

STATE OF MICHIGAN
IN THE 7TH JUDICIAL CIRCUIT COURT FOR THE GENESSEE COUNTY
CIVIL DIVISION

MICHIGAN OPEN CARRY, INC.; and,
KENNETH HERMAN, individually,

Plaintiffs,

v.

DOCKET NO. 2015-104373CZ

HON.

ARCHIE L. HAYMAN
P-37516

CLIO AREA SCHOOL DISTRICT;
FLETCHER SPEARS, III, individually; and,
KATRINA MITCHELL, individually;

Defendant.

DEAN G. GREENBLATT, PLC
Dean G. Greenblatt (P54139)
Attorney for Plaintiffs
4190 Telegraph Road
Suite 3500
Bloomfield Hills, Michigan 48302
(248) 644-7520 (telephone)
dgg@mnsi.net (email)



There is no other pending or resolved civil action arising out of the transaction or occurrence alleged in this complaint.

VERIFIED COMPLAINT FOR DECLARATORY RELIEF

Parties, Jurisdiction, Venue

1. Plaintiff Michigan Open Carry, Inc. [hereinafter "MOC"] is a Michigan not-for-profit advocacy organization created under the Nonprofit Corporation Act of 1982 that supports the lawful carry of handguns. MOC provides written material for the use of its

members, municipalities, and law enforcement that outlines the laws associated with open carrying of handguns, and offers seminars on the topic. MOC has a presence in Genesee County, and represents the interests of its member(s) having an actual case or controversy and interest in preventing reoccurrence of the same issue as raised in this complaint.

2. Plaintiff Kenneth Herman is a resident of the County of Genesee, State of Michigan.

3. Defendant Clio Area School District is a school district, pursuant to MCL 380.6; a local unit of government, pursuant to MCL 123.1101(a) and MCL 169.209(6).

4. Defendant Fletcher Spears III is the Superintendent of the Clio Area School District.

5. Dr. James Tenbusch was the preceding Superintendent of the Clio Area School District.

6. Defendant Katrina Mitchell is the Principal of Edgerton Elementary School, within the Clio Area School District.

7. This action arises out of several incidents occurring at the Edgerton Elementary School located within the Clio Area School District.

8. Venue is proper in Genesee County.

9. This Court has jurisdiction pursuant to MCR 2.605(A)(2).

10. An actual and justiciable controversy exists between the parties.

11. A present adjudication of the controversy is necessary to guide the Plaintiffs' future conduct and preserve legal rights.

12. Declaratory relief will avoid a multiplicity of actions at law and will avoid

potential conflicts between the parties.

Allegations

13. Plaintiff Herman is a single parent of a minor child who attends Edgerton Elementary School.

14. Plaintiff Herman generally has the right to possess firearms, including pistols.

15. Plaintiff Herman is also a Concealed Pistol License (“CPL”) licensee and as such is permitted to carry concealed pistols within the State of Michigan.

16. MCL 28.425o(1)(a), prohibits people with a CPL from carrying concealed pistols in specifically defined areas which include, *inter alia*, a school or school property except that a parent or legal guardian of a student of the school is not precluded from carrying a concealed pistol while in a vehicle on school property, if he or she is dropping the student off at the school or picking up the student from the school.

17. Carriage of a concealed pistol within a school building with or without a CPL is unlawful except for those individuals who meet certain exception criteria. MCL 28.425o(5)

18. The prohibition contained within MCL 28.425o(1)(a) applies only to concealed pistols and does not apply to those who open carry pistols.

19. Possession of an openly-carried pistol in Michigan is not an unlawful activity.

20. State law preempts a local unit of government from regulating firearms possession. MCL 123.1101(a) and MCL 123.1102. See also *Capital Area District Library v Michigan Open Carry, Inc.*, 298 Mich App 220 (2013).

21. On or about September 2, 2013, Plaintiff Herman went to Edgerton Elementary to obtain a copy of his daughter’s bus schedule.

22. Plaintiff Herman was openly carrying a pistol on his person.
23. Plaintiff Herman spoke with the principal of the school, Kate Mitchell, on September 2, 2013.
24. The principal of the school did not mention the pistol.
25. Plaintiff Herman observed a sign that had been posted at the school stating that the school was a weapon-free zone.
26. Plaintiff Herman sent an email to Dr. James Tenbusch, requesting a meeting.
27. Plaintiff Herman informed the school officials that he believed that the sign that the school had posted was without legal authority and contrary to Michigan law.
28. On September 4, 2013, Plaintiff Herman again went to Edgerton Elementary to pick up his daughter from school at the end of the school day.
29. School officials summoned the police who responded to Edgerton Elementary School.
30. Plaintiff Herman complied with all requests by the school officials and the police to leave the school grounds.
31. An automated telephone call was placed that night by the school to all parents which described the incident.
32. Plaintiff Herman's daughter was thereafter attending classes when her teacher advised the class that students must learn and drill the school's lockdown procedure "because [Plaintiff Herman's daughter's] dad carries a gun".
33. On September 4, 2013, in the evening, Plaintiff Herman sent an email with all the applicable laws surrounding his activity or carrying a pistol to Dr. James Tenbusch, Principal Katrina Mitchell and the Genesee County Sheriff.

