAE* FIREARMS POLICY COALITION AND FIREARMS POLICY FOUNDATION IN SUPPORT OF PLAINTIFF-APPELLANT

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTES

OTHER AUTHORITIES

INTEREST OF THE *AMICI CURIAE*[1]

Firearms Policy Coalition (**FPC**) is a nonprofit organization devoted to advancing individual liberty and defending constitutional rights. FPC accomplishes its mission through legislative and grassroots advocacy, legal and historical research, litigation, education, and outreach programs. FPC's legislative and grassroots advocacy programs promote constitutionally based public policy that respects individual freedom and self-government. Its historical research aims to discover the founders' intent and the Constitution's original meaning. And its legal research and advocacy aim to ensure that constitutional rights maintain their original scope. Since its founding in 2015, FPC has emerged as a leading advocate for individual liberty in state and federal courts, regularly participating as a party or *amicus curiae*.

Firearms Policy Foundation (**FPF**) is a nonprofit organization dedicated to preserving constitutional rights and liberties. FPF focuses on research, education, and legal efforts to inform the public about the importance of constitutional rights—why they were enshrined and their continuing significance. FPF is determined to ensure that the freedoms guaranteed by the U.S. and state constitutions are secured for future generations.

SUMMARY OF ARGUMENT

The University of Michigan categorically bans the possession of all firearms on campus. The University of Michigan is, without question, a special kind of constitutional institution. Within the confines of its operation and pedagogical mission it is supreme. Outside those confines, however, it is subject to the Constitution and laws of the State of Michigan. The University may not contravene

[1] All parties received notice and consented to this brief. No counsel for any party authored it in any part. Only *amici* funded its preparation and submission.

clearly established rights when managing outside the sphere of the institution's unique competence. Operating outside that sphere, the University is a public corporation like any other and subject to the State's firearm preemption statute.

The purpose of the preemption statute is to avoid the inherent problem of patchwork regulations operating differently in substantially similar localities. Allowing preemption statutes to control firearm regulation ensures equal protection under the law, especially for historically underserved populations. This Court should enforce the Michigan firearm preemption statute and prevent the University of Michigan from substituting the Regents' will for that of the People.

ARGUMENT

I. MCL 123.1102 PREEMPTS UNIVERSITY OF MICHIGAN ARTICLE X.

The Michigan Constitution expressly references the University of Michigan and, as such, creates in the governing board "the highest form of juristic person known to the law, a constitutional corporation of independent authority, which, *within the scope of its functions*, is coordinate with and equal to that of the legislature." *Federated Publications, Inc. v. Bd. of Trustees of Michigan State Univ.*, 594 N.W.2d 491, 495-96 (Mich. 1999) (emphasis added). The University suggests that this power is nearly plenary and allows the University to ban entirely firearms from campus property. The University overreaches its authority. MCL 123.1102 preempts University Article X and prevents the University from substituting their policy for the legislative enactments of the people of Michigan.

a. THE CONSTITUTIONAL AUTONOMY OF THE UNIVERSITY OF MICHIGAN IS LIMITED TO MATTERS WITHIN THE UNIQUE COMPETENCE OF THE UNIVERSITY.

The University of Michigan is indisputably not some run-of-the-mill state agency. The Michigan Constitution confers upon some public universities and their governing boards a unique

and independent authority. *See* MI CONST ART. 8, § 5. As a result, "the legislature may not interfere with the management and control of the universities. The constitution grants the governing boards authority over the absolute management of the University…" *Federated Publications, Inc.*, 594 N.W.2d at 497.

But this power is not unlimited. The University of Michigan "is not an island. Within the confines of the operation and the allocation of funds of the University, it is supreme. Without these confines, however, there is no reason to allow [the University] to thwart the clearly established public policy of the people of Michigan." *Branum v. Bd. or Regents of the Univ. of Michigan,* 145 N.W.2d 860, 862 (Mich. App. 1966). In other words, the University of Michigan's constitutional autonomy is limited to the unique competence of the University. *See, e.g.*, *Federated Publications, Inc.*, 594 N.W.2d at 498 (holding internal operations for electing a president did not violate Open Meetings Act); *Detroit Free Press Inc. v. U. of Michigan Regents*, 889 N.W.2d 717 (Mich. App. 2016) (holding closed informal sessions did not violate Open Meeting Act).

