

STATE OF MICHIGAN  
IN THE COURT OF APPEALS

On Remand from the Michigan Supreme Court

JOSHUA WADE,

Plaintiff-Appellant,

Court of Appeals No. 330555

v.

Court of Claims No. 15-00129

UNIVERSITY OF MICHIGAN,

Defendant-Appellee.

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**BRIEF OF BRADY, TEAM ENOUGH, AND AMERICAN ASSOCIATION OF  
UNIVERSITY PROFESSORS AS *AMICI CURIAE* IN SUPPORT OF DEFENDANT-  
APPELLEE**

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Matthew Turner (P48706)  
MTurner@sommerspc.com  
**Sommers Schwartz PC**  
One Towne Square, Suite 1700  
Southfield, MI 48076  
(248) 746-4039

Susannah K. Howard  
Racquel Martin  
**O'Melveny & Myers LLP**  
Two Embarcadero Center, 28th Floor  
San Francisco, CA 94111  
(415) 984 -8700  
showard@omm.com  
rmartin@omm.com

Houman Ehsan  
**O'Melveny & Myers LLP**  
400 South Hope Street, 18th Floor  
Los Angeles, CA 90071  
hehsan@omm.com  
(213) 430-6000

*Attorneys for Amici Curiae Brady, Team*

Douglas N. Letter  
dletter@bradyunited.org  
Shira Lauren Feldman  
sfeldman@bradyunited.org  
**Brady**  
840 First Street NE, Suite 400  
Washington, DC 20002  
(202) 370-8100

*Amici Curiae Brady and Team ENOUGH*

Risa Lieberwitz, General Counsel\*  
Aaron Nisenson, Senior Counsel  
Edward Swidriski, Assistant Counsel  
**American Association of University  
Professors**  
555 New Jersey Avenue NW, Suite 600  
Washington, DC 20001  
Telephone: (202) 737-5900  
rlieberwitz@aaup.org  
anisenson@aaup.org  
eswidriski@aaup.org

\*Also Professor, Labor and Employment Law  
ILR School, Cornell University

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*ENOUGH, and the American Association of  
University Professors*

361 Ives Hall  
Ithaca, NY 14853  
Telephone: (607) 255-3289

*Amicus Curiae American Association of  
University Professors*

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**TABLE OF CONTENTS**

	<b>Page</b>
INTRODUCTION .....	1
INTEREST OF <i>AMICI CURIAE</i> .....	2
ARGUMENT .....	4
I.    Article X Protects Student Speech and the Free Exchange of Ideas on the University’s Campus.....	5
A.    The Psychological Effect of Guns on University Students Will Severely Undermine Free Speech on Campus.....	5
B.    The Presence of Guns Will Chill Activism and Peaceful Protest on Campus .....	8
II.   Article X Protects Freedom of Speech and Academic Freedom for the University’s Faculty, and Furthers the University’s Core Educational Goals .....	11
CONCLUSION.....	16

RECEIVED by MCOA 3/9/2023 1:35:17 PM

**TABLE OF AUTHORITIES**

	<b>Page(s)</b>
<b><u>CASES</u></b>	
<i>Bd. of Regents v. Roth</i> , 408 U.S. 564 (1972).....	4
<i>Grutter v. Bollinger</i> , 539 U.S. 306 (2003).....	4
<i>Keyishian v. Bd. of Regents</i> , 385 U.S. 589 (1967).....	2, 4, 12
<i>McDonald v. City of Chicago</i> , 461 U.S. 742 (2010).....	3
<i>New York State Rifle &amp; Pistol Ass’n v. Bruen</i> , 142 S. Ct. 2111 (2022).....	1, 3, 4
<i>NLRB v. Yeshiva Univ.</i> , 444 U.S. 672 (1980).....	4
<i>Regents of the Univ. of Cal. v. Bakke</i> , 438 U.S. 265 (1978).....	2
<i>Regents of Univ. of Mich. v. Ewing</i> , 474 U.S. 214 (1985).....	4
<i>State v. Misch</i> , 2021 VT 10 (Vt. 2021).....	3
<i>State v. Weber</i> , 2020-Ohio-6832 (Ohio 2020) .....	3
<i>Sweezy v. New Hampshire</i> , 354 U.S. 234 (1957).....	2, 12
<i>Tilton v. Richardson</i> , 403 U.S. 672 (1971).....	4
<i>United States v. Hayes</i> , 555 U.S. 415 (2009).....	3
<i>Whitney v. California</i> , 274 U.S. 357 (1927), <i>overruled in part by Brandenburg v. Ohio</i> , 395 U.S. 444 (1969).....	11
<b><u>STATUTES</u></b>	
Mich. Comp. Laws § 28.422(1).....	10

