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STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF GENESEE

MICHIGAN OPEN CARRY, INCORPORATED,  
AND KENNETH HERMAN,

Plaintiffs,

-vs-

CASE NO. 15-104373-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:

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EXHIBIT A



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Flint, Michigan

Monday, August 10, 2015

2:40 o'clock p.m.

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

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

THE COURT: Thank you, Mr. Mullins.

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

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

MR. MULLINS: Yes, your Honor.

THE COURT: You may proceed, sir.

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

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

MR. GREENBLATT: Yes, your Honor.

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

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compel.

MR. GREENBLATT: Very good, your Honor.

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

THE COURT: Yes, sir.

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

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



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

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

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

Plaintiffs' argue that Capitol Area District Library vs Michigan Open Carry, Incorporated, again which is at 298 Michigan Appeals 220, a 2012 case, is controlling in this case and prohibits Clio Area Schools from enacting and/or enforcing its firearm ban. That case held that State law preempts a quasi-municipal 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.

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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.)

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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

\_\_\_\_\_  
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