This Court has circumscribed and defined the sphere of autonomy granted to Michigan public universities. Article 8 § 5 protects university educational and financial autonomy by entrusting the general supervision of the institution to the board of regents. *Federated Publications, Inc.*, 594 N.W.2d at 497. It is undisputed the University of Michigan is not subject to legislative control for matters touching the educational autonomy of the University. For matters falling outside educational autonomy, however, the University must yield to legislation and public policy.

The authority granted to Michigan public universities is not unique amongst the states. Other states expressly mention universities in their constitutions. Cases from those jurisdictions set forth similar limits on the authority granted to the universities by their respective state constitutions.

California, for example has articulated three areas of legislative regulation from which constitutionally autonomous universities are not exempt. *Regents of U. of California v. Aubry*, 49 Cal. Rptr. 2d 703, 707 (Cal. App. 2d Dist. 1996). These include [1] appropriations, [2] "general police power regulations[,] … and [3] legislation regulating public agency activity not generally applicable to the public … when the legislation regulates matters of statewide concern not involving internal university affairs." *Id*. In Minnesota, the Regents of the University of Minnesota are granted the power to manage the institution, which the legislature may not deprive. *Star Trib. Co. v. U. of Minnesota Bd. of Regents*, 683 N.W.2d 274, 284 (Minn. 2004). The Minnesota Supreme Court describes the relationship between the legislatures and the regents as "the distinction between … legislative and executive power." *Id.* The legislature has greater authority than the regents when the purpose of the "challenged law was to promote the general welfare." *Id*.; *see also Regents of U. of Minnesota v. Lord*, 257 N.W.2d 796, 802 (Minn. 1977) (holding legislative act was applicable to the University when promoted for the general welfare and does not direct academic policy or administration).

The extent to which constitutional autonomy applies differs between the states. *See* Neal H. Hutchens, *Preserving the Independence of Public Higher Education: An Examination of State Constitutional Autonomy Provisions for Public Colleges and Universities*, 35 J.C. & U.L. 271 (2009) (comparing university constitutional autonomy across states). No two states apply autonomy equally across the board. But it is possible to compare similar cases from jurisdictions on specific issues related to constitutional autonomy. For example, the Colorado Constitution vests the governing boards of higher education institutions with "the general supervisions of their respective institutions and the exclusive control and directions of all funds and appropriations … unless otherwise provided by law." COLO. CONST. ART. VIII, § 5. Like Michigan, "the Colorado Constitution grants the Regents general

supervisory authority over the University, but the Regents' authority is neither exclusive nor absolute." *Colorado Civ. Rights Commn. ex rel. Ramos v. The Regents of the U. of Colorado*, 759 P.2d 726, 730 (Colo. 1988). The Colorado Supreme Court held that the constitutional autonomy of the University of Colorado protects the Regents from the application of the Colorado Open Records Act in much the same way the University of Michigan is not subject to Michigan Open Meeting Act. *Uberoi v. U. of Colorado*, 686 P.2d 785 (Colo. 1984); *accord Federated Publications, Inc. v. Bd. of Trustees of Michigan State Univ.*, 594 N.W.2d 491 (Mich. 1999); *see also Associated Students of U. of Colorado v. Regents of U. of Colorado*, 543 P.2d 59 (Colo. 1975).

In *Regents of U. of Colorado v. Students of Concealed Carry on Campus,* LLC, 271 P.3d 496 (Colo. 2012) the Colorado Supreme Court reviewed a firearm preemption statute and its application on the campus of the University of Colorado. In 1994, the Board of Regents of the University of Colorado adopted a policy prohibiting "the possessions of firearms … on or within any University of Colorado campus." *Id.* at 497. Then, in 2003, the Colorado General Assembly enacted the Concealed Carry Act (CCA). *Id.* at 498. Under the act, "[a] local government does not have authority to adopt or enforce an ordinance of resolution that would conflict with the [CCA]." COLO. REV. STAT. ANN. § 18-12-214(1)(a). Students for Concealed Carry on Campus, LLC (Students) then filed a complaint in 2008 alleging the University policy prohibiting firearms violated the CCA. *Regents of U. of Colorado*, 271 P.3d at 498. The district court granted the Board of Regent's motion to dismiss concluding the "CCA prohibits only local government from adopting or enforcing laws contrary to the CCA." *Id.* (internal quotations omitted). The Students appealed. *Id.*