**TABLE OF AUTHORITIES**  
(continued)

	<b>Page(s)</b>
Mich. Comp. Laws § 28.422(3).....	10
Mich. Comp. Laws § 750.234d.....	10
 <b><u>OTHER AUTHORITIES</u></b>	
<i>1915 Declaration of Principles on Academic Freedom and Academic Tenure</i> , AAUP Policy Documents and Reports 3-12 (11th ed. 2015).....	12
<i>A Decade of Dissent: Student Protests at the University of Michigan in the 1960s</i> , Bentley Historical Library University of Michigan (Mar. 25, 2013, 11:25 AM).....	9
<i>A Non-Partisan Primer</i> , Student Life Edward Ginsberg Center University of Michigan .....	8
AAUP, <i>1940 Statement of Principles on Academic Freedom and Tenure with 1970 Interpretive Comments</i> , AAUP Policy Documents and Reports 13 (11th ed. 2015) .....	12, 14, 15
AAUP, <i>Joint Statement Opposing “Campus Carry” Laws</i> (2015) .....	13
AAUP, <i>Statement in Support of Gun Control Measures</i> (2018) .....	13
AAUP, <i>The Freedom to Teach</i> , AAUP Policy Documents and Reports, 28 (11th ed. 2015) .....	13
Arlin J. Benjamin, Jr., et al., <i>Effects of Weapons on Aggressive Thoughts, Angry Feelings, Hostile Appraisals, and Aggressive Behavior: A Meta-Analytic Review of the Weapons Effect Literature</i> , Personality & Soc. Sci. Rev. 13 (2017).....	6
Colleen Flaherty, <i>Don’t ‘Go There’</i> , Inside Higher Ed (2016).....	14
Colleen Flaherty, <i>Not in My Classroom</i> , Inside Higher Ed (2017) .....	13, 15
Daniel Horwitz, <i>Open Carry: Open-Conversation or Open-Threat</i> , 15 First Amend. L. Rev. 96 (2016) .....	10
Daniel W. Webster, et al., <i>Firearms on Campuses: Research Evidence and Policy Implications</i> 18-19 (2016).....	6
Darrell A. H. Miller, <i>Constitutional Conflict and Sensitive Places</i> , 28 William & Mary Bill of Rights Journal 459 (2019).....	4
Darrell A. H. Miller, <i>Guns as Smut: Defending the Home-Bound Second Amendment</i> , 109 Colum. L. Rev. 1278 (2009) .....	10, 11

**TABLE OF AUTHORITIES**  
(continued)

	<b>Page(s)</b>
David Hemenway, et al., <i>Is an Armed Society a Polite Society? Guns and Road Rage</i> , 38 Accident Analysis & Prevention 687 (2006).....	5
Emily Reimal, et al., <i>Guns on College Campuses: Students’ and University Officials’ Perceptions of Campus Carry Legislation in Kansas</i> , Urb. Inst. 9 (2019).....	7, 8
Firmin DeBrabander, <i>Campus Carry vs. Faculty Rights</i> , Inside Higher Ed. Opinion (Mar. 19, 2015) .....	7
Firmin DeBrabander, <i>Do Guns Make Us Free: Democracy and the Armed Society</i> (2015) .....	7
<i>Red Blue &amp; Brady, Episode 113: Do Guns Make Us Free?</i> , Brady (Jan. 20, 2021).....	7
Firmin DeBrabander, <i>How Guns Could Censor College Classrooms</i> , The Atlantic (2016).....	7, 14, 15
Firmin DeBrabander, <i>The Freedom of an Armed Society</i> , NY Times Opinion (Dec. 12, 2012) .....	7
Fort Hays State University, <i>Survey of Public Universities in Kansas Shows Strong Opposition to Law Allowing Guns on Campus</i> (Jan. 2016).....	15
<i>Freedom of Speech and Artistic Expression</i> , University of Michigan Standard Practice Guide Policies 601.01 (1993).....	1
<i>Freedom of Speech</i> , Vice President for Communications Public Affairs University of Michigan (2017) .....	1
Gregory P. Magarian, <i>Conflicting Reports: When Gun Rights Threaten Free Speech</i> , 83 Law & Contemp. Probs. 169 (2020) .....	5
Gregory P. Magarian, <i>Speaking Truth to Firepower: How the First Amendment Destabilizes the Second</i> , 91 Tex. L. Rev. 49 (2012).....	8, 10
J. Peter Byrne, <i>Academic Freedom: A “Special Concern of the First Amendment”</i> , 99 Yale L. J. 251 (1989) .....	12
J.M. Dieterle & W. John Koolage, <i>Affording Disaster: Concealed Carry on Campus</i> , 2 Pub. Affairs Q. 28 (2014) .....	7
Jack M. Balkin, <i>Constitutional Hardball and Constitutional Crises</i> , 26 Quinnipiac L. Rev. 579 (2008).....	11
Katlyn E. DeBoer, <i>Clash of the First and Second Amendments: Proposed Regulation of Armed Protests</i> , 45 Hastings Const. L.Q. 333 (2018).....	10, 11

**TABLE OF AUTHORITIES**  
(continued)

	<b>Page(s)</b>
Kim Clarke & Karl Leif Bates, <i>Students Protest Police</i> , Ann Arbor News (Nov. 15, 1990) .....	9
Leonard Berkowitz & Anthony LePage, <i>Weapons as Aggression-Eliciting Stimuli</i> , 7.2 J. of Personality & Social Psych. 202 (1967) .....	5
Rio Fernandes, <i>A PowerPoint Slide Advises Professors to Alter Teaching to Pacify Armed Students</i> , Chron. of Higher Educ. (2016).....	14
Sarah Parlette & Meredith Bruckner, <i>Undergraduates Protest, March in Support of Striking University of Michigan Students</i> , All About Ann Arbor (Sept. 16, 2020, 12:28 PM) .....	9
Timothy Zick, <i>Arming Public Protests</i> , 104 Iowa L. Rev. 223 (2018) .....	8, 10
University of Michigan Regents’ Ordinance, <i>An Ordinance to Regulate Parking and Traffic and to Regulate the Use and Protection of the Buildings and Property of the Regents of the University of Michigan art. X - Weapons</i> (July 2020) .....	1
Walter P. Metzger, <i>Profession and Constitution: Two Definitions of Academic Freedom in America</i> , 66 Tex. L. Rev. 1265 (1988).....	12

