

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.

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**DEFENDANTS' MOTION FOR SUMMARY DISPOSITION AND
DECLARATORY JUDGMENT**

INTRODUCTION

Plaintiffs—open carry gun advocates—seek a declaratory judgment asking this Court to hold that they should be allowed to openly carry guns in schools operated by the Clio Area School District. Plaintiffs filed this lawsuit premised upon the dangerous and incorrect presumption that it is appropriate (and legal) to carry a firearm into school buildings operated by Clio Area Schools. Defendants contend that Plaintiffs’ conduct is contrary to the School District’s responsibility to protect the safety of the students, parents, and faculty.

Plaintiffs’ legal arguments lack merit for several reasons. First, Michigan Statute expressly authorizes the School District to make policies to safeguard students—including policies related to firearms. MCL 380.11a. Second, the Michigan Court of Appeals has specifically rejected Plaintiff’s argument that state law preempts a school district’s regulation of firearms on school property. *Davis v Hillsdale Community School District*, 226 Mich App 375; 573 NW2d 77 (1997). For the reasons stated below, this Court should affirm the District’s Policy, and the School District should be awarded costs for defending this provocative claim.

FACTS

1. THE PARTIES

Plaintiff Michigan Open Carry, Inc. is an entity whose stated purpose is “[t]o educate and desensitize the public and members of the law enforcement community about the legality of the open carry of a handgun in public.” Plaintiff Michigan Open Carry’s “methods” include “informal gatherings in public places throughout the state while open carrying our handguns.” For several years now, Plaintiff Michigan Open

Carry has publicized its goal to file a lawsuit against a public school district because Plaintiff believes that guns should be allowed in schools and because most schools prohibit the possession of weapons on school property.

Plaintiff Kenneth Herman has a child attending school at Edgerton Elementary School. He has stated his belief that it is legal and acceptable to carry firearms into an elementary school, regardless of whether it results in panic and a disruption of the educational environment for hundreds of children.

Defendant Clio Area Schools is a Michigan Public School District authorized by the Michigan legislature to make policies pursuant to the Revised School Code. See, e.g., MCL 380.1 *et seq.* Defendant Fletcher Spears is the Superintendent of Clio Area Schools. Defendant Katrina Mitchell is the Principal of Edgerton Elementary School.

2. CLIO AREA SCHOOLS' POLICY REGARDING FIREARMS

Clio Area Schools' Board of Education has promulgated Policy 7217, which provides:

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

Under the Policy, "[t]he term 'weapon' . . . include[s], but [is] not limited to, firearms, guns of any type, including air and gas-powered guns, (whether loaded or unloaded), knives, razors, clubs, electric weapons, metallic knuckles, martial arts weapons, ammunition, and explosives." The School District posts the following signs on its doors regarding its weapons policy:

**DRUG
FREE
WEAPONS
FREE
ZONE**

ATTENTION

CPL HOLDERS:

Please be advised that all Clio Area School District buildings and grounds have been declared Weapons Free Zones by Board of Education Policy.

IF YOU INTEND TO ENTER THIS BUILDING OR REMAIN ON SCHOOL GROUNDS CARRYING A FIREARM, THE BUILDING ADMINISTRATOR HAS BEEN DIRECTED TO FOLLOW THE COUNTY-WIDE EMERGENCY RESPONSE PROCEDURE TO PLACE THIS FACILITY INTO "LOCKDOWN" MODE UNTIL LOCAL LAW ENFORCEMENT OFFICIALS ARRIVE.

As the implementation of a lockdown causes all educational services to cease, your ARMED presence in this building or on its grounds constitutes an unwarranted disruption to normal school activities, you will be asked to leave.

YOUR COOPERATION IN KEEPING THIS FACILITY A WEAPONS FREE ZONE DURING HOURS WHEN STUDENTS ARE PRESENT IS GREATLY APPRECIATED.