On appeal, the Colorado Supreme Court considered whether the authority granted to the Regents by the Colorado Constitution made the CCA inapplicable to the University's campus. *Id.* at

500. The board argued it had "special, constitutional authority to enact policies governing the University of Colorado" and that "the CCA only prohibit[ed] local governments, a phrase that would not include the University of Colorado." *Id*. The court rejected both arguments. On the issue of University autonomy, the court held that the CCA achieved its goal of bringing about "statewide uniform standards." *Id*. at 500. As such, the substantive provisions of "the CCA divested the Board of its authority to regulate concealed handgun possession on campus." *Id*. at 502. On the issue of the CCA limiting the authority only of local governments, the court held that exclusions to the broad state policy were limited to specific locations. *Id*. at 501. In addition, the court looked to another, unrelated statute, defining local government as "all municipal corporations, quasi municipalities, counties, and local improvement and service districts of this state." *Id*. (citing COLO. REV. STAT. ANN. § 24-32-102).

Regents of U. of Colorado supports the conclusion that, while constitutional universities enjoy autonomy over those areas affecting the unique competence of the university, *they enjoy no right to supplant clearly established legislative enactments*. Constitutional autonomy cannot possibly be equal to or greater than the individual rights of citizens protected under both state and federal law. No rights are more clearly protected than those codified in the state and federal constitutions. Universities do not enjoy a plenary right to abrogate constitutionally protected activity via an oblique reference to pedagogical interests. If Appellee's theory was accepted, the University of Michigan could ban free expression or association on all University property, including sidewalks abutting the campus, should it interfere with alleged pedagogical interests.

b. OUTSIDE THE SPHERE OF EDUCATIONAL AUTONOMY, THE UNIVERSITY OF MICHIGAN IS A QUASI-MUNICIPAL CORPORATION

The University of Michigan is a public corporation. A "public corporation[] is … created for political purpose … [and] exercised for purposes connected with the public good in the administration of civil government." 1 McQuillin Mun. Corp. Public Corporations § 2:3 (3d ed.). "Public corporations are either (1) municipal corporations proper [e.g., cities, townships, or municipalities], or (2) quasi-municipal corporations." *Id*. The University of Michigan is certainly a special kind of public corporation. The University is the supreme authority within its sphere of educational autonomy. Outside that sphere, however, there is no practical distinction between the University and other quasi-municipal corporations.

The Michigan Constitution grants the University of Michigan authority to adopt regulations that govern the University, supervise and control University property, and oversee activities necessary to conduct its pedagogical or financial mission. But, "the decisions of [Michigan] courts on this topic do not support a proposition that [the University] has free rein to determine which enactments of the Legislature it chooses to follow and which it chooses to ignore." *Wade v. U. of Michigan*, 905 N.W.2d 439, 452 (Mich. App. 2017) (Sawyer, J., dissenting); *see Branum*, 145 N.W.2d at 862. Outside its sphere of autonomy, the University may only exercise powers delegated to it by the legislature, as it has no other inherent powers of its own. Quasi-municipal corporations "possess and can exercise only such powers as are granted in express words or those necessarily and fairly implied in or incident to powers expressly conferred by the Legislature." *Wade*, 905 N.W.2d at 452 (citing 56 Am.Jur.2d, *Municipal Corporations, Counties, and Other Political Subdivisions*, § 194, p 246). Similarly, whatever sovereignty the University possesses is limited to that which is expressly and impliedly granted by the Constitution of Michigan. It does not encompass the broad scope of legislative power that the Michigan legislature retains. Because the University of Michigan has no special competence in firearm

regulation, and it falls outside of the bounds of the University's constitutional delegation, it must be regarded as a quasi-municipal corporation for purposes of the firearm preemption statute.

c. QUASI-MUNICIPAL CORPORATIONS ARE SUBJECT TO THE STATE FIREARM PREEMPTION STATUTE.