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## INTRODUCTION<sup>1</sup>

Article X of the University of Michigan’s (the “University’s”) Regents’ Ordinance provides that no person shall possess any firearm or other dangerous weapon while on the University’s property.<sup>2</sup> The University enacted this rule to protect physical safety and promote the free exchange of ideas on campus, consistent with its mission. Plaintiff Joshua Wade (“Plaintiff”) now seeks to challenge Article X and bring a firearm onto the University’s campus. While Plaintiff’s primary legal argument lacks merit because the University is a “sensitive place” where the Second Amendment does not apply, Article X also is constitutional because it imposes a “comparable burden” that is “comparably justified” when compared with founding-era restrictions on indisputably sensitive places, such as government buildings and polling places.<sup>3</sup>

As it is on university and college campuses throughout the United States, “[f]reedom of speech is a bedrock principle of [the University’s] academic community.”<sup>4</sup> Article X safeguards this principle and advances critical University interests. First, limiting firearms on campus safeguards the student body’s ability to freely engage in important First Amendment-protected activities, including classroom debate, political or issue-based activism, and peaceful protest on campus. Empirical research confirms that the mere presence of weapons can prime individuals to

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<sup>1</sup> Pursuant to Michigan Court Rule 7.312(H)(4), counsel for *amici* authored this brief in whole, and neither counsel nor any party made a monetary contribution intended to fund the preparation or submission of the brief.

<sup>2</sup> University of Michigan Regents’ Ordinance, *An Ordinance to Regulate Parking and Traffic and to Regulate the Use and Protection of the Buildings and Property of the Regents of the University of Michigan* art. X - Weapons (July 2020), <https://regents.umich.edu/governance/regents-ordinance/>.

<sup>3</sup> See *New York State Rifle & Pistol Ass’n v. Bruen*, 142 S. Ct. 2111, 2133 (2022).

<sup>4</sup> *Freedom of Speech*, Vice President for Communications Public Affairs University of Michigan (2017), <https://publicaffairs.vpcomm.umich.edu/key-issues/freedom-of-speech-and-artistic-expression/>; *Freedom of Speech and Artistic Expression*, University of Michigan Standard Practice Guide Policies 601.01 (1993), <https://spg.umich.edu/policy/601.01>.



aggression and that young adults like college students are particularly susceptible to this “weapons effect.” College classes that involve heated discussions regarding complex subject matters are ripe for such triggered aggression. In fact, evidence demonstrates that students are less likely to speak up in class if they believe their fellow students may be armed.

Second, Article X safeguards the First Amendment and academic freedom interests of the University’s faculty and protects constitutional rights critical to the University’s promotion of a “marketplace of ideas.” Article X is essential to the exercise of academic freedom that individual professors be able to choose their curriculum and course materials, determine topics for discussion, and foster an environment conducive to learning through rigorous analysis and critical thinking.

Significantly, the United States Supreme Court has described academic freedom as a “special concern of the First Amendment.”<sup>5</sup> The presence of firearms on campus would stifle this freedom, interfering with the University’s ability to promote innovative scholarship and productive instruction. Empirical research establishes that faculty members will feel compelled to change their curriculum and alter their teaching strategies if students or colleagues are armed on campus. Classes involving controversial topics are particularly vulnerable. For these reasons, *amici* respectfully request that this Court affirm the judgment below.

#### **INTEREST OF *AMICI CURIAE***

*Amicus curiae* Brady is one of the nation’s oldest and largest nonpartisan, non-profit organizations dedicated to gun violence prevention. For over 40 years, Brady has been dedicated to reducing gun deaths through education, research, and direct legal advocacy. Brady often files *amicus* briefs in cases involving firearms regulation, including in *New York State Rifle & Pistol*

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<sup>5</sup> *Keyishian v. Bd. of Regents*, 385 U.S. 589, 603 (1967); *see Sweezy v. New Hampshire*, 354 U.S. 234, 250 (1957); *Regents of the Univ. of Cal. v. Bakke*, 438 U.S. 265, 312 (1978) (Powell, J., concurring).

*Association v. Bruen*, 142 S. Ct. 2111 (2022); *McDonald v. City of Chicago*, 461 U.S. 742 (2010); *United States v. Hayes*, 555 U.S. 415 (2009); *State v. Misch*, 2021 VT 10 (Vt. 2021); and *State v. Weber*, 2020-Ohio-6832, 36 (Ohio 2020) (citing Brady’s *amicus* brief). Brady has a substantial interest in ensuring that the Second Amendment is interpreted to not supplant other constitutional rights or jeopardize state authority to prevent gun violence.

*Amicus curiae* Team ENOUGH is a youth-led, Brady-sponsored program that educates and mobilizes young people in the fight to end gun violence in the United States. A nationwide coalition of young people and students impacted in different ways by gun violence, Team ENOUGH has a substantial interest in ensuring that young people have influence over policies that affect their daily lives, and supports common-sense regulation of guns to reduce avoidable tragedies made lethal by easy access to guns.

