

STATE OF MICHIGAN
IN THE COURT OF APPEALS

JOSUHA WADE,

Plaintiff-Appellant,

v.

UNIVERSITY OF
MICHIGAN,

Defendant-Appellee.

Case No. 156150

COA Docket No. 330555

Trial Ct. Case No. 15-000129-MZ

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BRIEF OF *AMICUS CURIAE*
MARCH FOR OUR LIVES ACTION FUND

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STATEMENT OF THE QUESTIONS INVOLVED

Amicus curiae March for Our Lives Action Fund addresses the following issues:

1. Whether the two-part analysis applied by the Court of Appeals is consistent with *District of Columbia v Heller*, 554 US 570; 128 S Ct 2783; 171 L Ed 2d 637 (2008), and *McDonald v Chicago*, 561 US 742; 130 S Ct 3020; 177 L Ed 2d 894 (2010), cf. *Rogers v Grewal*, 140 S Ct 1865, 1867; 207 L Ed 2d 1059 (2020) (THOMAS, J., dissenting)?

Appellant says: No.

Appellee says: Yes.

Trial Court said: Yes.

Court of Appeals said: Yes.

This Court should answer: Yes.

2. If the first question presented is answered in the affirmative, whether intermediate or strict judicial scrutiny applies in this case?

Appellant says: Strict scrutiny.

Appellee says: It is not necessary to apply any level of scrutiny, because Article X restricts firearms in a “sensitive place” where Second Amendment rights are not implicated. If further scrutiny is necessary, however, then intermediate scrutiny applies.

Trial Court said: The Court of Claims did not address this issue.

Court of Appeals said: It is not necessary to apply any level of scrutiny, because Article X restricts firearms in a “sensitive place” where Second Amendment rights are not implicated. If further scrutiny is necessary, however, then intermediate scrutiny applies.

This Court should answer: It is not necessary to apply any level of scrutiny, because Article X restricts firearms in a “sensitive place” where Second Amendment rights are not implicated. If further scrutiny is necessary, however, then intermediate scrutiny applies.

3. Whether the University of Michigan’s firearm policy is violative of the Second Amendment, considering—among other factors—whether this policy reflects historical or traditional firearm restrictions within a university setting and whether it is relevant to consider this policy in light of the University’s geographic breadth within the city of Ann Arbor?

Appellant says: Yes.

Appellee says: No.

Trial Court said: No.

Court of Appeals said: No.

This Court should answer: No.

STATEMENT OF INTEREST OF *AMICUS CURIAE*¹

Amicus curiae March for Our Lives Action Fund (“MFOL”) is a non-profit organization of young people from across the country who are fighting for sensible gun violence prevention policies that will save lives. MFOL was formed after the mass shooting at Marjory Stoneman Douglas High School in Parkland, Florida, on February 14, 2018, and immediately began organizing the largest single day of protest against gun violence in history. Hundreds of thousands of people joined its March 24, 2018 march in Washington, D.C., and sibling marches all over the world.²

Since then, students seeking to effect change have formed MFOL chapters across the country. In 2018, MFOL leaders traveled the country on the “Road to Change” to discuss policy solutions, registering more than 50,000 new voters along the way. And in March 2020, MFOL launched “Our Power 2020,” a campaign to continue gun violence prevention advocacy and drive record youth turnout. During the 2020 general election cycle, MFOL held hundreds of rallies online—including the “Count On Us Rally,” which was the largest virtual youth rally the week of the election—and organized phone banks and text banks to get out the vote. These young people—all too familiar with mass shootings and other forms of gun violence—have a vital interest in ensuring that the Constitution is interpreted to allow for the enactment of gun violence prevention measures to protect all Americans, including students on

¹ Pursuant to MCR 7.312(H), no party or counsel for any party authored this brief in whole or in part. No entity or person, aside from *amicus curiae*, its members, or its counsel, made a monetary contribution intended to fund the preparation or submission of the brief. Counsel for Defendant-Appellee has consented to the filing of this brief, and counsel for Plaintiff-Appellant has stated that he does not oppose it.

² “[T]he March for Our Lives event brought out 1,380,666 to 2,181,886 people at 763 locations.” Bond, Chenoweth & Pressman, *Did You Attend the March for Our Lives? Here’s What It Looked Like Nationwide*, Washington Post (April 13, 2018), <<https://www.washingtonpost.com/news/monkey-cage/wp/2018/04/13/did-you-attend-the-march-for-our-lives-heres-what-it-looked-like-nationwide/>>.

college campuses. MFOL's interests align in this case with the interests of Michigan citizens and Michigan college students who want public universities to implement policies that minimize the danger posed and potential disruption caused by the presence of guns in an academic setting.

MFOL has participated as *amicus curiae* in other cases that affect its core interest in preventing gun violence, including filing an amicus brief last year in the U.S. Supreme Court in *New York State Rifle & Pistol Ass'n, Inc v City of New York*, 590 US __, 140 S Ct 1525; 206 L Ed 2d 798 (2020).

INTRODUCTION AND SUMMARY OF THE ARGUMENT

As the U.S. Supreme Court and other courts nationwide have recognized, there is a pressing “problem of handgun violence in this country.” *District of Columbia v Heller*, 554 US 570, 636; 128 S Ct 2783, 2822; 171 L Ed 2d 637 (2008). This epidemic of gun violence, which extends far beyond handguns, has provoked sustained engagement by the public and policymakers in an effort to develop solutions to this complex problem.

This brief presents the voices and stories of young people who have been affected directly and indirectly by gun violence—or the threat of it—at institutions of higher education. For the people whose stories are highlighted here, preventing gun violence is nothing short of an existential issue. And they are not alone: The issue looms large over college campuses across this nation, and creates a substantial potential for disrupting academic achievement and student life.

In light of these concerns, this brief urges this Court to adhere to the U.S. Supreme Court’s promise that its Second Amendment jurisprudence “by no means eliminates” the ability of Americans and their governments—including, in this case, the University of Michigan Board of Regents—“to devise solutions to social problems that suit local needs and values.” *McDonald v City of Chicago*, 561 US 742, 785; 130 S Ct 3020, 3046; 177 L Ed 2d 894 (2010). The Supreme Court has carefully left room for appropriate responses to the scourge of gun violence; indeed, the Court has made clear that restrictions “forbidding the carrying of firearms in *sensitive places such as schools*” are “presumptively lawful regulatory measures.” *Heller*, 554 US at 626, 627 n 26 (emphasis added). Precluding the University of Michigan from enacting sensible firearm policies like Article X would do great harm to students, undermining their physical safety and limiting their ability to engage fully in academic life unencumbered by fear of gun violence.

ARGUMENT

I. THE PROHIBITION OF GUNS ON COLLEGE CAMPUSES IS AN ISSUE OF CRITICAL IMPORTANCE TO AMERICAN STUDENTS.

The epidemic of gun violence in this country has had a disproportionate impact on young people,³ and many of those affiliated with MFOL have been affected—directly or indirectly—by school shootings. They, like the rest of the “Mass Shooting Generation,”⁴ are uniquely qualified to shed light on the shadow cast by the specter of gun violence in a school setting.

Seven of their stories are shared here to acquaint the Court with the pain and trauma that gun violence has inflicted on them, and the measure of comfort that restrictive gun policies at schools afford them. These voices represent tens of thousands of other young people who, weighed down by the daily threat of gun violence,⁵ want their colleges

³ Americans between the ages of 15 and 29 accounted for just 2.2% of overall deaths nationwide in 2016, but represented 31% of all *firearm* deaths and nearly 50% of the victims of firearm-related homicides. Parson et al, *America’s Youth Under Fire*, Center for American Progress (May 4, 2018), <<https://www.americanprogress.org/issues/guns-crime/reports/2018/05/04/450343/americas-youth-fire/>>.