Michigan statute preempts "local units of government, mean[ing] a city, village, township, or county" from imposing firearm regulations. MICH. COMP. LAWS ANN. § 123.1101. Michigan courts have since expanded the definition to include some quasi-municipal corporations but not others. *Compare Capital Area Dist. Lib. v. Michigan Open Carry, Inc.*, 826 N.W.2d 736 (Mich. App. 2012) (holding that a district library was preempted from banning firearms on its premise because it is a quasi-municipal corporation subject to preemption) with *Michigan Gun Owners, Inc. v. Ann Arbor Pub. Schools*, 918 N.W.2d 756 (Mich. 2018) (holding that a quasi-municipal corporation school district was not subject to state preemption statute).[2] *Michigan Gun Owners, Inc.* did not differentiate between the quasi-municipal corporation in *Capital Area Dist. Lib.* or expressly overrule *Capital Area Dist. Lib*. This is important because the justification for holding that preemption applied in *Capital Area Dist. Lib.* is in direct conflict with *Michigan Gun Owners, Inc*.

> Nevertheless, a quasi-municipal corporation such as a district library remains subject to the Constitution and the laws of this state. *See Detroit Sch. Dist. Bd. of Ed. v. Mich. Bell Tel. Co.*, 51 Mich.App. 488, 494–495, 215 N.W.2d 704 (1974) (explaining that a *school district*, a quasi-municipal corporation, is a state agency that is subject to the Constitution and laws of the state); [*Atty. Gen. of State of Mich. v. Lowrey*, 92 N.W. 289 (Mich. 1902), *aff'd sub nom. Atty. Gen. of State of Michigan v. Lowrey*, 199 U.S. 233 (1905)] ("The *school district* is a State agency. Moreover, it is of legislative creation. It is true that it was provided for in obedience to a constitutional requirement; and whatever we may think of the right of the district to administer in a local way the affairs

[2] School districts are quasi-municipal corporations in Michigan. *Richards v. Sch. Dist. of City of Birmingham*, 83 N.W.2d 643, 652 (Mich. 1957), *overruled on other grounds by Williams v. City of Detroit*, 111 N.W.2d 1 (Mich. 1961) ("Although invested with certain corporate characteristics to more efficiently serve the purpose for which they are created, school districts are not municipalities, nor public corporations in the full sense, but because of their very restricted powers are distinguished and recognized as quasi corporations.").

> of the district, under the Constitution, we cannot doubt that such management must be in conformity to the provisions of such laws of a general character as may from time to time be passed....")

Capital Area Dist. Lib., 826 N.W. 2d at 742-43 (emphasis added). The holding in both cases cited above is predicated upon school districts being quasi-municipal corporations subject to the laws and Constitution of the State. Put differently, the *Capital Area Dist. Lib.* holding is based on the supposition that quasi-corporation library districts are subject to the laws of the state of Michigan in a manner similar to quasi-corporation school districts. *Michigan Gun Owners, Inc* stands for the proposition that Michigan State law does not entirely occupy the field of firearm regulation. *Michigan Gun Owners, Inc.* 918 N.W.2d at 762. Yet, *Michigan Gun Owners, Inc*. does not expressly overrule *Capital Areas Library District*. As such, under Michigan law, some quasi-municipal corporations remain subject to the firearm preemption statute. This Court should hold that Michigan's firearms preemption statute applies to the University of Michigan while operating outside its sphere of constitutional autonomy as a quasi-municipal corporation.

d. THE UNIVERSITY OF MICHIGAN IS THE FUNCTIONAL EQUIVALENT OF A CITY, TOWNSHIP, OR VILLAGE

The nature of the University of Michigan militates in favor of finding that state preemption applies. The University is a city within a city. University property is spread throughout the City of Ann Arbor, Michigan. The campus itself encompasses 3,207 total acres, in many places directly abutting city streets, sidewalks, and both public and private property. *Overview of University of Michigan – Ann Arbor*, U.S. News and World Report (accessed 2/24/2021), https://www.usnews.com/best-colleges/university-of-michigan-ann-arbor-9092/overall-rankings. The University enrolls over 31,000 undergraduates and nearly 17,000 graduate students. *Id.* The entire

population of Ann Arbor is only 120,000. The University boasts its own police department, more than one hospital, and a football stadium capable of seating over 110,000 people. *Id.*

The purpose of any preemption statute is to "prevent a patchwork of local regulations in the state." *Wade*, 905 N.W.2d at 450 (Sawyer, J., dissenting). A map of the University of Michigan campus overlayed over the city of Ann Arbor could aptly be described as just that, a random patchwork. Any person, duly licensed to carry a concealed firearm by the State of Michigan, could run afoul of University policy merely by crossing the wrong street or stepping off the wrong sidewalk. The risk is particularly acute for students, most of whom live off-campus. Much of the campus is difficult to delineate from the surrounding City and students risk arrest and criminal prosecution which would arbitrarily ruin an academic career. Such an unjust outcome is exactly what preemption statutes aim to avoid.

