

Trial Court/Tribunal Name:  
Genesee  
Circuit Court

**Court of Appeals, State of Michigan**  
**Jurisdictional Checklist**

CASE NO.  
Trial Court/Tribunal:  
15-104373-CZ  
Court of Appeals:

Case Name: Michigan Open Carry v Clio Area Schools

**INSTRUCTIONS:** Please complete this checklist and file with your claim of appeal. **ALL** of the numbered items are required. Check each box as you confirm that each item is being filed.

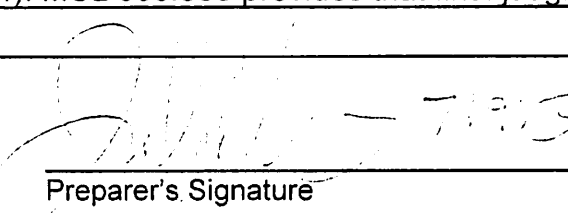
- ☒ 1. A **signed** claim of appeal showing the correct lower court number(s). [MCR 7.204(B)(1) & (D).]
- ☒ 2. A filing fee of \$375.00 or appropriate fee substitute. [MCR 7.202(3) & 7.204(B)(2).] (Where multiple lower court or tribunal numbers are involved, an additional filing fee may be required. Appellants will be advised of any additional amount required.)
- ☒ 3. A copy of the order you are appealing. [MCR 7.204(C)(1).] (This is the order deciding the merits and not an order denying reconsideration, new trial, or other post-judgment relief.)
- ☒ 4. Evidence that the necessary transcript has been ordered. [MCR 7.204(C)(2).] (Only one item from a through g is required).
- ☐ a. No transcript will be filed. [MCR 7.204(C)(2) & AO 2004-5 ¶ 8(A)(1).]
- ☐ b. The transcript has already been filed. [MCR 7.210(B)(1)(a).]
- ☒ c. The complete transcript has been ordered. [MCR 7.210(B)(1)(a).]
- ☐ d. This appeal is from a probate court proceeding which does not require a complete transcript. [MCR 7.210(B)(1)(b).]
- ☐ e. A motion has been filed in the lower court or tribunal for submission of the appeal on less than the complete transcript. [MCR 7.210(B)(1)(c).]
- ☐ f. The parties have stipulated to submission of the appeal on less than the complete transcript. [MCR 7.210(B)(1)(d).]
- ☐ g. The parties have stipulated to a statement of facts. [MCR 7.210(B)(1)(e).]
- ☒ 5. Proof of service demonstrating that all other parties have been served. [MCR 7.204(C)(3).] (*Even if a party is not an appellee, they must be served.*)
- ☒ 6. A **current** register of actions from the lower court or tribunal. [MCR 7.204(C)(5).]

**Finality of Order Being Appealed** (Check the box that demonstrates your claim of appeal is by right. If neither applies, you do not have an appeal by right.)

- ☒ The claim of appeal is from an order defined as a final order by MCR 7.202(6) or MCR 5.801(B)(1). [MCR 7.203(A)(1).] Please specify which category of final order applies: MCR 7.202(6)(a)(i)
- ☒ The claim of appeal is from an order which is designated by statute, court rule, or case law as an order appealable by right to the Court of Appeals. Please specify the authority under which you have an appeal by right: MCR 7.202(6)(a)(i) and MCR 7.203(A)(1). MCL 600.308 provides that final judgments are  
appealable as of right.

9/17/15

Date

  
Preparer's Signature

|  |                        |   |
|--|------------------------|---|
| <b>STATE OF MICHIGAN</b><br>JUDICIAL <input type="checkbox"/> CIRCUIT <input type="checkbox"/> DISTRICT<br>COUNTY<br><input checked="" type="checkbox"/> IN THE COURT OF APPEALS | <b>CLAIM OF APPEAL</b> | <b>CASE NO.</b><br>CIRCUIT 15-104373-CZ<br>DISTRICT<br>PROBATE  |
| Court address<br>201 W. Big Beaver Road, Suite 800, Troy, MI 48084   |                        | Court telephone no.<br>(248) 524-8700   |
| Plaintiff/Petitioner name(s) and address(es) <input type="checkbox"/> Appellant<br><input checked="" type="checkbox"/> Appellee<br><br>MICHIGAN OPEN CARRY                       | v                      | Defendant/Respondent name(s) and address(es) <input checked="" type="checkbox"/> Appellant<br><input type="checkbox"/> Appellee<br><br>CLIO AREA SCHOOLS                                  |
| Attorney, bar no., address, and telephone no.<br>DEAN G. GREENBLATT (P54139)<br>4190 Telegraph Road, Ste. 3500<br>Bloomfield Hills, MI 48302<br>248-644-7520                     |                        | Attorney, bar no., address, and telephone no.<br>TIMOTHY J. MULLINS (P28021)<br>GIARMARCO, MULLINS & HORTON, P.C.<br>101 W. Big Beaver Road, 10th Floor, Troy, MI 48084<br>(248) 457-7020 |
| <input type="checkbox"/> Probate In the matter of _____  |                        |   |
| Other interested party(ies) of probate matter _____  |                        |   |

1. Defendants, CLIO AREA SCHOOLS, et al \_\_\_\_\_, claims an appeal from a final judgment or order entered on \_\_\_\_\_  
 Name  
 09/07/2015 in the Genesee County Circuit Court of the State of Michigan,  
 Date  
 by ☐ district judge ☒ circuit judge ☐ probate judge ☐ district court magistrate  
 Judge Archie Hayman 37516  
 Name of judge or district court magistrate Bar no.

2. Bond on appeal is ☐ filed. ☐ attached. ☐ waived. ☒ not required.

3. ☒ a. The transcript has been ordered.

☐ b. The transcript has been filed.

☐ c. No record was made.

☐ 4. THIS CASE INVOLVES A CONTEST AS TO THE CUSTODY OF A MINOR CHILD.