34. A meeting between Plaintiff Herman, Dr. James Tenbusch and school board members was scheduled for Monday September 10, 2013.
35. On September 10, 2013, the scheduled meeting was conducted at the Clio Schools administration building.
36. Plaintiff Herman attended the meeting and was open carrying a pistol.
37. Plaintiff Herman attended the meeting with his counsel, a Clio police officer, the school principal, board members and the superintendent.
38. At the meeting, the principal, board members and the superintendent agreed to edit the sign but expressed an intent not to comply with state law by otherwise prohibiting Plaintiff Herman from entering the school if armed.
39. A copy of the school administrative guidelines was given to Plaintiff Herman.
40. The principal, board members and the superintendent indicated that the Clio Area School District was following the policy of the Genesee County Intermediate School District's policy of not allowing open carry on school grounds.
41. On or about October 9, 2013, Plaintiff Herman, while openly carrying a pistol, attempted to pick up his daughter (after school hours) after her student council meeting had concluded.
42. On or about October 9, 2013, Plaintiff Herman was denied access to school.
43. On or about November 26, 2013, Plaintiff Herman attempted to attend a parent-teacher conference while openly carrying a pistol.
44. Plaintiff Herman was again denied access to the school.
45. Plaintiff Herman made several attempts to pick up his daughter from school between December, 2013 and June, 2014, but was similarly denied access to the school.

46. On June 3, 2014, Plaintiff Herman signed up to be a chaperone on his daughter's field trip to the Detroit Zoo.
47. On June 3, 2014, Plaintiff Herman was denied access to the school.
48. On November 21, 2014, Plaintiff Herman attempted to pick up his daughter from school while openly carrying a pistol.
49. On this occasion, Plaintiff Herman was initially allowed entry into the school building without incident.
50. Plaintiff Herman was not asked to leave until the principal of the school saw his pistol.
51. Plaintiff Herman was then asked to depart the school building at the request of Principal Mitchell, and Plaintiff Herman complied.
52. The school officials have advised Plaintiff Herman that the police will be summoned and criminal trespass charges brought if he attempts to enter school grounds carrying a weapon.
53. Plaintiff Herman is unable to drop off and pick up his daughter from school because of the threat of trespassing.
54. Like Plaintiff Herman, the members of Plaintiff MOC are similarly situated.

Relief Requested

WHEREFORE, Plaintiffs respectfully request this Honorable Court grant the following relief:

- (i) GRANT a declaratory order that the school is not allowed to bar Plaintiff Herman from the school and school grounds.
- (ii) GRANT Plaintiffs a declaratory order enjoining Edgerton Elementary School and

the Clio Area School District from enforcing its invalid attempt at
legislation/regulation which is preempted by State Law;

- (iii) GRANT Plaintiff an order preventing Plaintiff's daughter from harassment and
vindictive retribution by school district employees; and,
- (iv) GRANT Plaintiffs their costs and attorney's fees
- (v) GRANT such other equitable relief as the court deems necessary and just.

Respectfully Submitted,



Dean G. Greenblatt (P54139)
Attorney for Plaintiffs
4190 Telegraph Road
Suite 3500
Bloomfield Hills, Michigan 48303-0040
(248) 644-7520 (telephone)
dgg@mnsi.net

Dated: March 3, 2015

I have reviewed the contents of this Complaint for accuracy, and I state that the
allegations contained herein are accurate to the best of my knowledge, information and belief.

Dated: March ____, 2015

by: Kenneth Herman

the City Area School District from enforcing its invalid attempt at
legislation/regulation which is preempted by State Law.

- (iii) GRANT Plaintiff an order preventing Plaintiff's daughter from harassment and
vindictive retribution by school district employees and
- (iv) GRANT Plaintiff their costs and attorney's fees.
- (v) GRANT such other equitable relief as the court deems necessary and just

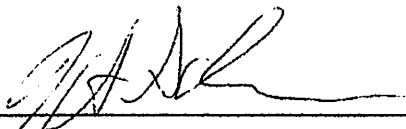
Respectfully Submitted,

Dean G. Greenblat (P/S 1139)
Attorney for Plaintiffs
4190 Telegraph Road
Suite 3500
Bloomfield Hills, Michigan 48303-0040
(248) 644-7520 (telephone)
dgg@mmsi.net

Dated: March 3, 2015

I have reviewed the contents of this Complaint for accuracy, and I state that the
allegations contained herein are accurate to the best of my knowledge, information and belief.

Dated, March 3, 2015



by: Kenneth Herman