> The regulation of firearm possession undoubtedly calls for such exclusive state regulation. If the state prevents all public libraries established by a city, village, township, or county from passing their own firearms regulations but does not similarly prevent district libraries from doing so, it would result in a "Balkanized patchwork of inconsistent local regulations.

Capital Area Dist. Lib., 826 N.W.2d at 746. Patchwork regulations are dangerous for two main reasons. First, they chill legal activity because people fear running afoul of the law. Second, they signal to criminals where soft targets exist.

Michigan State University takes a different approach. Michigan State University allows permitted CPL holders to carry firearms on campus. Students and faculty may not bring concealed firearms on the campus under their contract, but other CPL holders are not at risk of running afoul of a patchwork policy. Moreover, certain buildings are off-limits, which properly confines the area of exclusion to those sensitive places expressly outlined by the U.S. Supreme Court. As the *Heller* Court

said, "nothing in our opinion should be taken to cast doubt on longstanding … laws forbidding the carrying of firearms *in* sensitive place such as schools and government *buildings*." *D.C. v. Heller*, 554 U.S. 570, 626 (2008) (emphasis added). The entirety of a campus covering five square miles cannot be included within *Heller*'s presumptively lawful sensitive place exclusions.

II. STATE PREEMPTION PREVENTS THE DISCRIMINATORY IMPACT OF "MAY ISSUE" AND "NO ISSUE" FIREARM REGIMES.

Firearm regulations in the State of Michigan have a troubled and racially charged past. In 1925, the prominent African American physician Ossian Sweet moved his family into a house on the east side of Detroit. Heather Bourbeau, *Dr. Ossian Sweet's Black Life Mattered*, JSTOR DAILY (Jun. 17, 2015) https://daily.jstor.org/ossian-sweet-black-lives-matter/ [https://perma.cc/9HFK-7V5H]. The area was predominantly white. The night Sweet moved into the house, a crowd of several hundred hostile white residents mobbed the home. *Id*. Sweet had anticipated such action prior to moving in and brought with him a supply of firearms in order to protect his family. *Id*. The mob soon became more violent and Sweet, aware no one was coming to help, fired several shots into the crowd, killing one man and wounding another. *Id*. The police then arrested everyone inside the house, charging all with first degree murder. *Id*. All present were subsequently acquitted at trial with the assistance of the National Association for the Advancement of Colored People and the legendary Clarence Darrow. *Id*. The whole affair led Michigan lawmakers to pass legislation making it nearly impossible for an African American to possess a firearm.

a. UNEQUAL APPLICATION OF PREEMPTION STATUTES HARM MINORITIES.

Gun control in Northern States was brought about by the strong xenophobic and racist reaction to immigrants and African Americans. Stefan B. Tahmassebi, *Gun Control and Racism*, 2 GEO. MASON U. CIV. RIGHTS L.J. 67, 76-77 (1991). In 1911, New York passed the Sullivan Act

which "made handgun ownership illegal for anyone without a police permit." *Id* at 77; see also N.Y. PENAL LAW § 1897 (Consol. 1909) (amended 1911). Organizations throughout Northern States, including the New York Times and the American Bar Association, endorsed the Sullivan-type law concept. *Id*. Michigan passed a version of the Sullivan Act following the Ossian Sweet incident to prevent African Americans from defending themselves by requiring them to obtain a may-issue permit prior to purchasing a firearm, which was virtually never issued to African Americans. *Id*.

The right to carry firearms is essential to minorities. "[I]f self-defense is the central tenet of the Second Amendment, any change in Second Amendment law must consider the practical effect on those most in need of self-defense. Nowhere is self-defense needed more than in America's inner cities." Daniel Peabody, *Target Discrimination: Protecting the Second Amendment Rights of Women and Minorities*, 48 ARIZ. ST. L.J. 883, 912 (2016). Moreover, given the charged relationship between minorities and police officers, the right to carry a concealed weapon for self-defense is more important now than ever.

