



Michigan Court of Appeals Upholds Ann Arbor Public School's Policies Prohibiting Licensed Concealed Weapons on School Grounds

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In an opinion released December 15, 2016, the Michigan Court of Appeals (the "Court") ruled that Michigan state law does not preempt policies created by a Michigan school district banning the possession of firearms in schools and at school sponsored events.

THE BACKGROUND FACTS

This case involves three distinct, but related, policies created by Ann Arbor Public Schools ("AAPS") that, cumulatively, ban the possession of firearms at school and school events.

The policies, which exempt officers of public law enforcement agencies, prohibit those holding licenses to carry concealed firearms from carrying a concealed pistol on school property "except...as expressly authorized by MCL 28.425o."

After these policies were announced, plaintiffs Michigan Gun Owners, Inc. ("MGO") and Ulysses Wong brought suit to challenge them. Wong holds a concealed pistol license and is the parent of a child who attends AAPS. The sole legal issue raised by plaintiffs was preemption, specifically whether "[s]tate law preempts a local unit of government from regulating the possession" of firearms. Plaintiffs argued that AAPS is a "local unit of government" and that its policies regarding licensed concealed weapons were preempted pursuant to the Court's decision in *Capital Area District Library v Michigan Open Carry, Inc.* ("CADL").

In response to this argument, AAPS asserted that Michigan law enables public school districts to address the safety and welfare of students and prevent disruption of the educational environment by enacting policies such as ones prohibiting the presence of guns on school grounds, and that no statute conflicts with this authority.

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The trial court found no preemption, and ruled in favor of AAPS. Plaintiffs appealed.

THE COURT'S ANALYSIS

The Court began by analyzing the purpose and scope of MCL 28.425o(1)(a), which prohibits people who are licensed to carry a concealed pistol to bring one onto school grounds except in certain circumstances (such as if the person is a retired police officer). Plaintiffs argued that because the statute addresses the right of concealed pistol license holders to carry a concealed pistol on school property under certain circumstances, then the policies AAPS enacted were expressly preempted.

The Court disagreed and explained that the statute imposes a blanket prohibition on carrying a concealed weapon on school grounds, subject to certain exceptions. It does not prohibit additional regulations. Because AAPS's policies expressly acknowledge the exceptions when a holder of a concealed pistol license can carry on school grounds, the Court found no conflict between the statute and the policies, and thus no express preemption.

Plaintiff's second argument was that the *CADL* case, which addresses the rights of a "local unit of government" to regulate firearms, governs this case. The Court began by examining the relevant statutory language, and explained that, pursuant to MCL 123.1101(b), a "local unit of government" is "a city, village, township, or county." MCL 123.1101(b) prohibits a "local unit of government" from enacting regulations relating to the possession of firearms. In *CADL*, the Court held that a district library, because it was established by two local units of government, is itself a "local unit of government."

In ruling against the plaintiffs, the Court distinguished the *CADL* case and explained that "[s]chool districts are not formed, organized or operated by cities, villages, townships or counties, but exist independently of those bodies." Therefore, *CADL* did not apply because school districts are different and distinct from district libraries.

The plaintiffs' final argument was that MCL 123.1102 impliedly preempts any attempt by a school district to implement firearm policies "because the statute fully occupies the regulatory field." To analyze plaintiffs' implied preemption argument, the Court examined the four factors set forth in the case of *People v. Llewellyn*, which governs the analysis of whether the Michigan legislature intended to preempt a school district's firearm policies. The *Llewellyn* factors include:

1. First, where the state law expressly provides that the state's authority to regulate in a specified area of the law is to be exclusive, there is no doubt that municipal regulation is preempted.
2. Second, preemption of a field of regulation may be implied upon an examination of legislative history.
3. Third, the pervasiveness of the state regulatory scheme may support a finding of preemption. While the pervasiveness of the state regulatory scheme is not generally sufficient by itself to infer preemption, it is a factor which should be considered as evidence of preemption.
4. Fourth, the nature of the regulated subject matter may demand exclusive regulation to achieve the uniformity necessary to serve the state's purpose or interest.



The Court analyzed each *Llewellyn* factor in the context of the AAPS's policies and, like the trial court, found no express preemption, no legislative history supporting preemption, no regulatory scheme supporting a finding of preemption, and that the nature of firearm regulation did not demand exclusive state regulation. Accordingly, the Court affirmed the lower court ruling upholding AAPS's policies regarding firearms.

In a related opinion, the Court reversed a Genesee County Circuit Court ruling in a similar lawsuit against Clio Area School District, in which the lower court upheld an individual's right to carry a concealed weapon on school grounds.

In news reports following the Court's ruling, the attorney for Michigan Gun Owners, Inc. indicated that the organization would appeal the Court's decision. We will keep you informed of any developments in these and other cases that impact school policies regulating firearms.