09/17/2015

Date  
 101 W. Big Beaver, 10th Floor

Address

Appellant/Attorney signature  
 Troy, MI 48084

City, state, zip

(248) 457-702

Telephone no.

### PROOF OF SERVICE

I certify that copies of this claim of appeal and bond (if required) were served on

DEAN G. GREENBLATT (P54139)

Name

on

Date

by

☐ personal service.  
☒ first-class mail.

on

Date

by

☐ personal service.  
☐ first-class mail.

on

Date

by

☐ personal service.  
☐ first-class mail.

Name

Date

Signature

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF GENESEE

MICHIGAN OPEN CARRY, INC., and  
KENNETH HERMAN,

Plaintiffs,

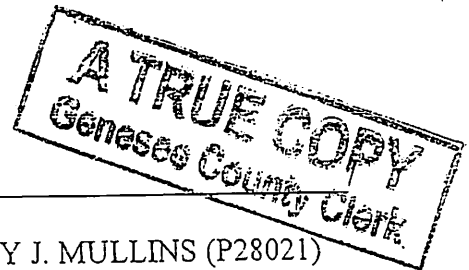
Judge Archie L. Hayman

vs.

No. 15-104373-CZ

CLIO AREA SCHOOLS, FLETCHER  
SPEARS, III, and KATRINA MITCHELL,

Defendants.



DEAN G. GREENBLATT (P54139)  
DEAN G. GREENBLATT, PLC  
Attorney for Plaintiffs  
4190 Telegraph Road, Ste. 3500  
Bloomfield Hills, MI 48302  
(248) 644-7520

TIMOTHY J. MULLINS (P28021)  
JOHN L. MILLER (P71913)  
GIARMARCO, MULLINS & HORTON, P.C.  
Attorneys for Defendants  
101 W. Big Beaver Road, 10<sup>th</sup> Floor  
Troy, MI 48084-5280  
(248) 457-7020

**ORDER DENYING DEFENDANTS' MOTION FOR SUMMARY DISPOSITION  
AND GRANTING PLAINTIFFS DECLARATORY RELIEF**

At a session of said Court, held in the  
City of Flint, Michigan, on the \_\_\_\_\_  
day of \_\_\_\_\_, 2015.

PRESENT: THE HONORABLE \_\_\_\_\_  
Circuit Court Judge

This matter having been fully briefed, and the Court having heard oral argument, it is  
hereby ORDERED:

1. Defendants' Motion for Summary Disposition is DENIED;
2. For the reasons stated on the record, and in accordance with the oral opinion in  
the attached transcript of proceedings, Plaintiffs are granted declaratory relief;

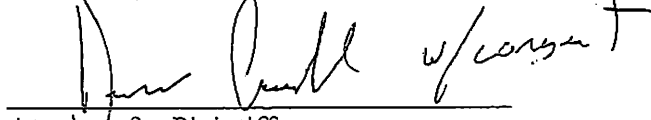
and

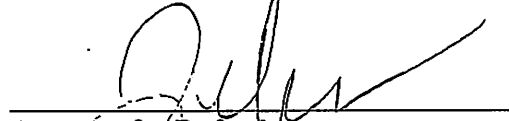
3. This is a final judgment that adjudicates all claims, rights, and liabilities of the parties.

**ARCHIE L. HAYMAN**  
**P-37516**

\_\_\_\_\_  
HONORABLE JUDGE HAYMAN

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Attorney for Plaintiffs

  
\_\_\_\_\_  
Attorney for Defendants

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42  
43  
44  
45  
46  
47  
48  
49  
50

STATE OF MICHIGAN  
IN THE CIRCUIT COURT FOR THE COUNTY OF GENESEE

MICHIGAN OPEN CARRY, INCORPORATED,  
AND KENNETH HERMAN,

Plaintiffs,

-vs-

CASE NO. 14-103476-CZ

CLIO AREA SCHOOL DISTRICT,  
ET AL,

Defendants.

JUDGE HAYMAN

\_\_\_\_\_ /

TRANSCRIPT OF PROCEEDINGS  
BEFORE THE HONORABLE ARCHIE L. HAYMAN, CIRCUIT JUDGE  
Flint, Michigan - Monday, August 10, 2015

APPEARANCES:

For the Plaintiffs: DEAN GREENBLATT (P-54139)  
Attorney for Plaintiffs  
4190 Telegraph Road, Suite 3500  
Bloomfield Hills, Michigan 48302-2043  
(248) 644-7520

For the Defendants: TIMOTHY J. MULLINS (P-28021)  
Attorney for Defendants  
101 West Big Beaver Road, Floor 10  
Troy, Michigan 48084-5253  
(248) 457-7020

Recorded by: (Video Recording)  
Transcribed By: Jacqueline J. Bolt, CER-4272  
Certified Electronic Recorder  
3271 Dillon Road  
Flushing, Michigan 48433  
(810) 424-4454

TABLE OF CONTENTS

| <u>MONDAY, AUGUST 10, 2015</u>               | <u>PAGE</u> |
|--|-------------|
| MOTION FOR DECLARATORY RELIEF BY MR. MULLINS | 4           |
| RESPONSE TO MOTION BY MR. GREENBLATT         | 6           |
| REBUTTAL ARGUMENT BY MR. MULLINS             | 10          |
| RULING OF THE COURT ON MOTIONS               | 11          |

|                  |                   |                 |
|------------------|-------------------|-----------------|
| <u>EXHIBITS:</u> | <u>IDENTIFIED</u> | <u>RECEIVED</u> |
| NONE.            |                   |                 |

1 Flint, Michigan

2 Monday, August 10, 2015

3 2:40 o'clock p.m.

4 THE COURT: All right, we are on the record in the  
5 case of Michigan Open Carry, Incorporated, and Kenneth  
6 Herman versus Clio Area Schools, Case Number 15-104373-  
7 CZ. And, gentlemen, state your appearances, please?