*Amicus curiae* American Association of University Professors (“AAUP”), founded in 1915, is a non-profit organization of over 43,000 faculty, librarians, graduate students, and academic professionals. The mission of the AAUP is to advance academic freedom and shared governance; to define fundamental professional values and standards for higher education; to promote the economic security of faculty, academic professionals, graduate students, post-doctoral fellows, and all those engaged in teaching and research in higher education; to help the higher education community organize to make AAUP’s goals a reality; and to ensure higher education’s contribution to the common good. AAUP has played a primary role in establishing academic freedom as an essential aspect of higher education.

AAUP, both independently and in concert with other higher education organizations, issues statements and interpretations that have been recognized by the Supreme Court and are widely respected and followed in American colleges and universities. *See, e.g., Bd. of Regents v. Roth*,

408 U.S. 564, 579 n.17 (1972); *Tilton v. Richardson*, 403 U.S. 672, 681-82 (1971). In cases that implicate AAUP policies or otherwise raise legal issues important to higher education or faculty members, AAUP frequently submits *amicus* briefs to the Supreme Court, and federal and state appellate courts. See, e.g., *Grutter v. Bollinger*, 539 U.S. 306 (2003); *Regents of Univ. of Mich. v. Ewing*, 474 U.S. 214 (1985); *NLRB v. Yeshiva Univ.*, 444 U.S. 672 (1980); *Keyishian v. Bd. of Regents*, 385 U.S. 589 (1967).

## ARGUMENT

The University qualifies as a “sensitive place” where the Second Amendment does not apply. Therefore, Article X is constitutional. However, to the extent there is any doubt that the University is a “sensitive place,” Article X is nevertheless constitutional because it imposes a “comparable burden” that is “comparably justified” when compared with founding-era restrictions on indisputably sensitive places, such as government buildings and polling places.<sup>6</sup> These places are particularly important because of their distinctive character in facilitating the exercise of other constitutional rights.<sup>7</sup>

Here, Article X is critical to the protection of First Amendment rights on the University’s campus. In our constitutional system, First Amendment rights are the lifeblood of democracy. They nurture political discourse, debate, resistance, and progress, and they lead to extensive dissemination of competing ideas, knowledge, and information, so that no single body or group has a monopoly on them. Article X safeguards First Amendment rights on the University’s campus by (1) protecting the open exchange of ideas, and (2) protecting the University faculty’s academic freedom. Empirical research confirms that laws like Article X that limit guns on college campuses

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<sup>6</sup> See *Bruen*, 142 S. Ct. at 2133.

<sup>7</sup> See Darrell A. H. Miller, *Constitutional Conflict and Sensitive Places*, 28 *William & Mary Bill of Rights Journal* 459, 461 (2019).

protect the exercise of these important free speech rights. If more people are allowed to carry guns on campus, without establishing proper cause for doing so, it will become much more dangerous to speak, assemble, or express controversial ideas in public settings.<sup>8</sup> This is especially problematic on the University’s campus, given that a core goal of the University is to promote a “marketplace of ideas” that require debate, often on sensitive or controversial topics. There is no evidence that the framers of the first ten amendments to the Constitution in 1791, or the adoption of the Fourteenth Amendment (making those first ten amendments applicable to state governments, including universities) in 1868 enshrined in the Constitution a Second Amendment right to significantly encroach on the exercise of essential First Amendment freedoms.

**I. Article X Protects Student Speech and the Free Exchange of Ideas on the University’s Campus**

**A. The Psychological Effect of Guns on University Students Will Severely Undermine Free Speech on Campus**

Empirical research confirms that the mere presence of guns on a university campus changes students’ behavior and chills speech.

Studies dating back to 1967 have demonstrated the “weapons effect”—the tendency of individuals to behave aggressively in the presence of actual guns, pictures of guns, and even words referring to weapons.<sup>9</sup> This research suggests that carrying a weapon can increase aggressive behavior by the person carrying.<sup>10</sup> The presence of guns also “primes” or “activates” aggressive

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<sup>8</sup> See Gregory P. Magarian, *Conflicting Reports: When Gun Rights Threaten Free Speech*, 83 *Law & Contemp. Probs.* 169, 169 (2020) (“In the real world . . . guns far more commonly impede and chill free speech than protect or promote it.”).

<sup>9</sup> See Leonard Berkowitz & Anthony LePage, *Weapons as Aggression-Eliciting Stimuli*, 7.2 *J. of Personality & Social Psych.* 202 (1967), <http://dx.doi.org/10.1037/h0025008>.

<sup>10</sup> See, e.g., David Hemenway, et al., *Is an Armed Society a Polite Society? Guns and Road Rage*, 38 *Accident Analysis & Prevention* 687 (2006) (finding that drivers with concealed firearms are

thoughts in those who see a gun even if they are not the ones carrying it. Therefore, “the mere presence of weapons can cause people to believe other people are aggressive and will respond in an aggressive manner in ambiguous situations. This hostile perception of others should increase the likelihood of aggression.”<sup>11</sup> In other words, the “mere presence of weapons” magnifies both aggressive cognition and conduct, particularly in stressful situations. This heightened aggression affects both those carrying firearms and those who merely perceive the presence of firearms.

