



Metro Bureau

Executive Board Meeting – August 10, 2018

Michigan Gun Owners, Inc, et al v Ann Arbor Public Schools, et al (July 27, 2018) **Michigan Supreme Court**

1. AAPS Policies. On April 15, 2015, the Ann Arbor Public Schools (“AAPS”) Board of Education (the “Board”) enacted three policies that collectively stated any person in possession of a dangerous weapon, including a pistol, and except as provided by law would not be allowed to remain on property owned or leased by AAPS any time students were at school, en route to or from school, or at a school-sponsored activity.

2. Plaintiffs. Michigan Gun Owners, Inc and AAPS parent Ulysses Wong brought suit against AAPS asserting AAPS was either directly preempted under MCL 123.1101 from enacting the policies or precluded by the doctrine of field preemption.

3. State Law at Issue – Firearms and Ammunition Act (among others)

- a. MCL 123.1102 – “**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, other firearms, or pneumatic guns, 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.” [Emphasis added.]
- b. MCL 123.1101(b) – “Local unit of government” means “a city, village, township, or county.”

4. Procedure History

- a. Washtenaw Circuit Court Judge Kuhnke ruled in favor of AAPS, concluding that school districts were not local unit of government under the Firearms and Ammunition Act.
- b. In a similar case, Genesee Circuit Court Judge Archie Hayman found in favor of Michigan Open Carry Inc against Clio Area School District, concluding that school districts were quasi-municipal corporations subject to MCL 123.1102.
- c. The **Michigan Court of Appeals** concluded that state law did not preempt the school districts’ (published decision authored by Gleicher, joined by K.F. Kelly and Shapiro)

5. Michigan Supreme Court Majority (authored by McCormack, joined by Bernstein, Viviano, Clement)

- a. The majority held that the Legislature has expressed its intent not to preempt policies like those adopted by AAPS.
- b. A school district is clearly not a local unit of government under the definition of the term found in MCL 123.1101 (defining “local unit of government” as a “city, village, township, or county.”)
- c. Because the Legislature’s intent is unambiguous, there is no need to apply the *Llewellyn* factors.

6. Conflict Preemption Not Decided

- a. The majority concluded that Appellants abandoned their conflict preemption argument by failing to assert it in their applications for leave to appeal and by stating at oral argument that they were not advancing the argument.
- b. In his dissent, Chief Justice Markman concluded that AAPS and Clio did not have the authority to adopt the policies at issue because a school district may not prohibit what state law expressly permits, and state law permits the open carry of pistols on school property.
- c. In his concurrence, Justice Viviano addressed the dissent, stating that for a state law to conflict with and preempt a local regulation, the state law must expressly permit something the local regulation prohibits; Justice Viviano asserted there is no Michigan law that expressly allows individuals to openly carry a firearm on school property.
- d. Because the issue of conflict preemption was not decided, school district policies that prohibit the open carrying of pistols on school property may be challenged on this ground.