8 MR. MULLINS: Good morning, your Honor! Timothy  
9 Mullins appearing on behalf of the Defendant School  
10 District and the Board of Education.

11 THE COURT: Thank you, Mr. Mullins.

12 MR. GREENBLATT: Good afternoon, your Honor! Dean  
13 Greenblatt on behalf of Michigan Open Carry and Kenneth  
14 Herman.

15 THE COURT: All right. Thank you, Mr. Greenblatt.  
16 And this is a motion that was filed by you, Mr. Mullins?

17 MR. MULLINS: Yes, your Honor.

18 THE COURT: You may proceed, sir.

19 MR. GREENBLATT: Your Honor, there are two motions  
20 that are up. I'm hoping that you have both.

21 THE COURT: Yeah, I do. I see also a motion to  
22 compel?

23 MR. GREENBLATT: Yes, your Honor.

24 THE COURT: Yes, sir. And Mr. Mullins, I'm gonna  
25 let him go first and then we'll address the motion to

1       compel.

2               MR. GREENBLATT:  Very good, your Honor.

3               MR. MULLINS:  Your Honor, I know you read the  
4       briefs, so I'll be - I will be brief.

5               THE COURT:  Yes, sir.

6               MR. MULLINS:  As you know, this is a declaratory  
7       action brought by the Plaintiffs herein seeking to allow  
8       individuals to openly carry firearms onto school  
9       premises.  Specifically, the Plaintiff in this case is  
10      the parent of a student of one - at one of our elementary  
11      schools; and he seeks, with and through this  
12      organization, to contravene school policy which declares  
13      the school to be a weapons-free and a drug free zone.

14              It's undisputed that the school district has  
15      passed a policy making such a declaration.  Plaintiff  
16      would claim that this would be - that this would  
17      contravene State law and is preempted.  We would argue  
18      that, indeed, the case of Davis vs Hillsdale Schools has  
19      already ruled on this wherein a student was expelled  
20      from school for carrying a B.B. gun on school premises.  
21      The Michigan School code specifically provides not just  
22      the right, but I would argue the obligation that school  
23      boards and school administrators pass rules and  
24      regulations to protect students; and, indeed, that's  
25      what the Clio School District has done here.  We would



1       argue that that is entirely consistent with State statute  
2       and State policy.

3               As your Honor knows, even be it in this  
4       courtroom, in many State agencies, you're not allowed to  
5       carry a - a firearm; and the Clio School Board would  
6       argue consistent with the Hillsdale case that the  
7       interest and safety of elementary students, much less all  
8       students, should be paramount; and that is consistent  
9       with law and we believe that is why the Michigan School  
10      Code has indicated and discusses at length in the  
11      Hillsdale case that the primary obligation of a school  
12      district is to provide a safe environment in which  
13      students can learn and the school district can accomplish  
14      it's scholastic goals.

15             Indeed, as a practical matter, if we are  
16      administering a school and we see somebody approaching  
17      the school, in today's day and age, openly carrying a  
18      firearm, what happens? The police are called, the school  
19      district is shut down, it goes into lockdown and parents,  
20      to the extent that they're present, are upset, children  
21      are terrified and education stops. Everything comes to a  
22      stop, and potentially you have a confrontation between  
23      law enforcement, administration and an individual  
24      carrying a firearm. It doesn't make good practical and  
25      common sense, but for the purposes we're here today, it's

1 consistent with the law. The School Code says that  
2 school districts should and must pass rules and  
3 regulations to provide for the safety of schools. In  
4 today's day and age, we know the problems that guns,  
5 knives, weapons - not to mention drugs and the like, what  
6 kind of problems those cause in schools.

7 So we would argue that our elementary -  
8 elementary school students, much less all of the students  
9 and the administrators and the parents and the teachers  
10 within the school districts should be provided with the  
11 same protections as our many governmental employees,  
12 airports and the like.

13 Did you have any questions, your Honor?

14 THE COURT: No, sir. I'll hear from Mr. Greenblatt.  
15 Thank you, Mr. Mullins.

16 MR. GREENBLATT: Your Honor, if I could approach?

17 THE COURT: Yes, sir, you may approach.

18 (Whereupon Mr. Greenblatt approached Court with  
19 document at 2:45 p.m.)

20 Thank you, sir.

21 MR. GREENBLATT: Your Honor, I'm not here to argue  
22 public policy. I'm not here to argue emotions. I will  
23 state that, as far as school policies relating to  
24 lockdowns, terrified children and confrontation goes, all  
25 those things are within the control of the Clio Area

1 School District. The issue in this case is whether or  
2 not the Clio Area School District has the regulatory  
3 authority to regulate firearms on its property. This  
4 has already been addressed by the Michigan Court of  
5 Appeals. It's already been addressed by statute. The  
6 policy of the Clio Area School District is that the  
7 Board of Education prohibits visitors from possessing,  
8 storing, making or using a weapon in any setting that is  
9 under control and supervision of the Board. That's a  
10 quote from Policy 7217 that was provided by the  
11 Defendants in their motion.

12 I would add that much of the evidence that was  
13 presented within the motion was denied in a motion - in a  
14 request for production of documents; so we only have what  
15 the school district is willing to provide. But what they  
16 are willing to provide is that they're - have come up  
17 with a policy - it's a Board policy - to ban firearms on  
18 their property, not just in the buildings, but on the  
19 school grounds. That is in direct conflict with State  
20 law and specifically MCL 28.425(o)(1)(a). The statute  
21 provides that CPL licensees may carry concealed upon  
22 school property that is under the control of the Clio  
23 Area School District Board. Because it's directly  
24 preempted, the regulation of the school board is  
25 preempted.