⁴ See, e.g., Burch, Mazzei & Healy, *A ‘Mass Shooting Generation’ Cries Out for Change*, N.Y. Times (February 16, 2018), <<https://www.nytimes.com/2018/02/16/us/columbine-mass-shootings.html>>. “[T]he pervasiveness of lockdowns and school-shooting drills in the U.S. has created a culture of fear that touches nearly every child across the country.” Pinsker, *When Was the Last Time American Children Were So Afraid?*, The Atlantic (May 9, 2019), <<https://www.theatlantic.com/education/archive/2019/05/lockdown-drill-fear/589090/>>; see also MFOL, *Generation Lockdown*, YouTube.com (April 29, 2019), <<https://www.youtube.com/watch?v=0IM4p62p3M0>>.

⁵ According to the American Psychological Association in 2018, 75% of “Gen Z” youth aged 15 to 21 cite mass shootings as a primary source

and universities to do all that they can to minimize safety concerns on campus and foster a free and open academic environment.

A. Colin Goddard

On the morning of April 16, 2007, Colin Goddard considered skipping class. A junior at Virginia Tech, Colin's first class on Mondays was Intermediate French, a course he was taking to fulfill the language requirement for his International Relations degree. Driving to campus, Colin picked up Kristina, a young woman in his class who he had a crush on. Sitting in the parking lot outside of Norris Hall, they flirted with the idea of grabbing breakfast at a café nearby. But ultimately, they decided to go to class; the semester was winding down, and they had already accumulated several absences together.

The lesson had already begun by the time Colin and Kristina arrived. They took seats at the back of the small, square room as the professor smiled and rolled her eyes at the oft-tardy duo. The 15 students conversed with each other in French about parties, dances, and other fun activities they had engaged in over the weekend. It was just another Monday.

The top student in the class, Rachael, arrived about halfway through the lesson. She explained, "There was a shooting in my dorm. They put us in lockdown and wouldn't let us leave until a few minutes ago. This is the first place I came." Colin and his classmates were

of stress, and more than 20% report that the possibility of a shooting at their school is a source of stress on a day-to-day basis. American Psychological Association, *Stress in America: Generation Z*, (October 2018), pp 1–2, <<https://www.apa.org/news/press/releases/stress/2018/stress-gen-z.pdf>>; see also Graf, *A Majority of U.S. Teens Fear a Shooting Could Happen at Their School, and Most Parents Share Their Concern*, Pew Research Center (April 18, 2018), <<https://www.pewresearch.org/fact-tank/2018/04/18/a-majority-of-u-s-teens-fear-a-shooting-could-happen-at-their-school-and-most-parents-share-their-concern/>>.

shocked. But because students had been released from the lockdown, they assumed the danger had passed.

A few minutes later, muffled banging reverberated from far away. The professor paused her lesson, concerned, but students reassured her that it was probably just the noisy construction underway in the adjacent building. Moments later, however, the banging resumed—this time much louder, and sounding nearby. The professor walked to the door and peered into the hallway, then immediately slammed the door shut and faced the class with a look of panic. “Get under your desks and someone call 9-1-1,” she said. Colin looked at her in disbelief. “Call 9-1-1,” she repeated sternly, looking at Colin.

Colin pulled out his cell phone and dialed 9-1-1 for the first time in his life. He told the emergency dispatcher, “I think someone’s shooting a gun in Norris Hall.” Just as Colin’s professor again directed the class to get underneath their desks, gunfire tore through the classroom door. Colin dived to the ground. When he lifted his head a few seconds later, he saw someone in light tan combat boots, khaki pants, a white shirt, and crossed holsters pacing around the front of the classroom. Colin tracked the combat boots heading back toward the classroom door, and, for a moment, hoped it was a police officer securing the classroom. But then the boots turned toward Colin’s row of desks. Just as he looked away, Colin felt his entire body shake. There was a sudden, searing pain above his right knee, followed by a wash of warmth and wetness, and then numbness. “I just got shot. I can’t believe this is really happening.”

Gunfire continued to erupt throughout the classroom, only pausing when the gunman stopped to reload. Wounded and with no escape route, Colin tried to play dead. He put his head down and listened as the gunman moved around the room, still shooting. Finally, the screams of his classmates began to subside, and the pitch of the gunfire changed. The shooter had left the room. Colin, still on the line with 9-1-1, told the dispatcher that he had been shot. She tried to reassure him that help was coming.

Just then, the gunman returned to Colin’s classroom. This time, he moved methodically up and down the rows of desks. Colin’s body

shook again as a bullet burrowed into his left hip and shattered his leg. Rolling to his side from the force of being shot, Colin slid his phone away so the gunman would not overhear the 9-1-1 dispatcher, who was still speaking. Soon after, the shooter left the room a second time. Colin lifted his head and searched for Kristina. She was huddled against the back wall, hands over her head. The screaming had now stopped. Colin heard gurgling sounds as someone on the floor next to him struggled to breathe. Colin did not turn to look, terrified of what he would see.

Moments later the shooter came back again. Colin lay on his back as the gunman repeated his march through the classroom, row by row. Not daring to look, Colin sensed the gunman standing at his feet. Colin's body jolted again as he was shot a third time in his right shoulder. He rolled over onto his stomach and felt a fourth bullet penetrate his right hip. As the gunman moved to the front of the room, Colin heard law enforcement clearing classrooms down the hall. Once they reached Colin's classroom, the sound of gunfire abruptly stopped.

The bodies of Colin's professor and another student blocked the door, momentarily obstructing police from entering the classroom. Once officers swept inside, Colin heard them say, "Shooter down." The gunman had killed himself inside the classroom. Colin crawled to Kristina and held her hand as police darted around the room assigning people colors—"yellow tag," "red tag," and "black tag." He heard "black tag" repeated over and over. For the first time, he understood just how many people in the classroom had died. Colin received a "yellow tag." Two police officers lifted Colin by his shoulders and dragged him out. Looking back to scan the scene, he absorbed the full scale of the devastation. Mounds of shell casings. Overturned desks. And the bodies of his professor and many classmates, including Rachael, who would not leave the classroom alive.

Colin spent six days in the hospital. "When you get shot, they leave the gunshot wound open so everything can come out. I had four entry wounds and one exit wound—open holes in my body. My bandages had to be changed constantly because so much stuff was coming out—bullet fragments, powder, blood." Eventually, the doctors left three bullets inside of Colin's body because it was too dangerous to remove them. Over the next ten years, those bullets would leach lead into

Colin's blood. In 2017, he found out that the lead levels in his blood were seven times higher than what is considered acceptable. Following additional surgeries and intensive medication, Colin's lead levels have dropped, but are still well above normal.

The lasting effects of the shooting are not just physical for Colin. When he returned to Virginia Tech to complete his degree, summoning the courage to step onto campus was difficult. "Any time I heard a loud noise or a student came in late to class, my heart would leap and I would have a small panic attack in my chair." To this day, Colin jumps at loud noises. He cannot watch violent movies. When he visits new places, the first thing he thinks about is where he would hide and how he would escape in the event of an active shooter situation.

In the aftermath of the shooting, Colin was the target of online commentators who claimed that if students were allowed to have firearms, the tragedy at Virginia Tech would have been avoided. Colin wonders if these advocates have ever actually spoken to a survivor of the shooting. "Allowing guns on campus is not the right way to deal with this," he explains. "There were countless instances during my college years when having firearms around would have made it way more dangerous than safe." Colin worries that when schools allow guns on campus, it is nearly impossible to distinguish a peaceful gun owner from a potential mass-shooter until the bullets start flying. "That's no way to be a student. You can't learn in that environment."

