IN THE SUPREME COURT

APPEAL FROM THE WASHTENAW COUNTY CIRCUIT COURT

MICHIGAN GUN OWNERS, INC.;
and ULYSSES WONG, an individual,

SC: 155196

COA: 329632

WASHTENAW CIRCUIT: 15-427-CZ

Plaintiff-Appellants,

v.

ANN ARBOR PUBLIC SCHOOLS, and
JEANICE K. SWIFT, an individual

Defendant-Appellees,

_____/

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_____/

SUPPLEMENTAL BRIEF ON APPEAL—APPELLANT

**** This appeal involves interpretation of a constitutional or statutory provision ****

ORAL ARGUMENT REQUESTED

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JURISDICTIONAL STATEMENT

Appellants, Michigan Gun Owners, Inc., and Ulysses Wong state this Court has jurisdiction to decide this appeal pursuant to MCR 7.303(B)(1) and grounds to decide the appeal pursuant to MCR 7.305(B)(2), MCR 7.305(B)(3), MCR 7.305(B)(5)(a) & MCR 7.305(B)(5)(b).

On April 27, 2015 Plaintiffs-Appellants filed suit in the Washtenaw County Circuit Court seeking injunctive and declaratory relief against the Ann Arbor Public Schools' ban of firearms on school property (Appendix 11a). On September 24, 2015, the Honorable Carol Kuhnke, Washtenaw County Circuit Court Judge, granted summary disposition in favor of Defendant-Appellees, Ann Arbor Public Schools and Jeanice K. Swift, without citing a specific court rule but presumably based upon MCR 2.116(C)(9). She denied Appellants' declaratory relief and entered an Order granting summary disposition to Appellees (Appendix 98a). On December 15, 2016, the Michigan Court of Appeals issued the decision appealed herein concurring with the lower court decision and released same for publication (Appendix 303a). Appellants Michigan Gun Owners, Inc. and Ulysses Wong timely filed their Application for Leave to Appeal pursuant to MCR 7.305(C). On December 21, 2017 this Court issued its Order directing parties to file the instant supplemental brief within forty-two (42) days.

STATEMENT OF QUESTIONS PRESENTED

I. In light of MCL 123.1102 is it necessary to consider the factors set forth in *People v. Llewellyn*, 401 Mich 314 (1977) in order to determine whether the Ann Arbor Public Schools' policies are preempted?

The trial court answers "YES."
The Court of Appeals answers "YES."
Appellants answer "YES."
Appellees answer is unknown.

II. Did the Court of Appeals properly analyze the *Llewellyn* factors?

Appellants answer "NO."
Appellees answer "YES."

III. Did the Court of Appeals correctly hold that the Ann Arbor Public School District's policies are not preempted?

Appellants answer "NO."
Appellees answer "YES."

STATEMENT OF FACTS

Plaintiff-Appellant Michigan Gun Owners [hereinafter "MGO"] is a not-for-profit grassroots organization created under the Nonprofit Corporation Activity Act of 1982. The organization is committed to educating the public on safe responsible gun ownership and preserving and defending the right to keep and bear arms as guaranteed by the Bill of Rights and Article I, § 6 of Michigan's Constitution (Appendix 11a).

Plaintiff-Appellant Ulysses Wong is a local resident with children attending Ann Arbor Public Schools. Wong is licensed to carry a concealed pistol, and in fact does so (Appendix 11a).

Defendant-Appellee Ann Arbor Public Schools is a school district, pursuant to MCL 380.6 [hereinafter "AAPS"]. Defendant-Appellee Jeanice K. Swift is an employee of AAPS engaged in the enforcement of AAPS's weapons policy (Appendix 11a).

MCL 750.237a(4) generally prohibits possession of a firearm within a "weapon free school zone". MCL750.237a(5)(c) exempts "an individual who is licensed by this state or another state to carry a concealed weapon" (Appendix 557a).

MCL 28.425o(1)(a) generally prohibits the carrying of a "concealed weapon" at a school or on school property. However, this statute specifically provides an exception for a concealed pistol licensee 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 (Appendix 495a).

18 USC §922(q)(2)(A) (Appendix 466a) restricts knowingly possessing a firearm in a school zone. An exception exists for an individual licensed to do so by the State in which the school zone is located. 18 USC §922(q)(2)(B)(ii) (Appendix 486a).