1           The second issue that is brought before the  
2 Court today in our motion - in the motion that I'm sure  
3 your Honor's had an opportunity to review it and the  
4 response. The second issue is that, in Capitol Area  
5 District Library vs MOC, the Court of Appeals has already  
6 ruled on this. This case couldn't any more closely  
7 mirror that case. We're specifically dealing with a  
8 subordinate unit of government, in this case the school  
9 district. In the Capitol Area District Library case, it  
10 was the District Library; and the Court of Appeals has  
11 already ruled that the legislature has occupied the field  
12 of firearm regulations and there's nothing left for the  
13 Capitol Area District Library to regulate with respect  
14 to firearms; and there's nothing left for the Clio Area  
15 School District to regulate. It simply isn't within  
16 their purview.

17           The proper remedy, if there is - if you want  
18 to call it a remedy or the proper course of action for  
19 the school district to take is something that they took  
20 on March 24<sup>th</sup> of 2015. The document that I provided to  
21 you, which I did not have at my disposal when I wrote  
22 the response specifically states in a resolution by the  
23 Defendant that whereas, in effect, the aforementioned  
24 laws allow an individual with a Concealed Pistol License  
25 to openly carry an unconcealed pistol into a Michigan

1 Public School - in my understanding of the practice of  
2 law, that is an admission. They admit that that is the  
3 case; and it is an appeal to the legislature to change  
4 the law. That's the proper course of action. They  
5 undertook it in March; the legislature has not responded.  
6 The legislature has already created the law in Michigan;  
7 and the law is the school district doesn't have this  
8 authority.

9 As for the case cited in the Defendant's brief,  
10 I believe it was the Davis case, it didn't have anything  
11 to do with firearm preemption in the Firearms and  
12 Ammunition Act. What it had to do is whether or not the  
13 school district had to follow the revised school code  
14 with their definition of what a dangerous weapon was in  
15 their expulsion of two students. The court rule in that  
16 case, which had nothing to do with firearms, for one, and  
17 with the Firearms and Ammunition Act for another, and  
18 State preemption, was the - the school can have its own  
19 regulation or its own rule about what a dangerous weapon  
20 is and when they're expelling a student. This isn't an  
21 administrative act; this is a - a venture into firearm  
22 regulations that is the sole purview of the State of  
23 Michigan.

24 So, with that, we would ask that the Court deny  
25 the motion for summary in this case. I'd like to point

1 out that the concurrent motion by Defendants for  
2 declaratory relief is not a proper form of pleading. It  
3 is a cause of action. You can't claim a cause of action  
4 in a motion; and so we're - I suppose that if it's the  
5 opposing party's position, that they're asking for  
6 2116(i)(2) relief, that's a possibility, but that's not  
7 what the motion says. So they haven't claimed a cause of  
8 action here. The Plaintiffs have; and we'd ask that the  
9 motion for declaratory relief be denied.

10 And with that, we would leave it to your  
11 Honor's discretion.

12 THE COURT: All right, Mr. Mullins, anything else  
13 you wish to add to this, sir?

14 (Whereupon rebuttal argument begins at 2:51  
15 p.m.)

16 MR. MULLINS: Just briefly, your Honor, the  
17 resolution by the School Board referred to by the  
18 Plaintiff herein was the request by the School Board to  
19 clear up any confusion that might have been created by  
20 the Capitol Area - Capitol Area Library case. But  
21 certainly it was a declaration on the part of the Board  
22 not admitting - the Board doesn't interpret or declare  
23 law; it - it was an appeal to the legislature to clear  
24 up any confusion that might exist in this area.

25 As to his argument on preemption, that was

1 specifically addressed in the Hillsdale case, which  
2 indeed did involve a weapon, a B.B. gun; and there, it  
3 was very clearly pointed out that, as school districts  
4 interpret the law, that preemption simply does not apply.  
5 I'm somewhat shocked by the Plaintiffs - if I understood  
6 his reply brief, that - that this case shouldn't be  
7 interpreted with regard to any considerations of the  
8 hoopla surrounding the concern of the safety of students  
9 in this case; and I would suggest that the safety of  
10 students is not hoopla. It's a serious concern in  
11 today's society and through all time. Our children  
12 should be able to learn in a safe environment free of  
13 concerns about the violence that might be presented by  
14 a presentation of firearms in the - in the school  
15 building.

16 Thank you, your Honor.

17 (Whereupon ruling begins at 2:52 p.m.)

18 THE COURT: Okay, thank you, Mr. Mullins. The  
19 Plaintiff, Kenneth Herman and Michigan Open Carry,  
20 Incorporated, collectively the Plaintiffs, have filed  
21 this lawsuit after Herman was either denied access to,  
22 asked to leave from or removed from a school building  
23 operated by Defendant Clio Area Schools because he was  
24 openly carrying a holstered handgun.

25 Defendants Fletcher Spears III and Katrina

1 Mitchell are employed by Clio Area Schools collectively  
2 as Defendants. The Clio Area Schools Board of Education  
3 promulgated Policy 7217, which states as follows:

4 "The Board of Education prohibits visitors from  
5 possessing, storing, making or using a weapon in any  
6 setting that is under the control and supervision  
7 of the Board for the purpose of school activities  
8 approved and authorized by the Board, including by  
9 not limited to property leased, owned or contracted  
10 for by the Board, a school sponsored event or in a  
11 Board owned vehicle."

12 Defendants have filed this motion for summary  
13 disposition seeking an order from the Court dismissing  
14 this lawsuit. Defendants do not specify under which  
15 court rule they seek summary disposition, but it appears  
16 that Defendants are arguing an issue of law; so the Court  
17 will treat the motion as if it was requested under MCR  
18 2.116(C)(8).

19 A motion for summary disposition under (C)(8)  
20 may be granted when the opposing party has failed to  
21 state a claim on which relief can be granted. The  
22 moving party must specify the grounds on which it is  
23 based. Only the pleadings may be considered when  
24 reviewing a motion based on (C)(8). In supporting the  
25 motion or opposing it, a party may not submit affidavits,



1 depositions, admissions or other documentary evidence in  
2 support of such a motion.