B. Pranasha Shrestha

As a high school senior in Los Angeles, Pranasha Shrestha had a difficult time deciding where to attend college. She was torn between the University of Southern California and the University of California, Los Angeles. Although both had incredible reputations, USC offered a construction program perfectly aligned with her career aspirations. As Pranasha began to lean toward USC, the decision was taken out of her hands. A week before her decision deadline, two graduate students were shot and killed just beyond the gates to USC's campus. Her mother, shaken by news of the murders, forbade Pranasha from attending USC. Pranasha enrolled at UCLA.

As Pranasha neared the end of her senior year in college, UCLA, too, was struck by gun violence. On the morning of June 1, 2016, Pranasha was taking the final exam for her structural concrete design class—one of her last tests before graduation. As the exam ended and students filtered out of the lecture hall, Pranasha received an alert from the University: There was an active shooter and students were ordered to lock down.

Pranasha and her classmates scrambled to warn others who had already left the room. She overheard fellow students on the phone with friends outside who were searching frantically for a hiding place, banging on doors. Rumors—including that there were multiple gunmen—spread quickly through social media and by text message, but there was one consistent message: Stay away from the engineering building—the very building where Pranasha and her classmates were stuck.

As they rushed to secure the classroom, the students quickly realized that the two doors in the stadium-style lecture hall opened out into hallways and had no locking mechanisms. Pranasha and her classmates turned off all lights in the room and instinctively split into two groups to secure both doors. “We did what you would expect engineers to do—create a locking system for the doors.” Employing lessons gleaned from their engineering curriculum, the students constructed a rudimentary locking mechanism using a belt, classroom chairs, and a water bottle. They tied the water bottle to the end of the belt, tied the other end of the belt to the door, and anchored the water bottle against a hand railing—all in an effort to “create an inward-moving force against the door that would oppose the outward force if someone tried to open it.” At the front of the room, students fastened a projector cord and a classroom chair against the door handle. Pranasha and her classmates were struck by “the absurdity of the situation,” shocked by the horrific irony of this real-world application of their education.

After fastening the doors, the students huddled in the dark, out of sight from the windows in the classroom’s two doors. They texted and quietly called family and friends, receiving and relaying updates on the situation unfolding outside. When the students heard footsteps on the

floor above them, the room fell silent. “It was really terrifying at that point. I was praying. I called my mom and just listened because I didn’t want to make any noise. My mom was crying and begging me to speak, but I didn’t want to make even a whisper. I was scared someone outside would hear.”

The students continued to receive text updates from campus police over the next hour, first instructing them to remain in lockdown, and later notifying them of a fatality. Finally, the lockdown was lifted. When Pranasha and her classmates undid the locks on the doors and emerged from the building, SWAT teams were everywhere, a helicopter circled overhead, and news reporters had arrived on the scene. Although campus police assured Pranasha that she was safe, she immediately left campus for her family’s home. She cried and slept for the rest of the day, struggling to focus on studying for her last exam.

Pranasha and her classmates soon learned that a former engineering Ph.D. student had murdered an associate professor before turning the gun on himself. They also found out that the shooter had been in their building, right above their lecture hall. Several weeks later, Pranasha attended a vigil for the slain professor, but she left after only 20 minutes, overwhelmed by the trauma of being back on campus. She also skipped the university-wide commencement ceremony. Pranasha had never felt unsafe at UCLA, but that changed the day of the shooting. After her traumatic experience, she felt permanently robbed of her sense of security on campus.

Pranasha is not opposed to responsible gun ownership, but believes that “there is no place for guns on a college campus.” Looking ahead, Pranasha wants to pursue a master’s degree, but her decision on where to attend school will—once again—be affected by the threat of gun violence: “With what I’ve experienced and the emotions I’ve developed around guns, I’m just not going to an open carry campus.”

C. Valerie Dynda

As a middle school math teacher, it is not uncommon for Valerie Dynda’s students to ask her what to do if a gunman were to enter their classroom: “Should I get down or try to jump out of a window?” Valerie

does not want to scare them, but she knows she has to leave them prepared. Her own experience with a school shooting makes answering these questions deeply personal and difficult.

In 2018, Valerie was a senior in the elementary education program at Central Michigan University. She was active in campus life—serving on her residence hall council, joining the student chapter of the Michigan Education Association, and holding a job at the on-campus convenience store. She felt safe at CMU. But on March 2, 2018, that feeling of safety evaporated.

It was the last day of classes before spring break, and the campus was largely empty. Valerie had an early morning shift at the store, where she worked as a cashier. At 9:07 a.m., while her supervisor was out running an errand and her co-worker was in the stockroom, she received a recorded message from CMU: “Shots fired in the Towers. Take shelter.” The Towers, a dormitory complex, were not far from Valerie’s post. Valerie’s mind instantly started racing. “How many people were shot? Is the shooter in custody? Or is the shooter on the move?”

Terrified that a mass shooting was underway, Valerie locked the door to the store. She called her boss, who told her that the gunman might be able to shoot through the store’s many windows and urged her to hide in the store’s stockroom. Valerie rushed to the stockroom and crouched down on the floor between tall aisles of inventory. They turned off the lights, kept conversation to a whisper, and opened their phones—both to monitor information and communicate with friends and family. Sitting in the dark, Valerie struggled to breathe. She felt like her “life was up in the air.”

Just an hour later, Valerie received another recorded message from CMU confirming that two people were shot. She read on social media that the shooter was heading north toward her location—possibly along the train tracks that passed next to the store. She prayed the gunman would go another way or get caught before he could reach her. Valerie heard helicopters roar overhead. While the sound of law enforcement might have been comforting in other circumstances, Valerie found it chilling to realize how close the shooter was.

The lockdown continued for more than three hours—and as the threat still loomed, so did the fear. When the lockdown lifted, the shooter was still at large. Valerie emerged from the store to see campus swarming with law enforcement personnel. She and her co-worker, keys at the ready, rushed to their cars and drove home.

Valerie struggled to sleep when she got home that night. When spring break came to an end, she did not want to return to campus. Her first day back at the store was jarring; she retrieved items from the stockroom, painfully aware that last time she had been there, she “was sitting on the floor while people were being shot on campus and a gunman was on the loose.”

Now, as a teacher, Valerie has to manage the fears and anxieties of her students in addition to her own. During lockdown drills orchestrated by her school, her feelings of anxiety and past trauma come rushing back. Considering her experiences as both a student and teacher, Valerie sees no place for guns in an academic setting. As she explains, it would adversely affect her ability to teach properly. “I would be concerned about which of my fellow teachers or students could access a gun, and I would question my trust in them every second. You just never know.” And the presence of guns in school would seriously undermine the learning environment. “No student should have to sit in class and fear what someone might do with a gun in school.”⁶

D. Sam Rubinstein

The prospect of gun violence has long weighed on Sam Rubinstein. In 2012, the same year in which a gunman killed 26 people

⁶ CMU President George Ross recognized the deep and lasting trauma experienced by the student body following the March 2, 2018 shooting and campus lockdown. “There were thousands of people on campus yesterday, and they’re going to be dealing with this for the rest of their lives,” he said. Sicaon, *Suspect in Central Michigan University Deaths Used Gun Registered to Dad, Police Say*, Detroit Free Press, <<https://www.freep.com/story/news/nation-now/2018/03/02/2-shot-central-michigan-university-gunman-still-large/388570002/>> (accessed February 27, 2021). Of course, that is certainly true for Valerie.

at Sandy Hook Elementary School, Sam's Jewish day school installed bulletproof glass windows in response to anti-Semitic attacks abroad. And as a gay college student, he was deeply and personally affected when 49 people were slaughtered at the Pulse nightclub in Orlando, Florida.