College and university students are particularly susceptible to the weapons effect. A 2016 report from the Johns Hopkins Bloomberg School of Public Health explains:

Compared with adults and younger children, adolescent decision-makers . . . are more sensitive to stress, both psychologically and biophysiologicaly. . . . [T]ypical developmental processes in adolescence are associated with more risk-taking, and poorer self-control in the transition to adulthood. **Guns may be called on in the very situations in which adolescents are most developmentally vulnerable: in the context of high emotional arousal, situations that require rapid, complex social information processing, those that involve reinforcing or establishing peer relationships (i.e., showing off), or in conditions of perceived threat.**<sup>12</sup>

Activities like vigorous debate or intellectual risk-taking create a charged atmosphere where guns, or the suspected presence of guns, may cause aggression. The chilling effect in the classroom will be particularly pronounced in classes discussing controversial subject matter. Firmin DeBrabander, a professor of Philosophy at the Maryland Institute College of Art and an

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more likely to engage in aggressive driving behaviors than those without), <http://www.science-direct.com/science/article/pii/S0001457505002162>.

<sup>11</sup> See Arlin J. Benjamin, Jr., et al., *Effects of Weapons on Aggressive Thoughts, Angry Feelings, Hostile Appraisals, and Aggressive Behavior: A Meta-Analytic Review of the Weapons Effect Literature*, *Personality & Soc. Sci. Rev.* 13 (2017), <https://journals.sagepub.com/doi/10.1177/1088868317725419>.

<sup>12</sup> Daniel W. Webster, et al., *Firearms on Campuses: Research Evidence and Policy Implications* 18-19 (2016) (citations omitted; emphasis added), [http://www.jhsph.edu/research/centers-and-institutes/johns-hopkins-center-for-gun-policy-and-research/\\_pdfs/GunsOnCampus.pdf](http://www.jhsph.edu/research/centers-and-institutes/johns-hopkins-center-for-gun-policy-and-research/_pdfs/GunsOnCampus.pdf).

author,<sup>13</sup> notes that “[f]ew young adults have put significant thought” into complex subjects they may discuss in class.<sup>14</sup> Students “must experiment with them to understand them properly and deeply” and “feel free to push their intellectual limits, and entertain lines of argument that are controversial, probably offensive to some.”<sup>15</sup> Students who are afraid of being perceived as offensive simply will not speak, for fear of being shot.<sup>16</sup>

Student surveys validate these concerns. For example, a survey of hundreds of college and university students in Kansas showed that students were concerned that the presence of guns would escalate tensions during class debates.<sup>17</sup> Forty-one percent stated that they would be less likely or much less likely to engage in an intellectual debate with someone who is carrying a handgun.<sup>18</sup> This figure reveals the significant chilling effects that the presence of handguns would have on intellectual discussion and debate. Further, the figure is higher than the thirty-two percent of students surveyed who said that the presence of a handgun would not make a difference and the

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<sup>13</sup> Firmin DeBrabander is an outspoken author and commentator on how guns impact expressive rights. *See, e.g.*, Firmin DeBrabander, *Do Guns Make Us Free: Democracy and the Armed Society* (2015); *Red Blue & Brady, Episode 113: Do Guns Make Us Free?*, Brady (Jan. 20, 2021); Firmin DeBrabander, *Campus Carry vs. Faculty Rights*, Inside Higher Ed. Opinion (Mar. 19, 2015), available at <https://www.insidehighered.com/views/2015/03/19/essay-movement-allow-guns-campus-violates-academic-freedom>; Firmin DeBrabander, *The Freedom of an Armed Society*, NY Times Opinion (Dec. 12, 2012), available at <https://opinionator.blogs.nytimes.com/2012/12/16/the-freedom-of-an-armed-society/>.

<sup>14</sup> Firmin DeBrabander, *How Guns Could Censor College Classrooms*, The Atlantic (2016), <https://www.theatlantic.com/education/archive/2016/03/the-steep-cost-of-allowing-guns-in-the-college-classroom/472296/>.

<sup>15</sup> *Id.*

<sup>16</sup> J.M. Dieterle & W. John Koolage, *Affording Disaster: Concealed Carry on Campus*, 2 Pub. Affairs Q. 28, 115 (2014).

<sup>17</sup> Emily Reimal, et al., *Guns on College Campuses: Students’ and University Officials’ Perceptions of Campus Carry Legislation in Kansas*, Urb. Inst. 9 (2019), [https://www.urban.org/sites/default/files/publication/100963/guns\\_on\\_college\\_campuses\\_1.pdf](https://www.urban.org/sites/default/files/publication/100963/guns_on_college_campuses_1.pdf).

<sup>18</sup> *Id.*

twenty-six percent who stated they would be more or much more likely to participate in classroom discussion or intellectual debate.<sup>19</sup>

**B. The Presence of Guns Will Chill Activism and Peaceful Protest on Campus**

In addition to undermining the First Amendment interests of students to freely exchange their ideas in class, pervasive gun possession will chill political or issue activism and peaceful protest by students. Requiring the University to allow widespread gun possession throughout its campus will undermine the University’s “institutional values [and] commitments that advance a marketplace of ideas.”<sup>20</sup> In our democracy, the freedoms of speech, assembly, and petition provide the “chosen and legitimate vehicle[s] for political revolution.”<sup>21</sup> When citizens oppose laws, policies, or programs implemented by their government, they are entitled to use their voices and their bodies to declare their views and propose action without fear of punishment or physical harm. “All of the principal justifications for protecting expressive rights—advancing self-government, facilitating the search for truth, and respecting individual autonomy—apply to communications at public protests and demonstrations.”<sup>22</sup> Students and other members of the academic community who choose to engage in this American tradition deserve the utmost protection for these inalienable rights that are now baked in to our national culture. Indeed, the First Amendment expressly bars the Government from “abridging the freedom of speech” and interfering with the right of the “people peacefully to assemble, and to petition the Government for a redress of grievances.”