3 A motion for summary disposition based on a  
4 pleading that the opposing party has failed to state a  
5 claim on which relief can be granted tests the legal  
6 sufficiency of the complaint. It must be resolved by  
7 treating as true all well-pled factual allegations and  
8 determining whether the claims made are so clearly  
9 unenforceable as a matter of law that no factual  
10 development could possibly justify a right to recovery.

11 Defendants argue that they can prohibit weapons  
12 on school property pursuant to MCL 380.11(a)(3)(b),  
13 which allows schools to provide "for the safety and  
14 welfare of pupils while at school or a school sponsored  
15 activity or while in route to or from school or a school  
16 sponsored activity." Defendants further argue that  
17 Davis vs Hillsdale Community School District, which is  
18 at 226 Michigan Appeals 375, a 1997 case, held that  
19 State law does not preempt a school district's regulation  
20 of firearms on school property.

21 Plaintiffs argue that this case is directly  
22 controlled by the holding in Capitol Area District  
23 Library vs Michigan Open Carry, Incorporated, which is  
24 found at 298 Michigan Appeals 220; that is a 2012 case.

25 At the outset, it is important to start out

1 with a basic civics lesson. The Michigan Legislature  
2 makes the law. The law - the Michigan Judiciary  
3 interprets and applies that law. This Court is a  
4 Circuit Court; and Michigan Circuit Courts must adhere  
5 to the legal interpretations contained within published  
6 opinions issued by the Michigan Court of Appeals and the  
7 Michigan Supreme Court. The legal interpretations within  
8 published opinions are binding on Circuit Courts.

9 With these basic principles in mind, the  
10 outcome of this case is relatively simple. In Michigan,  
11 "Every person has a right to keep and bear arms for the  
12 defense of himself and the State." This is found at  
13 Constitution, 1963, Articles I, Sections 6. The United  
14 States Constitution guarantees the same right.

15 The U.S. Constitution, the Second Amendment  
16 guarantees "the individual right to possess and carry  
17 weapons in case of confrontation." This is found at the  
18 District of Columbia vs Heller, which is at 554 U.S. 570;  
19 this is a 2008 case. However, this constitutional right  
20 to bear arms is not unlimited. The Court, in Heller is  
21 not unlimited held only that a ban on handguns in a  
22 person's home for self-defense violates the Federal  
23 Constitutional right to keep and bear arms. Heller went  
24 on to clarify that second amendment right and its  
25 limitations by stating "nothing, in our opinion, should

1       be taken to cast doubt on longstanding prohibitions on  
2       the possession of firearms by felons and the mentally ill  
3       or laws forbidding the carrying of firearms in sensitive  
4       places such as schools or government buildings or laws  
5       imposing conditions and qualifications on the commercial  
6       sale of arms."

7               The Michigan Legislature has seen fit to pass  
8       certain laws limiting the right of individual to possess  
9       firearms specifically with respect to the issue in this  
10      case, an individual shall not possess a concealed weapon  
11      in a weapons-free school zone, MCL 750.237(a)(1). An  
12      individual shall not possess a weapon in a weapons free  
13      school zone - that's MCL 750.237(a)(4) - unless that  
14      individual is licensed to carry a concealed weapon, MCL  
15      750.237(a)(5). An individual licensed to carry a  
16      concealed pistol shall not carry a concealed pistol on  
17      school property; that's MCL 28.425(o)(1)(a); however, a  
18      parent or guardian licensed to carry a concealed pistol,  
19      may carry that pistol concealed while in a vehicle on  
20      school property either dropping the student off at school  
21      or picking the student up from school.

22              When you read this law as a whole and these  
23      statutes as a whole, these statutes do not prohibit an  
24      individual, who is licensed to carry a concealed pistol,  
25      from openly possessing a pistol in a weapons free school

1 zone. The Michigan Legislature evidently has not seen  
2 fit to completely prohibit individuals from possessing  
3 firearms on school property.

4 In this case, Clio Area School District is  
5 attempting to prohibit individuals from openly possessing  
6 firearms on school property. The Defendants argue that  
7 Davis vs. Hillsdale Community School District stands for  
8 the proposition that a school authority has plenary power  
9 that enables it to ban guns from its premises; and that  
10 a school district's regulation of firearms on school  
11 property is not preempted by State law. This Court  
12 finds that case to be distinguishable from this case  
13 concerned the school district's ability to discipline,  
14 that is expel a student, for being in possession of a  
15 dangerous weapon while at school. With respect to the  
16 concept of plenary power, that Court noted that a school  
17 has plenary power regarding maintaining order and  
18 discipline in the schools; that Court did not hold that  
19 a school can do anything that it wants. Specifically,  
20 that Court quoted from a Federal case Davis vs. Ann Arbor  
21 Public Schools, which is at 313 Fed Supplement 217, a  
22 1970 case; and the quote is as follows:

23 "The school authorities, for their part, in  
24 order to carry out their important function, have  
25 both the inherent and the statutory power to

1 maintain order and discipline in the schools and to  
2 exclude from the student body those who are  
3 detrimental to such body and whose conduct is  
4 inimical to the exercise of the institution of  
5 scholastic function."

6 Therefore, because this case before this Court  
7 is factually distinguishable from that case, that case  
8 does not control the outcome of this case.

9 Defendant also argues that Davis vs Hillsdale  
10 Community School District, which this Court notes was  
11 published in 1997, specifically held that a school  
12 district's weapons' policy was not preempted by State  
13 Law. Again, this Court finds that that case is factually  
14 distinguishable from the case - from this case because  
15 that case involved the issue of the school's ability to  
16 discipline its students; and this case involves a  
17 school's purported ability to completely ban firearms on  
18 school property.