> A young African-American male in a high crime neighborhood is the individual most in need of a firearm for self-defense. However, if a younger Otis McDonald - a young African-American male- were forced to open carry a firearm because the Second Amendment was interpreted to exclude concealed carry, he would be walking probable cause. Young minorities, and indeed minorities of all ages, would be forced to decide between proceeding through a virtual warzone, unarmed and risking death, or walking through a virtual warzone openly armed alerting potential assailants and police to the presence of a firearm. Furthermore, this option puts law enforcement in the difficult situation of trying to keep neighborhoods safe all the while trying not to needlessly bother law abiding individuals who are exercising their Second Amendment rights

Id. at 913. Individuals living in communities plagued by violence, crime, and government brutality are those most in need of the protections that a concealed weapon provides. "Today, most are ignorant—many willfully—of the reality facing many African-Americans who want to practice their Second Amendment right to bear arms, and although the Second Amendment's promise of self-

defense is at its zenith with many African-Americans the reality is that their Second Amendment rights are handicapped." *Id* at 914. The Second Amendment and the right to carry a concealed firearm in a permissive shall-issue state must apply equally to all citizens. The purpose of preemption statutes is to prevent disparate treatment amongst varying environments and encourage a uniform equality amongst citizens.

The University of Michigan policy goes beyond even may-issue permitting regimes. Instead, the University bans all firearms from campus much like the former Michigan gun control regime applied to immigrants and African Americans. The harms associated with restricting rights are particularly acute amongst minorities and vulnerable communities. State preemption statutes enforcing a shall-issue regime are meant to increase access to self-defense tools for law abiding and vulnerable citizens. Applying preemption statutes on an essentially ad hoc basis undermines this basic purpose and often harms minorities disproportionately.

b. UNEQUAL APPLICATION OF PREEMPTION STATUTES HARM VULNERABLE COMMUNITIES.

On October 22, 2007, Amanda Collins, a student at the University of Nevada studying English and Education was on campus to take a midterm. Brian Vasek, *Rethinking the Nevada Campus Protection Act: Future Challenges & Reaching A Legislative Compromise*, 15 NEV. L.J. 389, 390 (2014). After finishing the exam, she ventured out to her car in a parking garage where she was attacked, brutally raped, and nearly strangled to death. *Id*. A year later, another student, Brianna Denison went missing in the middle of the night near the University of Nevada. *Briana Denison Timeline, From Her Disappearance to the Death Penalty for James Biela*, Reno Gazette-Journal (Jan. 26, 2018, 5:39 AM) https://www.rgj.com/story/news/2018/01/26/brianna-denison-timeline-her-disappearance-death-penalty-james-biela/1059624001/ [https://perma.cc/2BDD-LSSL]. Her body was found four weeks

later. *Id*. She had been kidnapped, brutally raped, and strangled to death. *Id*. Amanda Collins's rapist turned out to be Brianna Denison murderer. *Id*. At the time of her attack Collins was a CPL holder. However, the University of Nevada prohibited firearms on campus. David Kopel, *Guns on University Campuses: The Colorado Experience*, Wash. Post (Apr. 20, 2015, 1:36 PM), https://www.washingtonpost.com/news/volokh-conspiracy/wp/2015/04/20/guns-on-university-campuses-the-colorado-experience/ [https://perma.cc/KGU7-FF9T]. Following Denison's murder, Collins petitioned for a bill decriminalizing concealed carry at Nevada public universities. *Id*. The bill passed in the Senate but was defeated by a Judiciary Chairman who refused to bring the bill to a vote. *Id*. Instead, the University granted to Collins alone a special exception to carry a firearm on campus. Vasek, *supra*, at 390. The moral of the story: a university might give you a right to carry a firearm on campus but only after you have been raped and another student has been raped *and* murdered.

Nevada enacted a firearms preemption statute in 1989. The statute expressly requires courts to liberally construe the law in order to effectuate its purpose. NEV. REV. STAT. ANN. § 244.364. Yet, Amanda Collins was still prevented from carrying a firearm on the University of Nevada campus. Allowing patchwork regulations, in contravention of clear legislative policy, endangers vulnerable populations by signaling to potential predators exactly where the most vulnerable victims will be. Gun rights may be controversial, but so are others. Gun rights "have the capacity to absolutely consume very substantial interests, making unparalleled demands on our tolerance of the costs that rights impose." Nicholas J. Johnson, *Principles and Passions: The Intersection of Abortion and Gun Rights*, 50 RUTGERS L. REV. 97, 98 (1997). Yet, "our willingness to endorse costly rights is the best test of whether we take rights seriously." *Id.* at 98 n.10.