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<sup>19</sup> *Id.*

<sup>20</sup> *A Non-Partisan Primer*, Student Life Edward Ginsberg Center University of Michigan, <https://drive.google.com/file/d/1ENVUPW3-IEjdfkm4NFgoywQcY-DELZC-/view>

<sup>21</sup> *See* Timothy Zick, *Arming Public Protests*, 104 Iowa L. Rev. 223, 237-38 (2018) (citing Gregory P. Magarian, *Speaking Truth to Firepower: How the First Amendment Destabilizes the Second*, 91 Tex. L. Rev. 49, 95-96 (2012)).

<sup>22</sup> *Id.* at 233.

Universities are unique institutions that foster and promote the free exchange of ideas. College campuses are known for being at the center of political and social debates over controversial issues such as civil rights, foreign and military policies, affirmative action, pay equity, compensation of college athletes, police brutality, reproductive rights, and environmentalism. To bring awareness to critical issues and provoke discussion and an essential exchange of ideas, students—including those at the University—often choose to make their opinions known through public protests.<sup>23</sup> Such protests may take many different forms—including assemblies, marches, rallies, pamphleteering, and other expressive demonstrations—and frequently involve boisterous communications from incensed individuals highlighting a specific injustice that has occurred, demanding the recognition of certain individual or collective rights, and/or calling for action to make communities more safe, equitable, and inclusive. By preventing the possession of guns on any property owned, leased, or otherwise controlled by the University, Article X protects the rights of students who choose to protest on campus, and helps ensure that controversial speech is addressed by counter-speech and not the threat of violence, whether openly or implicitly raised.

Without the presence of Article X, a person without a concealed pistol license (“CPL”) can openly carry a gun during protests on the University’s campus as long as the individual meets certain basic requirements (*i.e.*, be at least eighteen years old, be a U.S. citizen or non-U.S. national

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<sup>23</sup> Sarah Parlette & Meredith Bruckner, *Undergraduates Protest, March in Support of Striking University of Michigan Students*, All About Ann Arbor (Sept. 16, 2020, 12:28 PM), <https://www.clickondetroit.com/all-about-ann-arbor/2020/09/15/undergraduates-protest-march-in-support-of-striking-university-of-michigan-students/>; *A Decade of Dissent: Student Protests at the University of Michigan in the 1960s*, Bentley Historical Library University of Michigan (Mar. 25, 2013, 11:25 AM), [https://deepblue.lib.umich.edu/bitstream/handle/2027.42/111871/A%20Decade%20of%20Dissent%20Student%20Protests%20at%20the%20University%20of%20M%20-%20202006\\_bhl-158bcafe.pdf?sequence=3&isAllowed=y](https://deepblue.lib.umich.edu/bitstream/handle/2027.42/111871/A%20Decade%20of%20Dissent%20Student%20Protests%20at%20the%20University%20of%20M%20-%20202006_bhl-158bcafe.pdf?sequence=3&isAllowed=y); Kim Clarke & Karl Leif Bates, *Students Protest Police*, Ann Arbor News (Nov. 15, 1990), A1, <https://aadl.org/node/378322>.



who legally resides in Michigan, and obtain a purchase permit for a gun).<sup>24</sup> Allowing individuals to openly carry guns at protests on the University’s campus “elevates armed conflict over peaceful democratic discourse” and “is repugnant to the premise of peaceful self-government and democratic change that the First Amendment supports.”<sup>25</sup> Instead of encouraging students to civilly present and stand up for their beliefs and respectfully engage with those who have different perspectives and experiences, guns increase the likelihood that discussions, meetings, and protests will transform into threatening, intimidating, and violent events that endanger students and other members of the University community. The inevitable result will be a reduction in thought and discourse on the most important issues of our times.

Guns are perceived as symbols of violence, intimidation, and force, and foster a climate of mistrust and fear.<sup>26</sup> When displayed at protests, guns demand attention, alarm onlookers, and are likely to incite violence.<sup>27</sup> “Valueless opinions enjoy an inflated currency if accompanied by threats of violence. Even if [students are] equally armed, everyone is deterred from free-flowing democratic deliberation if each person risks violence from a particularly sensitive [peer] who might take offense.”<sup>28</sup> One can also never escape the fact that “any time an individual openly displays a gun, intentional or not, the message is clear: that individual now has the power to kill.”<sup>29</sup>

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<sup>24</sup> See Mich. Comp. Laws § 28.422(1), (3); § 750.234d.

<sup>25</sup> Zick, *supra*, at 237-38.

<sup>26</sup> See Katlyn E. DeBoer, *Clash of the First and Second Amendments: Proposed Regulation of Armed Protests*, 45 Hastings Const. L.Q. 333, 346 (2018); Magarian, *supra*, at 95.

<sup>27</sup> DeBoer, *supra*, at 339-40, 343-44 (describing the “Unite the Right” rally in Charlottesville, Virginia where there were dozens of injuries from violent encounters between armed protesters and counter-protesters).

<sup>28</sup> Darrell A. H. Miller, *Guns as Smut: Defending the Home-Bound Second Amendment*, 109 Colum. L. Rev. 1278, 1310 (2009).