19 Plaintiffs' argue that Capitol Area District  
20 Library vs Michigan Open Carry, Incorporated, again  
21 which is at 298 Michigan Appeals 220, a 2012 case, is  
22 controlling in this case and prohibits Clio Area Schools  
23 from enacting and/or enforcing its firearm ban. That  
24 case held that State law preempts a quasi-municipal  
25 corporation's "weapons policy because the Michigan

1       Legislature, through its statutory scheme in the field  
2       of firearm regulation, has completely occupied the field  
3       that the quasi-municipal corporation's weapons policy  
4       attempts to regulate."

5               It is this Court's opinion that this case  
6       is directly controlled by the holding in Capitol Area  
7       District Library because the facts of that case and this  
8       case are virtually identical; and the legal holdings in  
9       that case directly apply to this case. The Michigan  
10      Legislature, the body responsible for passing laws in  
11      this state, has decided, for whatever reason, not to  
12      completely ban the possession of openly carried firearms  
13      on school property. Defendant, Clio Area School  
14      District, which is a quasi-municipal corporation, has  
15      decided to take it upon itself to completely ban the  
16      possession of firearms on school property. This Court  
17      is bound by the published decision of the Michigan Court  
18      of Appeals in Capitol Area District Library vs. Michigan  
19      Open Carry, which specifically held that Michigan - held  
20      that the Michigan Legislature has occupied the field of  
21      firearm regulation to such an extent that State law  
22      preempts a quasi-municipal corporation's attempts to  
23      regulate in that same field.

24             Accordingly, Clio Area School District's  
25      firearms ban, while likely smart and well-intentioned,

1 is not allowed under current law. Only the Michigan  
2 Legislature can completely ban the possession of  
3 firearms on school property; and, as of yet, the  
4 Michigan Legislature has not fit - or seen fit to impose  
5 that ban. Because of this, Defendants' motion for  
6 summary disposition under (C)(8) should be denied  
7 because Plaintiffs have indeed stated a claim on which  
8 this Court can grant relief.

9 Moreover, Plaintiffs are entitled to a  
10 declaratory judgment in their favor for the reasons  
11 already stated.

12 And, if you'll submit the order, Mr.  
13 Greenblatt, I will sign it.

14 MR. GREENBLATT: Thank you, your Honor. I believe  
15 that it was attached to the filing.

16 THE COURT: I think you're gonna have to submit me  
17 another order, okay, 'cause I don't want to look through  
18 the file.

19 MR. GREENBLATT: We - we'll do that, your Honor.

20 THE COURT: I've got two volumes here; and I don't  
21 want to have to look through to find it, okay.

22 MR. GREENBLATT: Very good, your Honor.

23 THE COURT: All right, and thank you.

24 And, Mr. Mullins, an excellent job on your  
25 behalf, also, sir.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

MR. MULLINS: Thank you, your Honor.

MR. GREENBLATT: And, your Honor, as far as the  
other motion goes, since it's a moot point, there's -

THE COURT: Moot point at this point, gentlemen.  
Thank you.

MR. GREENBLATT: Thank you, your Honor.

MR. MULLINS: Thanks.

(Whereupon proceedings concluded at 3:04 p.m.)

-oOo-



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19

STATE OF MICHIGAN)  
COUNTY OF GENESEE)

I certify that this transcript, consisting of 20 pages,  
is a complete, true and correct transcript, to the best  
of my ability, of proceedings taken in the matter of  
Michigan Open Carry, Inc., et al vs. Clio Area School  
District, et al, Case Number 15-104373-CZ, recorded by  
video recording, on Monday, August 10, 2015.

Dated: August 20, 2015

---

Jacqueline J. Bolt, CER-4272  
Certified Electronic Recorder  
3271 Dillon Road  
Flushing, Michigan 48433  
(810) 424-4454

STATE OF MICHIGAN  
IN THE CIRCUIT COURT FOR THE COUNTY OF GENESEE

MICHIGAN OPEN CARRY, INC, ET AL,

Plaintiffs

-vs-

Case No. 15-104373-CZ

COA: #

CLIO ARE SCHOOL DISTRICT, ET AL,

JUDGE HAYMAN

Defendants.

\_\_\_\_\_ /

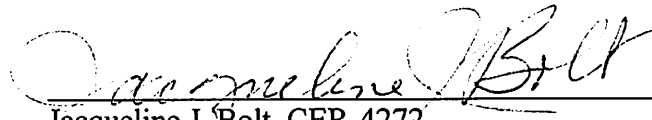
RECORDER CERTIFICATE OF ORDERING  
OF TRANSCRIPT ON APPEAL

On 09/21/15, an order for complete transcript of proceedings, taken in this case before The Honorable Archie L. Hayman, Court Judge, on 08/10/15 was requested by Timothy J. Mullins (P-28021), Attorney for Defendant-Appellants, at his address at 101 West Big Beaver Road, Floor 10, Troy, Michigan 48084-5253.

Payment has been secured and above transcript has been previously typed and filed; and a copy of this certificate has been furnished to all the parties in the above case.

I declare that the statements above are true to the best of my information, knowledge and belief.

September 22, 2015

  
Jacqueline J. Bolt, CER-4272  
Certified Electronic Recorder  
Address: 3271 Dillon Road  
Flushing, Michigan 48433  
Phone: (810) 424-4454

# Michigan Court of Appeals

## DOCKETING STATEMENT

Case No:  
Circuit: 15-104373-CZ  
Court of Appeals:

Please read before completing form.

- MCR 7.204(H) and 7.205(D)(3) require an **appellant** in a civil action to complete and file a docketing statement within 28 days after the claim of appeal is filed or the application for leave to appeal is granted. Failure to timely file this document may lead to dismissal of the appeal. An appellee may respond by filing a separate docketing statement.
- This document will be used to screen the appeal for suitability and eligibility for the settlement conference program, and will be used to help resolve jurisdictional and transcript issues. It is important that you complete this form accurately and legibly.
- The issues identified in the docketing statement do not limit appellant's presentation of the issues in appellant's brief. Omission of an issue in the docketing statement will not provide a basis for a motion to strike appellant's brief.