3. HISTORY OF SHOOTINGS AT SCHOOLS

As a Nation, we have endured too many tragic shootings at public schools. By way of partial example, in 1999 12 students were murdered at Columbine High School. In 2007, 32 students were murdered at Virginia Tech. In 2012, 20 children and six adults were murdered at Sandy Hook Elementary School. And, closer to home, a six-year-old student was fatally shot in an elementary school in Genesee County in 2000.

It is entirely understandable that—in light of the above events—the presence of firearms in an elementary school causes panic, disrupts students' education, and may result in serious injury or loss of life. If a tragedy occurred because a school knowingly allowed a person with a weapon to enter its hallways without taking protective action, hindsight would call into question the School District's complacency.

STANDARD OF REVIEW

A suit for declaratory judgment is a judicial procedure in which a court renders an opinion on a question of law. *Health Cent v Commissioner of Ins*, 152 Mich App 336, 347, 393 NW2d 625 (1986). Declaratory judgments enable parties involved in an actual controversy to obtain adjudication of their rights before actual injuries or losses have occurred. *Detroit Base Coalition for Human Rights of Handicapped v Director, Dep't of Soc Servs*, 431 Mich 172, 428 NW2d 335 (1988).

A declaratory judgment has the force and effect of, and is reviewable as, a final judgment. MCR 2.605(E). Pursuant to MCR 2.605(A), any Michigan court of record may declare the rights and other legal relations of an interested party seeking a declaratory judgment if it involves a case of actual controversy within the court's jurisdiction. The determination to make a declaration is ordinarily a matter entrusted to the sound discretion of the trial court, provided an actual controversy exists within the subject-matter jurisdiction of the court. *Allstate Ins Co v Hayes*, 442 Mich 56, 499 NW2d 743 (1993); *City of Lake Angelus v Michigan Aeronautics Comm'n*, 260 Mich App 371, 377 n7, 676 NW2d 642 (2004).

LAW AND ANALYSIS

1. THERE IS NO SECOND AMENDMENT RIGHT TO CARRY GUNS IN A SCHOOL BUILDING

As a threshold issue, it must be noted that there is no constitutional right to possess firearms in certain buildings—such as courts and public schools. The Supreme Court has unequivocally stated that the right to carry and bear arms under the Second Amendment is not unlimited. *District of Columbia v. Heller*, 554 U.S. 570, 626-627, 128

S.Ct. 2783, 171 L.Ed.2d 637 (2008). Specifically, the Supreme Court stated in *Heller* that

nothing in our opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons and the mentally ill, or laws forbidding the carrying of firearms in sensitive places such as schools and government buildings, or laws imposing conditions and qualifications on the commercial sale of arms. [*Id.*](emphasis added)

Notably, the Supreme Court clarified in an accompanying footnote that in providing these examples: “We identify these presumptively lawful regulatory measures only as examples; our list does not purport to be exhaustive.” *Id.* at 627 n. 26, 128 S.Ct. 2783. The Michigan Court of Appeals has cited *Heller* approvingly in this regard. See *People v. Deroche*, 299 Mich. App. 301, 306-07, 829 N.W.2d 891, 895 (2013)

2. THE MICHIGAN LEGISLATURE HAS GRANTED SCHOOL DISTRICT’S THE ABILITY TO MAKE SCHOOLS “GUN FREE ZONES”

Plaintiff’s entire lawsuit is premised upon a fundamental misunderstanding of Michigan Law. Plaintiff cites and relies upon MCL 123.1101(a), MCL 123.1102, and the Court of Appeals Opinion in *Capital Area District Library v Michigan Open Carry, Inc*, 298 Mich App 220 (2013). See (Complaint at ¶ 20.) The first statute Plaintiff relies upon—MCL 123.1102—provides:

A local unit of government shall not impose special taxation on, enact or enforce any ordinance or regulation pertaining to, or regulate in any other manner the ownership, registration, purchase, sale, transfer, transportation, or possession of pistols or other firearms, ammunition for pistols or other firearms, or components of pistols or other firearms, except as otherwise provided by federal law or a law of this state.

The second statute Plaintiff relies upon—MCL 123.1101(a)—defines the phrase “local unit of government” as meaning “a city, village, township, or county,” but not a public school district.