Not long after Sam began his first year of law school at the University of Michigan in 2018, the Tree of Life Synagogue in Pittsburgh, Pennsylvania, was the site of a deadly mass shooting. Sam attended a vigil on the University's campus for the victims. His spirits were buoyed by the solidarity demonstrated by students of other faiths standing shoulder to shoulder with members of the campus Jewish community. A few months later, when a mass shooting at mosques in Christchurch, New Zealand, killed 51 and injured scores more, Sam wanted to show his support.

So on March 16, 2019, Sam joined a vigil for the Christchurch victims on the Diag, a grassy quad facing Hatcher Graduate Library in the heart of the University's campus. Those gathered—including public officials and media—listened to leaders from the University's Muslim student groups. Suddenly, Sam heard shouting behind him. "Move! Move! Move!" He spun around and saw a police officer running toward the group, frantically gesturing for everyone to move forward. Panic set in, and the assembled crowd stampeded up Hatcher's marble steps. Despite hearing no gunshots, Sam instantly assumed there was an active shooter. Swept up the marble steps and into the library's atrium, Sam paused momentarily—after some initial hesitation, unsure if stopping would cost him his life—to help a woman in front of him who had fallen down.

Those in the crowd were confused, and rumors spread quickly. Unfamiliar with the layout of the labyrinthine library, Sam entered fight-or-flight mode and followed a smaller group of vigil attendees upstairs and deeper into the building. Then, flashing in yellow on a digital display screen in the library stacks, he saw an emergency alert from the University that confirmed his fears: "Active shooter in Mason Hall. Run, hide, fight." Mason Hall was adjacent to Hatcher.

Feeling exposed near study tables and stacks of books, Sam searched frantically for a safer spot. “Where is the most hidden place I can go? At the very least, I wanted to be behind a locked door.” He joined a small group of students as they hid in a third-floor women’s restroom. Because the door did not lock, they began putting together a makeshift barricade. A student retrieved a chair from the study tables to jam the door handle. Another used his belt to tie the door hinge in place. The group sat quietly in the dimly lit restroom glued to their phones. They desperately scrolled social media for the latest information and texted family and friends. Sam tweeted at the University’s Division of Public Safety and Security: “[P]lease give us any info you can [because] we don’t know where the shooter is.” And just in case, he called his parents, whispering to avoid being overheard.

After an hour, Sam received word that students could safely leave the library. He passed dozens of police officers on his way back to the Law School. The University formally gave the all-clear signal two hours later, reporting that the active shooter alert was a false alarm. As the vigil was underway, a sorority was popping balloons as part of a bonding activity in a nearby dormitory. Dozens of students, assuming popping balloons to be gunfire, called 9-1-1. For hours, law enforcement had searched for a nonexistent gunman while students sheltered in place.

Although there was no actual shooting, Sam was left with enduring trauma. And the fact that it was caused by something as innocent as popping balloons—that this is the reality of student life on American college campuses—still upsets Sam. He believes that “there is collective trauma with gun violence in this country. With the right stimuli, it’s only reasonable for people to assume a shooting is underway.”

Now a third-year law student, Sam is vastly reassured that Article X prohibits the possession of firearms at the University. Although his experience did not in fact involve the use of guns on campus, the great anxiety he felt then would be a daily concern if guns were allowed on campus. As Sam says, “no student wants to think about which classmates are packing heat, and then having to avoid any disagreement with them. Guns on campus would change everything.”

E. Jaclyn Corin

Jaclyn Corin spent the morning of February 14, 2018, handing out carnations. As the junior class president at Marjory Stoneman Douglas High School in Parkland, Florida, she was responsible for delivering Valentine's Day flowers to students around the school. But a mid-morning fire drill interrupted her delivery schedule. As she made her way out of the building, Jaclyn confided to a friend: "I'm a little scared of these fire drills. I've heard that if shooters want to get access to a lot of people at once, they'll pull the fire alarm so people will congregate in one area." Looking back, she is haunted by her remarks that morning.

During Jaclyn's last period of the day—study hall—she and her friends distributed the remaining flowers and cards. Just minutes after they finished, the fire alarm blared again. She thought it was strange to have two drills in one day, but mostly she was annoyed by the disturbance. She just wanted to finish her homework.

As soon as she was outside again, Jaclyn heard screams. She turned around and saw students sprinting back inside the building. "That was a gunshot," exclaimed Jaclyn's friend, grabbing her hand. Jaclyn heard her teacher scream "CODE RED!" into her walkie talkie. Still not fully believing it was real, she and her friend ran back to their study hall and huddled in the corner with about 40 other students. They turned off the lights and remained quiet.

Furiously searching for information on social media, Jaclyn came across an aerial photo of her school from a helicopter and a photo of her friend covered in blood being treated on the sidewalk outside. Realizing this was no drill, she broke down. And it soon became clear to Jaclyn how close she had been to danger while delivering the last of the Valentine's Day carnations. "If I had had 10 more flowers to drop off, I would have been in that hallway and one of the shooter's first targets. It still screws me up."

Several of Jaclyn's close friends were killed in the shooting. In the aftermath, Jaclyn had trouble eating and sleeping, and struggled to find comfort with friends and family. Overwhelmed with sadness and

anger, she shared a social media post urging her classmates to speak to their local elected officials about Florida’s gun laws. She soon connected with a state senator and organized a student lobbying trip to the statehouse in Tallahassee. As Jaclyn embarked on the healing process, gun violence prevention advocacy became her anchor. And over the next year and half, she channeled her grief into grassroots organizing.

Now a sophomore at Harvard, Jaclyn still struggles with the traumatic effects of the shooting. She thinks about her experience every day and finds it nearly impossible to feel secure anywhere. “Everywhere I walk I think someone’s going to pull a gun on me.” Jaclyn suffers from waves of extreme anxiety and depression, and she experiences uncontrollable flashbacks to images of the shooting—sometimes for hours at a time. Despite the significant progress she has made in managing her symptoms since leaving Parkland for college, Jaclyn does not believe it is possible to fully recover from an event like a school shooting. She still asks professors to close the classroom door if it is left open, and feels anxious when lecture hall doors are behind her and she is unable to see who is entering the room.

Jaclyn’s decision to attend Harvard was borne from her traumatic experience in Parkland. She refused to consider any school that allows guns on campus; she knew that she could not achieve academic or personal success where she felt unsafe. Through her advocacy and organizing efforts, Jaclyn has traveled to dozens of college campuses across the country with vastly different campus-carry policies. Massachusetts’s gun laws are among the most restrictive in the country, and Harvard does not permit guns on campus. Jaclyn believes that attending a college that prohibits firearms on campus has allowed her to regain a sense of normalcy: “Now I can breathe.”

For Jaclyn, the presence of guns on campus clearly endangers students and undermines academic life. And she doubts that educational institutions fully understand the number of their students who have been touched by gun violence and carry that trauma into the classroom. “School is supposed to be a safe and protective environment, where the primary goals are to learn and interact with fellow students. Guns inhibit those goals. And if the school can make that environment safer for students, faculty, and staff, then it should do so. If I saw

someone with a gun on my campus, I would never feel safe here ever again.”