### 1. Case Name:

MICHIGAN OPEN CARRY ☐ Appellant  
☒ Appellee

v

CLIO AREA SCHOOLS ☒ Appellant  
☐ Appellee

Name of first Plaintiff

Name of first Defendant

Address:

Address:

Telephone No:

Telephone No:

Attorney Name: Dean Greenblatt Bar No: 54139

Attorney Name: Timothy Mullins Bar No: P28021

Address: 4190 Telegraph Road, Ste. 3500  
Bloomfield Hills, MI 48302

Address: 101 W. Big Beaver Road, 10th Floor  
Troy, MI 48084

Telephone No: (248) 644-7520

Telephone No: (248) 457-7020

2. ☐ A bankruptcy or other proceeding has been filed which affects this Court's jurisdiction over this appeal.

Identify and explain.

3. ☐ There are pending or prior appeals in the Court of Appeals or Supreme Court which arose out of the same transaction, lower court case, or between the same parties.

Specify case name, lower court number, appellate court number(s), and citation, if available.

4. ☒ I am aware of the following pending appeals in the Court of Appeals or Supreme Court raising the same or closely related issues.

Specify case name, lower court number, appellate court number(s), and citation, if available.  
While the case has not yet been adjudicated, there is a similar case currently pending in the Washtenaw County Circuit Court, No. 15-000427-CZ. This case involves the same issues, and will likely result in an appeal.

5. Identify all the lower court hearings.

| Type of proceeding (i.e. motion, trial, etc.)<br>Summary Disposition | Date(s) Occurred<br>August 10, 2015 | Court Reporter |
|--|-------------------------------------|----------------|
|  |                                     |                |
|  |                                     |                |
|  |                                     |                |

6. Nature of case:

a. If the lower court case number provided on page 1 does not include a suffix, please specify the circuit court case code (i.e. NI, CK, etc): 15-104373-CZ

b. Identify the procedural nature of the case being appealed.

- ☐ arbitration      ☐ bench trial      ☐ post-judgment action      ☒ declaratory judgment  
☐ interlocutory matter      ☐ jury trial      ☒ summary disposition  
☐ administrative proceeding (specify agency) \_\_\_\_\_  
☐ other (i.e. default judgment) \_\_\_\_\_

7. Briefly describe the nature of the action and the result in the trial court. Conclusory statements such as "the judgment of the trial court is not supported by law" are unacceptable. Attach additional pages as needed.

This is a lawsuit filed by an advocacy group that promotes the open carriage of firearms. Plaintiff filed suit against the School District alleging that the School District had no legal authority to regulate the possession of firearms on school property. The School District, however, contends that State Law does not preempt local school districts from protecting students and staff; in fact, State Law expressly allows school districts to pass policies to safeguard students. Plaintiff sought declaratory relief. Defendant School District filed its Motion for Summary Disposition, which the Court denied. The Court entered an Order granting declaratory judgment for Plaintiff and this Order resolved all claims between the parties.

8. Briefly state the issues to be raised in this appeal. Attach additional pages as needed.

The issues presented are whether the School District is preempted by federal law from regulating the possession of firearms on school property.

9. The amount and terms of the judgment appealed are:

Declaratory Relief.

10. Settlement negotiations. (Check all boxes that apply.)

- ☐ Settlement negotiations have been conducted or are scheduled.  
☒ Settlement is unlikely.  
☐ Other \_\_\_\_\_

9/17/15

Date

Signature

Provide the Proof of Service on a separate form.

## Register of Action

[Enter New Search](#) [Nxt Action](#)

ADR

CASE REGISTER OF ACTIONS

09/17/15 PAGE 1

15-104373-CZ JUDGE HAYMAN

FILE 03/05/15

GENESEE COUNTY

JDF

P 001 MICHIGAN OPEN CARRY INC,,

VS D 001 CLIO AREA SCHOOL DISTRICT,,

430 NORTH MILL STREET

CLIO MI 48420

ATY:GREENBLATT, DEAN

ATY:MULLINS, TIMOTHY

P-54139 248-644-7520

P-28021 248-457-7020

SERVICE/ANS 04/15/15 ANS

P 002 HERMAN, KENNETH,,

VS D 002 SPEARS III, FLETCHER,,

430 NORTH MILL STREET

CLIO MI 48420

ATY:GREENBLATT, DEAN

ATY:MULLINS, TIMOTHY

P-54139 248-644-7520

P-28021 248-457-7020

SERVICE/ANS 04/15/15 ANS

D 003 MITCHELL, KATRINA,,

430 NORTH MILL STREET

CLIO MI 48420

ATY:MULLINS, TIMOTHY

P-28021 248-457-7020

SERVICE/ANS 04/15/15 ANS

Actions, Judgments, Case Notes

| Num | Date     | Judge  | Chg/Pty | Event Description/Comments     |
|-----|----------|--------|---------|--------------------------------|
| 1   | 03/05/15 | HAYMAN |         | SUMMONS AND COMPLAINT FILED    |
|     |          |        |         | RECEIPT# 00413537 AMT \$150.00 |
| 2   | 03/19/15 |        | D 001   | APPEARANCE                     |
|     |          |        |         | ATTORNEY: P-28021 MULLINS      |
|     |          |        |         | PROOF OF SERVICE 3/16/15 ON    |
|     |          |        |         | COUNSEL OF RECORD FILED        |
| 3   |          |        | D 002   | APPEARANCE                     |
|     |          |        |         | ATTORNEY: P-28021 MULLINS      |
| 4   |          |        | D 003   | APPEARANCE                     |
|     |          |        |         | ATTORNEY: P-28021 MULLINS      |
| 5   | 04/15/15 |        |         | JURY DEMAND PAID               |
|     |          |        |         | RECEIPT# 00415454 AMT \$85.00  |
| 6   |          |        | D 001   | ANSWER FILED                   |
|     |          |        |         | ATTORNEY: P-28021 MULLINS      |