Plaintiff's legal argument that the above statutes prevent a school district from banning guns on campus is deficient for two reasons. First, the above statutes expressly apply only to cities, villages, townships, and counties. The legislature did not include "school district" in the above definition. More compelling, however, is that MCL 123.1102 expressly provides that "local units of government" can regulate possession of firearms if authorized by state law. In this instance, the Michigan legislature has authorized Clio Area Schools to enact Policies to safeguard school children.

Specifically, the Revised School Code, MCL 380.11a(3)(b), expressly authorizes school district to "Provid[e] for the safety and welfare of pupils while at school or a school sponsored activity or while en route to or from school or a school sponsored activity." The School Code then clarifies that a school district "may exercise a power implied or incident to a power expressly stated in this act" and "may exercise a power incidental or appropriate to the performance of a function related to operation of the school district in the interests of public elementary and secondary education in the school district."

Based on the above, Clio Area Schools has acted within its express statutory authority when it "provided for the safety and welfare" of students by determining that guns should not be in its schools. The School District has been entrusted with educating and caring for the pupils in its charge, and it has done just that.

3. PLAINTIFF'S PREEMPTION ARGUMENT ALSO LACKS MERIT

Plaintiff has argued—both in its Complaint and on its advocacy webpage—that the Michigan Court of Appeals decision in *Capital Area District Library v Michigan Open Carry* established the rule that local governmental entities are preempted from

regulating firearms in any manner. This is simply an errant conclusion.

First, the Court of Appeals carefully explained that local units of government can regulate firearms to the extent “otherwise provided by federal or state law.” *Id.* As discussed above, the Revised School Code expressly authorizes school districts to enact policies to safeguard students and carefully instructed that school districts can exercise any “power implied or incident to a power expressly stated in this act.” As such, the School District fits within the exception articulated by the Court of Appeals in *Capital Area District Library*.

Perhaps more importantly, the Michigan Court of Appeals has affirmatively held that the legislature did NOT preempt the ability of school district’s to create appropriate weapons policies. In *Davis v Hillsdale Community School District*, 226 Mich App 375; 573 NW2d 77 (1997), the plaintiff specifically argued that a local school district was preempted from enacting weapon policies because state law had preempted the field. In soundly rejecting this argument, the Court of Appeals held that, **“in this area, preemption simply does not apply; a school board’s reasonable exercise of its powers is permissible unless it actually conflicts with an express statutory provision.”** *Id.* at n 5 (emphasis added.) The Court then described the school board’s authority in this regard as “plenary.” As such, Plaintiff’s argument that the School District’s Policy is preempted is simply untrue. In fact, the Michigan Court of Appeals has held the exact opposite.

The issue to be resolved in this case is both legal and practical. If a principal sees an individual approach or enter a school with a gun, what is he to do? The administrator or, for that matter, any parent or faculty member will declare a lockdown,

call the police and seek to protect the students. In such case, education stops, the children are frightened and a dangerous confrontation with authority may ensue. Guns are not allowed in State or Federal Court buildings or in various government agencies. Why should the safety of government employees be paramount to children or their parents?

CONCLUSION

Defendant School District and its administrators ask that this Court recognize the need to protect students while they are at school by affirming the legality of the School District's ban on weapons in school buildings and during school activities.

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DATED: July 7, 2015

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**ORDER GRANTING MOTION FOR SUMMARY DISPOSITION
AND DECLARATORY JUDGMENT**

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

PRESENT: THE HONORABLE _____
Circuit Court Judge

Upon motion of Defendants, CLIO AREA SCHOOLS, FLETCHER SPEARS, III,
and KATRINA MITCHELL, having come on for hearing, oral argument having been
heard, and the Court being fully advised in the premises;

IT IS HEREBY ORDERED that Defendants' Motion for Summary Disposition and
Declaratory Judgment is granted for the reasons set forth on the record, and this matter
is, therefore, dismissed with prejudice and without costs to any party. This Order
resolves all pending claims and closes this case.

Circuit Court Judge