F. Kennedy Rodriguez

Just two weeks after the shooting at Parkland, Kennedy Rodriguez’s school was placed on lockdown following reports of an active shooter. For nearly six hours, Kennedy and her classmates at Santa Fe High School in Texas sat crouched in the corner of a classroom, holding up textbooks for protection. As she and her friend squeezed each other’s hands, Kennedy feared that those could be her last moments. When the lockdown finally lifted, Kennedy and her classmates learned that there was no active shooter. The school’s response was prompted by what sounded like gunshots outside the school. Kennedy, relieved that no one was harmed, was nonetheless deeply shaken.

Two months later, on May 18, 2018, gun violence—not just the threat of it—reached Santa Fe High School. Kennedy, who as a senior took morning classes at a local college, was still at home when her high school classmates had begun first period. Her morning routine was interrupted by a friend’s frantic call: “Don’t come to school today! We think there’s an active shooter; we’re running across the street.” Kennedy could hear chaos in the background—screams of horror and confusion, people crying, students trying to locate their friends. Immediately, Kennedy felt guilty that she was not at school, and she had to actively resist the urge to help her friends, classmates, and teachers.

The rest of the day was a blur. Kennedy remained glued to the television and her phone, anxiously awaiting updates from friends. “There were so many people I had to check in with. There were so many people who weren’t answering their phones, and I didn’t know if their phones were just dead or if they were dead. I sat there clenching my jaw all day, terrified.” Ten people—eight students and two teachers—were killed at Santa Fe High School during the shooting. And the emotional trauma for survivors lingers: “It’s an indescribable amount of fear and pain—just the highest level of terror that I can’t even put it into words.”

Kennedy is now a senior at the University of Texas at Austin, where guns are permitted on campus. After all that Kennedy has experienced, the presence of guns exacerbates her trauma and weighs on her daily. During a routine fire drill in her freshman dorm, she experienced a panic attack and was unable to breathe. Kennedy missed out on typical college activities, fearing the presence of guns. “I just felt uncomfortable being in spaces with a lot of people. I didn’t go to parties or to the movies because, of course, you don’t know if there will be a gun there. There’s always that chance because we have campus carry.” Since the first day she arrived on campus, the possibility of an active shooter at UT “has crossed her mind a lot.” She is “hyper-aware” of her surroundings in classrooms, constantly looking for exits: “If something were to happen, how would I get out and where I would go?”

After experiencing the way campus carry detracted from her education, Kennedy hopes to attend graduate school at a campus that has more restrictive gun policies. For Kennedy, there is a strong link between a sense of security and a healthy learning environment. She believes fervently that guns do not belong on campus. “When people don’t have peace of mind that they are safe and secure, there’s no way for them to be good students, pay attention, and truly learn.”

G. Leesa Ross

Jonathan Ross wanted to be an author. Even as a young boy, he loved to read and write—especially poetry. Jon was shy, and rarely shared his personal writing with anyone at first except his mom, Leesa. When he permitted it, she joyfully read through drafts of his writing, admiring her son’s creativity and potential.

At Appalachian State University, Jon began to seriously consider making a career out of his passion. He pursued a degree in creative writing and literature. He began to overcome his introversion, posting his work online to solicit feedback and sharing collections with the world. One night when Jon signed up to read his poetry on stage at a college pub, his mom was in the crowd. Knowing how nervous he was, she was boundlessly proud.

On the night of September 25, 2009, Jon called home from college to check in. He told Leesa that he was meeting up with some friends to attend a concert. Leesa told him to be safe and, as she often did, asked him to text her when he got home.

Leesa has struggled to piece together the details of what happened next. All she knows for sure is that in the early morning hours, Jon and others left the concert for a friend's house. They had been drinking. When Jon walked inside, there were two handguns on the living room coffee table. One of the guns, with a bullet still in the chamber, somehow made it into Jon's hand. While resting in his non-dominant hand, the gun went off. Jon was shot in the head at close range, killing him instantly. He was 23 years old.

Leesa's phone rang early that morning. When she picked it up, all she heard was heavy breathing. After a pause, her husband told her there was an accident and that they had lost Jon. She did not want to believe it and threw her phone across the room. Leesa went to tell Jon's 15-year-old brother but, sobbing, she was unable to get the words out. Eventually, all she could do was push out Jon's name, adding, "Jon's dead."

Over the next few days, Leesa prepared to bury her son. At the viewing, she felt so sick that she went to a bathroom stall to keep from collapsing. During the service, Jon's childhood friends sent testaments about happy times of pillow fights and playing video games. One friend wrote a poem.

Leesa gathered everything from Jon's off-campus house. She hung up his artwork, brought his bookcase into her home, and began compiling his poetry—even saving drafts that Jon wrote on napkins and other scraps of paper. She has found multiple versions of the same poem with a few words swapped or sections reordered, but has no way of knowing which version Jon intended to be final.

In the weeks and months after Jon's death, Leesa's grief was overwhelming. She had trouble sleeping for a long time and felt no desire to leave the house. An avid tennis player, Leesa cried the first time she stepped back on a tennis court after losing Jon. "I felt like I

was enjoying something that he couldn't because he was gone," she says. "I felt guilty." Even today, Jon's absence is crushing. It remains difficult for Leesa to display recent family photos that do not include Jon. Leesa struggles through milestone dates on the calendar each year—the date of Jon's death in September, his birthday in October, family gatherings at Thanksgiving, Christmas, and Mother's Day. And the milestones that were yet to come also haunt Leesa. "I'll never see him get married, have a wife, or have children. There is not a day that goes by that we don't think about him." Her phone screensaver is a picture of the son she lost.

Law enforcement—and Leesa—have conducted their own investigations into the events of that night. According to all three witnesses, the shooting was an accident. "This could happen to anybody," Leesa says. "Anybody could walk into a room in a college town anywhere in the United States and have this happen."

Speaking from painful experience, Leesa does not think students should have access to guns on campus. She has learned that the adolescent brain does not fully develop until age 25, making college students more likely to exhibit risky behavior. "The recklessness that is common in collegiate settings and firearms do not mix," she says. "College can be an emotional time, and we don't need to add guns to that environment." Any time Leesa learns of a firearms-related incident in one of our schools, her grief surges again. "I go back to the day that I lost my son. The feeling comes right back. I know what those parents are going to be experiencing. I know the pain."

* * *

These stories paint a searing portrait of college life in America today. The individuals discussed here, and many others like them, have been terrorized by gun violence in what should be sanctuaries of learning, debate, experimentation, and personal growth—their schools. Campus prohibitions on the possession of firearms can prevent trauma and tragedy from reaching others the way it has reached them. Keeping students safe and focused on what college should be all about—rather than the threat of gun violence—has never been more important.

II. THIS COURT’S RULING SHOULD NOT DEPRIVE THE UNIVERSITY OF THE ABILITY TO DECIDE HOW BEST TO ADDRESS THE PROBLEM OF GUN VIOLENCE ON CAMPUS.

The U.S. Supreme Court has made clear that the Second Amendment does not include “a right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose.” *Heller*, 554 US at 626. Rather, the rights secured by the Second Amendment are “not unlimited,” and “laws forbidding the carrying of firearms in sensitive places such as schools” are “presumptively lawful.” *Id.* at 626, 627 n 26; see *McDonald*, 561 US at 786 (reiterating that *Heller* “did not cast doubt on such longstanding regulatory measures as . . . laws forbidding the carrying of firearms in sensitive places such as schools and government buildings” (quoting *Heller*, 554 US at 626)). Article X, which prohibits the possession of firearms on University of Michigan property, falls well within the established contours of valid gun regulations. It does not burden activity protected by the Second Amendment and, even if it did, it passes constitutional muster.