"For women, the concealed firearm is the equalizer." Peabody, *supra*, at 911. Today, women are obtaining concealed carry permits twice as fast as men and twenty-five percent of all concealed carry permit holders are women. *Id.* "A firearm drastically increases a woman's ability to defend … from any attacker and gives them greater freedom because they can ensure their own safety without relying on someone else." *Id.* at 912. Like other vulnerable populations, it is crucial that women be allowed to carry and conceal firearms. Women gain the tactical advantage of surprise when carrying concealed and can prevent a criminal from taking away an openly carried firearm. *Id.* The uniform application of preemption statutes prevents women with concealed carry permits from being forced to disarm in locations known to criminals as soft targets.

c. PERMISSIVE CONCEALED CARRY LAWS ARE NOT ASSOCIATED WITH A RISE IN VIOLENT CRIME

The effectiveness of concealed weapons to deter crime has been analyzed thoroughly using various methodologies. Most have found permissive concealed carry laws reduced crime by deterring criminal activity or had no measurable effect on crime rates. Mark Gius, *Using the Synthetic Control Method to Determine the Effects of Concealed Carry Laws on State-Level Murder Rates*, 57 INTL. REV. L. & ECON. 1, 2 (2019) (Table 1). The most famous, and oft-quoted, of these studies analyzed data from U.S. counties between 1977 and 1992. The study found "allowing citizens to carry concealed weapons deters violent crimes and it appears to produce no increase in accidental death." John R. Lott, Jr. & David B. Mustard, *Crime, Deterrence, and Right-to-Carry Concealed Handguns*, 26 J. LEG. STUD. 1 (1997). As usual, all studies on the subject do not agree. After all, "the persuasiveness of social scientific evidence cannot remotely approach the persuasiveness of conclusions in the physical sciences." Don B. Kates & Gary Mauser, *Would Banning Firearms Reduce Murder and Suicide? A Review of International and Some Domestic Evidence*, 30 HARV. J.L. & PUB. POL'Y 649, 693 (2007). Most,

however, agree the statistics gathered by Lott and Mustard were produced using a sound methodology. Carlisle E. Moody, *Testing for the Effects of Concealed Weapons Laws: Specification Errors and Robustness*, 44 J.L. & ECONS. 799, 812 (2001) ("The results of the … analyses confirm and reinforce the basic findings of the original Lott and Mustard study"). Other studies similarly conclude that concealed carry laws do not increase crime rates and may deter criminal activity. *See generally* David E. Olson & Michael D. Maltz, *Right-to-Carry Concealed Weapon Laws and Homicide in Large U.S. Counties: The Effect on Weapon Types, Victim Characteristics, and Victim-Offender Relationships*, 44 J.L. & ECONS. 747 (2001); Florenz Plassmann & T. Nicolaus Tideman, *Does the Right to Carry Concealed Handguns Deter Countable Crimes? Only A Count Analysis Can Say*, 44 J.L. & ECONS. 771 (2001); Florenz Plassmann & John Whitley, *Confirming "More Guns, Less Crime*," 55 STAN. L. REV. 1313 (2003).

Preemption statutes in shall-issue states exist for a reason. They protect both the unwitting gun carrier from being subject to arbitrary arrest and the potential victim from being disarmed in arbitrary locations. Limiting exceptions to narrowly defined sensitive areas prevents the disparate impacts of violent crime on vulnerable populations. Moreover, permissive concealed carry laws do not increase crime and likely have a deterrent effect on criminals. Allowing the University of Michigan to avoid the clear legislative will of the State of Michigan does not help to prevent crime, does not provide vulnerable populations with greater security, and serves no legitimate pedagogical interests when the prohibition applies to all campus property.

CONCLUSION

When operating outside their constitutional autonomy, the Board of Regents of the University of Michigan is not free to ignore the Constitution and Laws of the State of Michigan. The Michigan firearm preemption statute applies to the University when operating as a quasi-municipal corporation.

The purpose of firearm preemption statutes is to ensure the uniform application of laws across states with narrowly tailored exceptions. Citizens in Michigan may, commensurate with State and Federal constitutional protections, exercise their right to self-defense by carrying concealed weapons. The University of Michigan is not free to ignore this clear public policy mandate from the Legislature. This Court should find for the Appellant and hold University of Michigan Title X invalid as preempted by statute.

Respectfully Submitted,

Dated: March 1, 2021

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