|             |       |                                     |
|-------------|-------|-------------------------------------|
|             |       | AFFIRMATIVE DEFENSES FILED          |
|             |       | JURY DEMAND FILED                   |
|             |       | PROOF OF SERVICE 4/13/15 ON         |
|             |       | PLTF ATTY FILED                     |
| 7           | D 002 | ANSWER FILED                        |
|             |       | ATTORNEY: P-28021 MULLINS           |
| 8           | D 003 | ANSWER FILED                        |
|             |       | ATTORNEY: P-28021 MULLINS           |
| 9           | D 001 | JURY DEMAND FILED                   |
|             |       | ATTORNEY: P-28021 MULLINS           |
| 10 07/09/15 |       | MOTION FEE PAID                     |
|             |       | RECEIPT# 00419107 AMT \$20.00       |
| 11          | D 001 | SET NEXT DATE FOR: 08/10/15 2:01 PM |
|             |       | SUMMARY DISPOSITION MOTION          |
|             |       | DEFTS SUMMARY MOTION                |
|             |       | NOTICE OF HEARING FILED             |
| 12          |       | DEFTS' MOTION FOR SUMMARY           |
|             |       | DISP. AND DECLARATORY               |
|             |       | JUDGMENT FILED                      |
| 13          |       | PROOF OF SERVICE FILED              |
|             |       | OF SAME UPON ATTYS OF RECORD        |
|             |       | ON 07/06/15 FILED                   |
| 14 08/03/15 |       | MOTION FEE PAID                     |
|             |       | RECEIPT# 00420173 AMT \$20.00       |
| 15          | P 001 | SET NEXT DATE FOR: 08/10/15 2:00 PM |
|             |       | MOTION HEARING                      |
|             |       | PLTF'S MOTION TO COMPEL             |
|             |       | NOTICE OF HRG. FILED                |
|             |       | DEFT'S MOTION AND BRIEF TO          |
|             |       | COMPEL PRODUCTION OF DOCUMENTS      |
|             |       | AND TO COMPEL ANSWERS TO            |
|             |       | INTERRG'S FILED                     |
| 16          |       | RESPONSE IN OPPOSITION TO           |
|             |       | DEFT'S MOTION FOR SUMMARY           |
|             |       | DISPOSITION AND DECLARATORY         |
|             |       | JUDGMENT WITH BRIEF IN              |
|             |       | SUPPORT OF RESPONSE AND PROOF       |
|             |       | OF SERVICE 7/29/15 FILED            |
| 17 08/05/15 |       | RESPONSE TO PLTF'S MOTION TO        |
|             |       | COMPEL FILED                        |
|             |       | PROOF OF SERVICE 8/4/15 ON          |
|             |       | PLTF ATTY FILED                     |
| 18          |       | REPLY BRIEF IN SUPPORT OF           |
|             |       | MOTION FOR SUMMARY DISPOSITION      |
|             |       | FILED                               |
|             |       | PROOF OF SERVICE 8/4/15 ON          |
|             |       | PLTF ATTY FILED                     |
| 19 08/10/15 |       | MOTION HEARING                      |
|             |       | ATTY GREENBLATT FOR PLTF AND        |
|             |       | ATTY MULLINS FOR DEFT'S             |
|             |       | PRESENT FOR DEFT'S MOTION FOR       |
|             |       | SUMMARY DISPOSITION. MOTION         |
|             |       | DENIED. ORDER TO BE FILED.          |
|             |       | ALSO MOTION BY PLTF ATTY            |
|             |       | FOR DECLARATORY RULING.             |
|             |       | MOTION GRANTED. ORDER TO BE         |
|             |       | FILED.                              |
| 20 08/17/15 |       | NOTICE OF PRESENTMENT OF            |
|             |       | (7-DAY) ORDER WITH CERT OF          |
|             |       | SERVICE 8/14/15 FILED               |
| 21 08/18/15 |       | SET NEXT DATE FOR: 08/31/15 2:00 PM |
|             |       | MOTION HEARING                      |
|             |       | OBJECTION TO 7-DAY ORDER            |

|             |                                     |
|-------------|-------------------------------------|
|             | NOTICE OF HRG. FILED                |
|             | DEFT'S OBJECTION TO PLTF'S          |
|             | PROPOSED (7-DAY) ORDER FILED        |
|             | PROOF OF SERVICE 8/17/15 ON         |
|             | PLTF ATTY FILED                     |
| 22 08/28/15 | CASE EVALUATION ORDERED MCR 2.403   |
|             | SET NEXT DATE FOR: 02/02/16 9:00 AM |
|             | JURY TRIAL                          |
| 23 08/31/15 | MOTION HEARING                      |
|             | ATTY GREENBLATT FOR PLTF AND        |
|             | ATTY MILLER FOR DEFT PRESENT        |
|             | FOR MOTION OF OBJECTION TO          |
|             | 7-DAY ORDER. MOTION                 |
|             | GRANTED. ORDER SHOULD SAY           |
|             | DENIED AS TO DEFT AND               |
|             | GRANTED AS TO PLTF'S MOTION         |
|             | AS STATED ON THE RECORD.            |
| 24 09/03/15 | VIDEO RECORDING FEE PAID/REQUEST    |
|             | FILED                               |
|             | RECEIPT# 00112555 AMT \$20.00       |
| 25 09/14/15 | ORDER DENHYING DEFT'S MOTION        |
|             | FOR SUMMARY DISPOSITION AND         |
|             | GRANTING PLTF'S DECLARATORY         |
|             | RELIEF FILED                        |
| .....       | END OF SUMMARY .....                |

[Enter New Search](#)[Disclaimer](#)