<sup>29</sup> Daniel Horwitz, *Open Carry: Open-Conversation or Open-Threat*, 15 First Amend. L. Rev. 96, 107 (2016).

Considering the prevalence of gun violence and resulting deaths in America, students who witness peers or other individuals openly carrying guns at protests on campus are likely to see the gun as a highly effective means for violence.<sup>30</sup>

There is no doubt that the presence of guns at open discussions and protests on University property would be a form of intimidation that would chill, distort, or even eliminate the expressive activities of protesters and the essential channels of democracy—public deliberation and interchange.<sup>31</sup> Any alleged right to possess or openly carry guns on the University’s campus “must be tempered by other constitutional values, including the preservation and maintenance of the social compact and democratic norms.”<sup>32</sup> The freedom of students to think and openly articulate their thoughts “are means indispensable to the discovery and spread of political truth; [] without free speech and assembly discussion would be futile[.]”<sup>33</sup> “[T]he greatest menace to freedom is an inert people; [] public discussion is a political duty; and [] this should be a fundamental principle” that governs the University and supports Article X.<sup>34</sup>

## **II. Article X Protects Freedom of Speech and Academic Freedom for the University’s Faculty, and Furthers the University’s Core Educational Goals**

The United States Supreme Court has stated that the free exchange of ideas in the classroom is of “transcendent value” to everyone and that the classroom is “peculiarly the ‘marketplace of

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<sup>30</sup> DeBoer, *supra*, at 346.

<sup>31</sup> See Miller, *supra*, at 1309-10; see also Jack M. Balkin, *Constitutional Hardball and Constitutional Crises*, 26 *Quinnipiac L. Rev.* 579, 592 (2008) (“A right to freely brandish firearms frustrates one of the very purposes of a constitution, which is ‘to make politics possible.’”).

<sup>32</sup> Miller, *supra*, at 1308.

<sup>33</sup> See *Whitney v. California*, 274 U.S. 357, 375 (1927) (Brandeis, J., concurring), *overruled in part by Brandenburg v. Ohio*, 395 U.S. 444 (1969).

<sup>34</sup> *Id.*

ideas.”<sup>35</sup> The “Nation’s future depends upon leaders trained through wide exposure to that robust exchange of ideas.”<sup>36</sup> Indeed, *amicus* AAUP has stated that such academic freedom “is fundamental for the protection of the rights of the teacher in teaching and of the student to freedom in learning.”<sup>37</sup> Article X serves the critical interest of academic freedom by protecting faculty speech and furthering the University’s core educational goals.

Academic freedom—which includes the freedom of faculty members to teach, research, and engage in extramural speech as citizens—has long been recognized as an important value in the United States. Beginning with the growth of scientific research and the rise of the modern university in the second half of the nineteenth century, the principle of academic freedom attained its “authoritative definition” as a professional norm in the AAUP’s *1915 Declaration of Principles on Academic Freedom and Academic Tenure*, AAUP Policy Documents and Reports 3-12 (11th ed. 2015).<sup>38</sup> As the United States Supreme Court has stated: “Our Nation is deeply committed to safeguarding academic freedom . . . .”<sup>39</sup> The Court has recognized that academic freedom is “a special concern of the First Amendment . . . .” *Id.*

In *Sweezy*, the United States Supreme Court stated: “The essentiality of freedom in the community of American universities is almost self-evident. . . . Teachers and students must always remain free to inquire, to study and to evaluate, to gain new maturity and understanding; otherwise

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<sup>35</sup> *Keyishian*, 385 U.S. at 603.

<sup>36</sup> *Id.*

<sup>37</sup> AAUP, *1940 Statement of Principles on Academic Freedom and Tenure with 1970 Interpretive Comments*, AAUP Policy Documents and Reports 13, 14 (11th ed. 2015), <https://www.aaup.org/file/1940%20Statement.pdf>.

<sup>38</sup> J. Peter Byrne, *Academic Freedom: A “Special Concern of the First Amendment”*, 99 Yale L. J. 251, 269-73 (1989); Walter P. Metzger, *Profession and Constitution: Two Definitions of Academic Freedom in America*, 66 Tex. L. Rev. 1265, 1267-68 (1988).

<sup>39</sup> *Keyishian*, 385 U.S. at 603.

our civilization will stagnate and die.”<sup>40</sup> The freedom to teach includes “the right of the faculty to select the materials, determine the approach to the subject, make the assignments, and assess student academic performance . . .”<sup>41</sup> There is widespread concern among university faculty that allowing guns on campus would threaten this freedom and force them to alter their curriculum and important classroom discussions. On November 12, 2015, *amicus* AAUP, the American Federation of Teachers, the Association of American Colleges and Universities, and the Association of Governing Boards of Universities and Colleges issued a joint statement opposing campus carry laws, stating that “students and faculty members will not feel comfortable discussing controversial subjects if they think there might be a gun in the room.”<sup>42</sup> On March 6, 2018, in the wake of the Parkland shooting, *amicus* AAUP issued a “Statement in Support of Gun Control Measures” confirming its long-standing opposition to the presence of firearms on college and university campuses.<sup>43</sup> Furthermore, in a study by the American Educational Research Association, seventy-one percent of surveyed college faculty members agreed with the statement that campus carry laws “will have a negative impact on the free and robust exchange of ideas at my university.”<sup>44</sup>

Without the protections afforded by Article X, professors at the University would likely

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<sup>40</sup> *Sweezy*, 354 U.S. at 250.