Since the Supreme Court explained that the Constitution makes available “a variety of tools for combating” gun violence, *Heller*, 554 US at 636, state and federal courts nationwide have embraced some form of a bifurcated, “two-step” approach to determine whether a regulation violates the Second Amendment. See, e.g., *United States v Greeno*, 679 F3d 510, 518 (6th Cir 2012). First, courts must ask “whether the challenged law burdens conduct that falls within the scope of the Second Amendment right, as historically understood.” *Id.*; see *People v Deroche*, 299 Mich App 301, 309; 829 NW2d 891, 896 (2013). If not, “the analysis can stop there; the regulated activity is categorically unprotected, and the law is not subject to further Second Amendment review.” *Greeno*, 679 F3d at 518 (quoting *Ezell v City of Chicago*, 651 F3d 684, 703 (7th Cir 2011)). This category includes the “longstanding limitations” identified by the Supreme Court that “are exceptions to the right to bear arms.” *United States v Marzzarella*, 614 F3d 85, 91 (3d Cir 2010). If the regulated activity is not categorically unprotected, then the second step examines the “justification for restricting or regulating the exercise of Second Amendment rights,” and “applies the appropriate level of

scrutiny.” *Greeno*, 679 F3d at 518 (internal quotation marks and citation omitted). In determining whether to apply intermediate or heightened scrutiny, courts consider two factors: (1) “how close the law comes to the core of the Second Amendment right” and (2) “the severity of the law’s burden on the right.” *Ezell*, 651 F3d at 703.⁷

Plaintiff-Appellant’s challenge to the University’s policy here cannot clear the initial hurdle, because restrictions, like Article X, on “the carrying of firearms in sensitive places such as schools and government buildings” are “presumptively lawful.” *Heller*, 554 US at 626, 627 n 26. The Court of Appeals thus correctly concluded that “Article X does not burden conduct protected by the Second Amendment,” and that “[t]herefore, no further analysis is required.” *Wade v Univ of Michigan*, 320 Mich App 1, 15; 905 NW2d 439, 445 (2017). This Court should affirm.

The University’s campus is a sensitive place as contemplated under *Heller*. It is both a school and is comprised of government buildings. See *DiGiacinto v Rector & Visitors of George Mason Univ*, 281 Va 127, 136; 704 SE2d 365, 370 (2011) (“The fact that GMU is a school and that its buildings are owned by the government indicates that

⁷ Nearly every federal appellate court employs some variation of this two-step framework. See *Gould v Morgan*, 907 F3d 659, 669 (1st Cir 2018); *GeorgiaCarry.Org, Inc v US Army Corps of Engineers*, 788 F3d 1318, 1322 (11th Cir 2015); *New York State Rifle & Pistol Ass’n, Inc v Cuomo*, 804 F3d 242, 254 (2d Cir 2015); *United States v Chovan*, 735 F3d 1127, 1136 (9th Cir 2013); *Nat’l Rifle Ass’n of America, Inc v Bureau of Alcohol, Tobacco, Firearms & Explosives*, 700 F.3d 185, 194 (5th Cir 2012); *Heller v District of Columbia*, 670 F3d 1244, 1252 (DC Cir 2011); *Ezell*, 651 F3d at 702–704; *United States v Chester*, 628 F3d 673, 680 (4th Cir 2010); *United States v Reese*, 627 F3d 792, 800–801 (10th Cir 2010); *Marzzarella*, 614 F3d at 89. Similarly, the high courts in many states have adopted a similar version of this same inquiry. See, e.g., *State v Roundtree*, 395 Wis 2d 94; 952 NW2d 765, 773 (2021); *State v Weber*, opinion of the Supreme Court of Ohio, issued December 23, 2020 (Case No. 2019-0544), p 4; *In re Jordan G.*, 2015 IL 116834, 33 NE3d 162, 167–168 (2015).

GMU is a ‘sensitive place.’”). As the University’s brief compellingly demonstrates, the very function of a school or university is to foster the free and uninhibited exchange of ideas protected by the First Amendment, and it is essential that students and faculty be able to express those ideas without the fear and intimidation that could result from the presence of guns on campus. See Defendant-Appellee’s Br at 22–24 (citing Darrell A.H. Miller, *Constitutional Conflict and Sensitive Places*, 28 William & Mary Bill of Rights J 459 (2019)); see also *Grutter v Bollinger*, 539 US 306, 329; 123 S Ct 2325, 156 L Ed2d 304 (2003) (“We have long recognized that, given the important purpose of public education and the expansive freedoms of speech and thought associated with the university environment, universities occupy a special niche in our constitutional tradition.”).

The scope of the Second Amendment “as historically understood” confirms this result. *Greeno*, 679 F.3d at 518; see *Wade*, 320 Mich App at 15 (noting that “at the historically relevant period, universities were understood to be schools”). In 1824, James Madison and Thomas Jefferson served on the six-member Board of Visitors at the University of Virginia that prohibited the possession of firearms by students. In other words, Madison and Jefferson—the authors, respectively, of the Second Amendment and the Declaration of Independence—adopted a policy for the University of Virginia that, like Article X, banned students from carrying guns and ammunition on campus.⁸ And for close to two

⁸ Before the University of Virginia was to open to students, the Board agreed that “[n]o Student shall, within the precincts of the University, . . . keep or use weapons or arms of any kind, or gunpowder, . . . [or] appear in school with . . . any weapon[.]” *Meeting Minutes of University of Virginia Board of Visitors, 4–5 Oct. 1824, 4 October 1824*, Founders Early Access, <<https://rotunda.upress.virginia.edu/founders/default.xqy?keys=FOEA-print-04-02-02-4598>> (last accessed February 27, 2021); see also Li & The Trace, *When Jefferson and Madison Banned Guns on Campus*, *The Atlantic* (May 6, 2016), <<https://www.theatlantic.com/politics/archive/2016/05/when-jefferson-and-madison-banned-guns-on-campus/481461/>> (noting that “[t]oday’s pro-gun politicians can’t avoid the fact that these founding fathers explicitly banned firearms from the university they founded”).

centuries, “guns were prohibited at American institutions of higher education as a matter of course.” Valentine, *The Growing Crisis of Guns on Campus*, *The New Republic* (March 22, 2019), <<https://newrepublic.com/article/153356/growing-crisis-guns-campus>>; *Constitutional Conflict and Sensitive Places*, 28 *William & Mary Bill of Rights J* at 471 (noting the “long history of forbidding firearms in educational institutions”). Article X thus “regulates activity falling outside the scope of the Second Amendment right as it was understood at the relevant historical moment,” and the Court’s “analysis can stop there.” *Greeno*, 679 F3d at 518 (quoting *Ezell*, 651 F3d at 702–703).

Even if it were appropriate to proceed to the second step of the inquiry, the University’s restriction would nevertheless “satisfy whatever standard of means-end scrutiny is held to apply.” *Ezell*, 651 F3d at 703. Here, as the University’s brief explains, the proper standard should be intermediate scrutiny, see Defendant-Appellee’s Br. at 24–28 (quoting *Marzzarella*, 614 F3d at 97 (applying intermediate scrutiny to “a regulation of the manner in which persons may lawfully exercise their Second Amendment rights”)), which requires “that the challenged regulation serve[] an important, substantial, or significant governmental interest and that there is a reasonable fit between the asserted interest or objective and the burden placed on an individual’s Second Amendment right,” *People v Wilder*, 307 Mich App 546, 557; 861 NW2d 645, 650 (2014).

As is painfully evident from the individual stories highlighted above—and as persuasively explained by the University, see Defendant-Appellee’s Br. at 29–36—the prohibition of guns on campus serves significant interests of the University, and Article X more than reasonably promotes those interests. The University’s interests certainly include maintaining the safety and security of students, faculty, staff, and visitors. But in addition, as a center of academic and student life, the University is responsible for creating an environment conducive to learning, free expression, and growth. In the University’s well-supported judgment, those interests are substantially undermined by the danger and disruption posed by the presence of guns on campus.

The University’s interest in fostering a safe environment and minimizing the threat of gun violence on campus plainly is substantial,

as courts across the country have recognized. See *id.* at 29–30 (collecting cases). Wholly apart from the danger of mass shootings, research shows that permitting firearms on campus would increase the risk of other types of gun violence, such as homicides, suicides, nonfatal shootings, and threatening behavior.⁹ Indeed, a number of factors often present on college campuses—including alcohol abuse, mental health issues, and suicidal ideation—create a particularly dangerous environment when guns enter the mix. The University is no doubt aware of scientific research regarding “the onset of severe mental illness during young adulthood, the frequency of binge drinking of alcoholic beverages among college students[,] and the violence that stems from that drinking,” as well as that “suicidal ideation and behavior is common during late adolescence and early adulthood.” See *Firearms on College Campuses* at 17.¹⁰ Further, the presence of guns on campus increases the likelihood of serious or fatal accidents caused by unintentional

⁹ Allowing guns on campus is likely to have “a deleterious impact on the safety of students, faculty, and staff.” Webster et al., *Firearms on College Campuses: Research Evidence and Policy Implications*, Johns Hopkins Bloomberg School of Public Health, (October 15, 2016), p 3, available at <https://nccpsafety.org/assets/files/library/Firearms_on_College_Campuses.pdf>; Siebel, *The Case Against Guns on Campus*, 18 Geo Mason U Civ Rts L J 319, 324 (2008) (explaining why “gun violence is likely to increase, perhaps dramatically, if students are able to keep and carry guns on college campuses”). Available data suggest that “more guns on college campuses [do not] have some protective effect against rare mass shootings” and, moreover, “the net effect on the safety of college students, faculty, and staff is likely to be more deaths, more nonfatal gunshot wounds, and more threats with a firearm that are traumatizing to victims.” *Firearms on College Campuses* at 24.

¹⁰ According to studies, “[t]he more time that students spent in an environment where guns were prohibited, the less likely they were to die by suicide.” *The Growing Crisis of Guns on Campus*; see *Firearms on College Campuses* at 3 (“Research demonstrates that access to firearms substantially increases suicide risks, especially among adolescents and young adults, as firearms are the most common method of lethal self-harm.”).

discharges. *See, e.g., Bonidy v US Postal Serv*, 790 F.3d 1121, 1126 (10th Cir 2015) (recognizing that “[f]irearms may create or exacerbate accidents or deadly encounters”). As is illustrated by the death of Jonathan Ross recounted above, such tragic accidents are all too common.¹¹

Addressing these safety concerns is certainly a core purpose of Article X, but physical security alone does not fully explain why the

¹¹ In 2014, an Idaho State professor accidentally shot himself in the foot in the middle of class. *See Schwarz, Idaho Professor Shoots Himself in Foot Two Months After State Legalizes Guns on Campuses*, *Washington Post* (September 5, 2014), <<https://www.washingtonpost.com/blogs/govbeat/wp/2014/09/05/idaho-professor-shoots-himself-in-foot-two-months-after-state-legalizes-guns-on-campuses/>>. In 2016, a permit-holding student at Tarleton State University in Texas unintentionally fired his gun in his dorm room. *See Cardona, Tarleton State Student Accidentally Fires Gun in Campus Dorm*, *The Dallas Morning News* (September 15, 2016), <<https://www.dallasnews.com/news/education/2016/09/15/tarleton-state-student-accidentally-fires-gun-in-campus-dorm/>>. The next year, a Utah Valley University student accidentally fired his gun when he reached into his backpack—the second gun incident on the UVU campus in two years. *See Ramseth, UVU Student Accidentally Discharges Firearm Near Campus Restaurants; No One Injured*, *The Salt Lake Tribune* (April 26, 2017), <<https://archive.sltrib.com/article.php?id=5217524&itype=CMSID>>. In the span of one week in 2018, two guns were left unattended in women’s restrooms at the University of Texas at Austin. *See McGaughy, Police Investigating Two Unattended Guns Found This Week in Women's Restrooms at UT*, *The Dallas Morning News* (February 23, 2018), <<https://www.dallasnews.com/news/education/2018/02/23/police-investigating-two-unattended-guns-found-this-week-in-women-s-restrooms-at-ut/>>. And in 2019, a University of Georgia student accidentally shot himself in the leg in a student lounge. *See Ford, UGA Student Charged Over Shooting Mishap on Campus*, *Athens Banner-Herald* (October 21, 2019), <https://www.onlineathens.com/news/20191021/uga-student-charged-over-shooting-mishap-on-campus>.

University prohibits firearms on campus. The University also has a critical, constitutionally protected interest in maintaining an open academic environment that promotes rigorous study, nurtures the free exchange of ideas, and encourages students and faculty to flourish. These goals are fundamentally undercut by the presence of firearms on campus, which—as the individual stories above place in stark relief—results in pervasive fear and anxiety,¹² intimidation,¹³ and self-

¹² Kansas State University English professor Philip Nel explains that campus-carry policies generate “a constant buzzing in the background. This unease seeps in to the minds of faculty and students. It changes us. It changes the way we teach. It changes the way we learn.” Nel, *The Unanticipated Consequences of Campus Carry*, in Somers & Valentine, *Campus Carry: Confronting a Loaded Issue in Higher Education*, (Cambridge: Harvard Education Press, 2020), p 32; see also Siegel & Blocher, *Why Regulate Guns?*, 48 *The J of Law, Medicine & Ethics*, S2:11, 13 (2020) (“*Most* teenagers in the United States now report being ‘very’ or ‘somewhat’ worried about the possibility of a shooting taking place at their school[.]” (emphasis in original)).

¹³ Patricia Maniaci, an English professor at Maryville University in St. Louis, shared her fears following the deadly Sutherland Springs shooting in Texas:

Every day I step foot on to a college campus, I’m terrified. I’ve been stalked by students, I’ve been threatened by students, I’ve been purposely intimidated by student[s] and not a moment goes by that I don’t think, “Is today the day this student flips [out] and opens fire on me and the rest of the class?”

Parr, *Guns on Campus: “Every Day I Step Onto a College Campus, I’m Terrified”*, *Timed Higher Education* (November 6 2017), <<https://www.timeshighereducation.com/blog/guns-campus-every-day-i-step-college-campus-im-terrified>>.

censorship.¹⁴

Indeed, a recent study found that the majority of all segments of the campus community—including even most of those who own guns to protect themselves and generally support carry policies—believe that allowing guns on campus “would harm the academic atmosphere and diminish feelings of safety when having heated exchanges or evaluating student outcomes.” Shepperd et al., *The Anticipated Consequences of Legalizing Guns on College Campuses*, 5 *J of Threat Assessment and Management* 1:21, 21 (2018). Guns on campus can have a “chilling effect on academic speech . . . including students’ in-class expression, professor and student engagement, professor and professor interaction, and administrator and professor relations.” Lewis, *Crossfire on Compulsory Campus Carry Laws: When the First and Second Amendments Collide*, 102 *Iowa L Rev* 2109, 2111 (2017); see Smith, *Second Amendment Challenges to Student Housing Firearms Bans: The Strength of the Home Analogy*, 60 *UCLA L Rev* 1046, 1066 (2013) (“Professors may be afraid of being critical of their students and may be worried about giving students poor grades. Professors and students alike may be worried about expressing controversial views, knowing that students may possess firearms in close proximity to the classroom.” (internal citations omitted)).