<sup>41</sup> AAUP, *The Freedom to Teach*, AAUP Policy Documents and Reports, 28 (11th ed. 2015), [https://www.aaup.org/file/2013-Freedom\\_to\\_Teach.pdf](https://www.aaup.org/file/2013-Freedom_to_Teach.pdf).

<sup>42</sup> AAUP, *Joint Statement Opposing “Campus Carry” Laws* (2015), <https://www.aaup.org/file/CampusCarry.pdf>.

<sup>43</sup> AAUP, *Statement in Support of Gun Control Measures* (2018), [https://www.aaup.org/file/2018-gun\\_control.pdf](https://www.aaup.org/file/2018-gun_control.pdf).

<sup>44</sup> Colleen Flaherty, *Not in My Classroom*, Inside Higher Ed (2017), <https://www.insidehighered.com/news/2017/04/28/study-professors-widely-oppose-campus-carry-inimical-academic-freedom-fewer-would>.

remove certain controversial topics from their curriculum or self-censor discussions. For example, during a 2016 presentation at the University of Houston regarding a Texas campus carry law, the President of the Faculty Senate provided suggestions for faculty members to alter their behavior.<sup>45</sup> The presentation included suggestions like “Be careful discussing sensitive topics,” “Drop certain topics from your curriculum,” “Do not ‘go there’ if you sense anger,” and “Limit student access off hours.”<sup>46</sup> University of Houston professor Maria Gonzales stated she was particularly concerned about guns being allowed on campus since she teaches theories that can lead to “heated discussions.”<sup>47</sup> Classes on such controversial topics will be the most vulnerable to self-censorship, and chilling of speech in these classes will be particularly harmful. As *amicus* AAUP has stated: “Controversy is at the heart of the free academic inquiry . . .”<sup>48</sup> Indeed, universities are a safe harbor for ideas that may be unpopular in society at large and play a substantial role in early discussions about expanding civil rights.<sup>49</sup>

Several surveys of university faculty members confirm that guns on campus will lead to the chilling of free speech in the classroom. A 2015 survey of faculty and staff at seven Kansas public universities showed that, out of 10,866 respondents, seventy percent stated that allowing

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<sup>45</sup> Rio Fernandes, *A PowerPoint Slide Advises Professors to Alter Teaching to Pacify Armed Students*, Chron. of Higher Educ. (2016), <https://www.chronicle.com/article/a-powerpoint-slide-advises-professors-to-alter-teaching-to-pacify-armed-students/>.

<sup>46</sup> *Id.*

<sup>47</sup> Colleen Flaherty, *Don't 'Go There'*, Inside Higher Ed (2016), <https://www.insidehighered.com/news/2016/02/24/u-houston-faculty-senate-suggests-changes-teaching-under-campus-carry>.

<sup>48</sup> AAUP, *1940 Statement*, *supra*, at 14 n.4.

<sup>49</sup> See DeBrabander, *How Guns Could Censor College Classrooms*, *supra*.

guns on campus would negatively impact their course and how they teach.<sup>50</sup> Sixty-six percent of respondents said that “allowing guns in the classroom limits their academic freedom to teach the material and engage with students in a way that optimizes learning.”<sup>51</sup> And sixty percent stated that they are concerned “they will need to change how they teach their course if guns are allowed in the classroom.”<sup>52</sup> In the American Educational Research Association study, twenty-three percent of college faculty members surveyed stated they would likely omit topics from their course content.<sup>53</sup> Such self-censorship runs directly counter to the free flow of ideas that the University is designed to foster and feature, and that Article X seeks to protect. In fact, one of the reasons professors are given tenure is to protect academic freedom and to protect against censorship.<sup>54</sup>

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<sup>50</sup> Fort Hays State University, *Survey of Public Universities in Kansas Shows Strong Opposition to Law Allowing Guns on Campus* (Jan. 2016), <https://www.fhsu.edu/news/2016/01/Survey-of-public-universities-in-Kansas-shows-strong-opposition-to-law-allowing-guns-on-campus>.

<sup>51</sup> *Id.*

<sup>52</sup> *Id.*

<sup>53</sup> See Flaherty, *Not in My Classroom*, *supra*.

<sup>54</sup> See AAUP, *1940 Statement*, *supra*, at 14; see also DeBrabander, *How Guns Could Censor College Classrooms*, *supra*.

## CONCLUSION

For the foregoing reasons, *amici* respectfully urge the Court to affirm the judgment below.

Dated: March 9, 2023

Respectfully submitted,

/s/ Matthew Turner

Matthew Turner (P48706)  
MTurner@sommerspc.com  
**Sommers Schwartz PC**  
One Towne Square, Suite 1700  
Southfield, MI 48076  
(248) 746-4039

Susannah K. Howard  
Racquel Martin  
**O'Melveny & Myers LLP**  
Two Embarcadero Center, 28th Floor  
San Francisco, CA 94111  
(415) 984 -8700  
showard@omm.com  
rmartin@omm.com

Houman Ehsan  
**O'Melveny & Myers LLP**  
400 South Hope Street, 18th Floor  
Los Angeles, CA 90071  
(213) 430-6000  
hehsan@omm.com

*Attorneys for Amici Brady, Team ENOUGH,  
and the American Association of University  
Professors*

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