In these important ways, the threat of gun violence on college campuses “can dramatically restrict exercise of a wide range of freedoms, many of them constitutionally guaranteed liberties”—including rights secured under the First Amendment. *Why Regulate Guns?* at 13. American colleges and universities are “First Amendment institutions” . . . where a free exchange of ideas in an orderly and civil

¹⁴ See also, e.g., O’Connor, *Texas LGBT Students Say They Don’t Feel Safe Now That People Can Carry Guns on Campus*, BuzzFeed News (August 29, 2016), <<https://www.buzzfeednews.com/article/emaconnor/texas-lgbt-students-say-they-dont-feel-safe-now-that-people#.admg5kJVG>> (“Many LGBT students at the University of Houston say they feel like they can no longer express themselves safely now that a law allowing people to carry concealed weapons on campus is in effect and classes have begun.”).

manner is essential.” *Constitutional Conflict and Sensitive Places* at 470–471; see *Keyishian v Bd of Regents of Univ of State of New York*, 385 US 589, 603; 87 S Ct 675, 683; 17 L Ed 2d 629 (1967) (noting that a university’s “academic freedom” is “a special concern of the First Amendment”). And the First Amendment safeguards “not only the right to utter or to print, but . . . the right to read and freedom of inquiry, freedom of thought, and freedom to teach—indeed the freedom of the entire university community.” *Griswold v Connecticut*, 381 US 479, 482; 85 S Ct 1678, 1680; 14 L Ed 2d 510 (1965) (internal citations omitted). Critically, for American colleges and universities, the academic freedom secured by the First Amendment “encompasses a duty to create an atmosphere which is most conducive to speculation, experiment and creation. Obviously, to create this atmosphere requires security.” Lewis, *Bullets and Books by Legislative Fiat: Why Academic Freedom and Public Policy Permit Higher Education Institutions to Say No to Guns*, 48 Idaho L Rev 1, 14 (2011) (internal quotation marks and citation omitted); see *Sweezy v State of NH by Wyman*, 354 US 234, 250; 77 S Ct 234; 1 L Ed 2d 1311 (1957) (“Scholarship cannot flourish in an atmosphere of suspicion and distrust.”); *Constitutional Conflict and Sensitive Places* at 471 (noting that some “deference is warranted” when “school and university regulations improve, not limit, the free flow of information and ideas” (internal quotation marks and citation omitted)).

The University’s interests in limiting the threat of gun violence on campus are thus very substantial—indeed, they go to the very core of the school’s mission of creating a “preeminen[t]” academic environment and “developing leaders and citizens who will challenge the present and enrich the future.” *Mission*, Univ of Mich, <<https://president.umich.edu/about/mission/#:~:text=The%20mission%20of%20the%20University,pr esent%20and%20enrich%20the%20future>> (last accessed February 27, 2021). And Article X at the very least bears a reasonable relationship to these critically important interests. Sensible gun restrictions like Article X provide students, faculty, staff, and visitors some measure of “security and confidence and freedom from fear” to, for example, speak freely and peaceably assemble. *Why Regulate Guns?* at 13; see *Bloedorn v Grube*, unpublished opinion of the United States District Court for the Southern District of Georgia, issued November 24, 2009 (Case No. 609CV055), p 7 (“Maintaining safety, efficiency, and order on

campus are crucial to the furtherance of the University’s mission of providing a proper educational environment.”), *aff’d*, 631 F.3d 1218 (11th Cir 2011). Accordingly, even if this Court were to reach step two and apply intermediate scrutiny, Article X is plainly valid.

III. THE STRICT SCRUTINY THAT PLAINTIFF-APPELLANT SEEKS WOULD CUT OFF DEMOCRATIC DEBATE ON THIS IMPORTANT ISSUE.

Plaintiff-Appellant demands that this Court apply strict scrutiny to strike down Article X. See Plaintiff-Appellant’s Br. at 13. This is wrong. The U.S. Supreme Court’s Second Amendment jurisprudence makes clear that it “by no means eliminates” the ability of Americans, through the democratic process, “to devise solutions to social problems that suit local needs and local values.” *McDonald*, 561 US at 785. And if any area of constitutional law requires the courts to leave room for political engagement to shape policy choices, it is this one: No other constitutional right so directly implicates other Americans’ fundamental right to stay alive and in one piece. See Lowy & Sampson, *The Right Not to Be Shot: Public Safety, Private Guns, and the Constellation of Constitutional Liberties*, 14 *Geo J L & Pub Pol’y* 187, 190 (2016) (describing the “right to live” and public safety interests as “paramount”). For this reason, citizens have demanded, and deserve, a say in making these fundamental policy choices.

This process has played out in Michigan and resulted in the University’s campus-wide ban on firearms. Article X was adopted in 2001 by the University’s Board of Regents, which is composed of eight members elected at large in biennial state-wide elections. Now two decades of election cycles later, Article X remains in place. Plaintiff-Appellant’s position—to impose strict scrutiny to invalidate a gun restriction that *Heller* deemed “presumptively lawful”—would deprive citizens of Michigan, acting through the political process, of their ability to have a say in life-and-death firearm policy choices. And this is especially true for the millions of young Michiganders who have only just begun to participate in the democratic process. The individual stories highlighted in this brief—including two from Michigan—demonstrate that for the generation of Americans coming of age in the

era of school shootings and lockdown drills, preventing gun violence is an issue of paramount importance.¹⁵

This Court thus should decline the invitation to adopt a form of scrutiny that would make it effectively impossible to adopt reasonable firearms regulation in this State, and should leave these sensitive decisions to the political process. For MFOL to continue its political engagement advocating for commonsense gun reform that keeps American students—and Americans in general—safe, the courts must allow space for the political branches to make policy choices. And this Court and courts around the country should be wary of being “even minutely responsible for some unspeakably tragic act of mayhem because in the peace of our judicial chambers we miscalculated as to Second Amendment rights. . . . If ever there was an occasion for restraint, this would seem to be it.” *United States v Masciandaro*, 638 F3d 458, 475–476 (4th Cir 2011) (WILKINSON, J., concurring).¹⁶

¹⁵ MFOL understands that engagement by young Michiganders in the democratic process can help achieve important policy goals. During the 2020 general election cycle—in Michigan and around the country—MFOL hosted phone bank, text bank, and voter registration events to help get out the youth vote. These efforts helped spur staggering youth voter turnout in Michigan and across the United States. See Noor, *Surge in Youth Voter Turnout May Have Helped Propel Biden to Victory*, *The Guardian* (November 9, 2020), <<https://www.theguardian.com/us-news/2020/nov/09/youth-turnout-us-election-biden-victory-young-voters>> (youth voter turnout in 2020 tripled 2016 turnout); *Election Week 2020: Young People Increase Turnout, Lead Biden to Victory*, Tufts: Center for Information & Research on Civic Learning and Engagement (November 25, 2020), <<https://circle.tufts.edu/latest-research/election-week-2020#youth-voter-turnout-increased-in-2020>> (youth turnout nationwide increased by about 10 percent over 2016).

¹⁶ In light of the powerful policy reasons supporting the University’s adoption of Article X, MFOL also agrees with the University that “even if this Court finds that strict scrutiny is appropriate—and it is not—Article X withstands such scrutiny.” Defendant-Appellee’s Br. at 36 n 24.

CONCLUSION AND RELIEF REQUESTED

The threat of gun violence looms large over American life—including on college campuses. It lurks in every dormitory, behind closed classroom doors, and during every exam. It is an unfortunate reality that students and faculty face, and one that America’s colleges and universities must confront. The University of Michigan, through Article X, has done so in a manner consistent with the Second Amendment’s guarantees. This Court therefore should affirm the decision below.

March 1, 2021

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

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