Reading the three statutes in concert, an individual who is licensed by this state to carry a concealed weapon may not carry a concealed weapon onto a school or school property,

excepting those who are in a vehicle and picking up or dropping off the student from school. An individual who is in possession of a firearm that is not concealed, (i.e. openly carried), is not prohibited from possessing that firearm at a school or on school property if that individual is licensed by this state to carry a concealed weapon. The sole concealed-carry exception of picking up or dropping off a student does not act as a limitation to those who are openly-carrying elsewhere at a school or on school property.

On April 15, 2015, the Ann Arbor Public School Board authorized Policies 5400 (Appendix 596a), 5410 (Appendix 598a), and 5420 (Appendix 599a) following a disruption caused by school staff at Pioneer High School over the presence of a legally carried weapon at a choir concert on March 5, 2015. Policies are not laws, as are state statutes or local government ordinances.

Policy 5400 allows the Superintendent to close schools and cancel events if there is an emergency. It specifically states that the presence of a dangerous weapon, which includes a pistol, constitutes an emergency. Policy 5410 designates all Ann Arbor Public School's property, as "Dangerous Weapon & Disruption-Free Zones." This policy mandates they refuse entry to anyone causing a disruption of the educational process or a reasonable forecast of material disruption. Policy 5410 further mandates the Superintendent is charged with its enforcement. Policy 5420 bars persons in possession of a dangerous weapon (including a pistol) from Ann Arbor Public Schools property.

On April 27, 2015 Plaintiff-Appellees Plaintiffs filed suit seeking a Declaratory Judgment in an effort to establish conclusively that AAPS policy implementation was unlawful as it affects lawful firearm possession (Appendix 11a).

On August 31, 2015, Defendant-Appellees responded by filing their Motion for Summary Disposition and Declaratory Judgment (Appendix 21a). Plaintiffs-Appellants filed their response

timely (Appendix 50a). Defendant-Appellees' motion was heard on September 24, 2015 before the trial court. At the motion hearing, the trial court denied Plaintiff-Appellants' motion(s) and granted Defendant-Appellees' request for summary judgment. The trial court issued its written Order Granting Defendants' Motion for Summary Disposition and Dismissing Complaint on September 24, 2015 (Appendix 98a).[1] The Order incorporated the court's Transcript of Proceedings of August 10, 2015.

Plaintiffs-Appellants timely filed an appeal as of right (Appendix 100a). On December 13, 2016 Appellants argued this case before a panel of the Michigan Court of Appeals. On December 15, 2016, the Court of Appeals issued the opinion at issue in the instant appeal (Appendix 303a). On December 21, 2017 this Court ordered the Appellants to prepare and file a supplemental brief within forty-two (42) days.

[1] All documents attached hereto were considered by the court below, or are properly part of the record on appeal. See *Coburn v Coburn*, 230 Mich App 118, 583 NW2d 490, *rev'd on other grounds*, 459 Mich 874, 585 NW2d 302 (1998). Copies of constitutional, statutory or court rule provisions are included in the appendix, pursuant to MCR 7.212(C)(7).

ARGUMENT

I. In light of MCL 123.1102 is it necessary to consider the factors set forth in *People v. Llewellyn*, 401 Mich 314 (1977) in order to determine whether the Ann Arbor Public Schools' policies are preempted?

Article VIII of the 1963 Michigan Constitution (Appendix 600a) mandates the State to offer free public primary and secondary education to the citizens of the State. To effectuate this constitutional imperative, the Michigan Legislature has passed enabling legislation throughout the years, the latest being Public Act 451 of 1976. PA 451 of 1976 is otherwise known as the Revised School Code and codified in MCL 380.1 *et seq* (Appendix 570a).

Generally, a school district is "A local administrative authority with fixed territorial limits created by the legislature, and ***subordinate to its will***, as an ***agent of the state*** for the sole purpose of administering the state's system of public education (***emphasis added***).[2] Appellee Ann Arbor Public Schools is a creation of the state legislature; a "general powers school district" pursuant to MCL 380.11a(3) (Appendix 576a):

> (3) A general powers school district has all of the rights, powers, and duties expressly stated in this act; may exercise a power implied or incident to a power expressly stated in this act; and, ***except as otherwise provided by law***, may exercise a power incidental or appropriate to the performance of a function related to operation of a public school and the provision of public education services in the interests of public elementary and secondary education in the school district, including, but not limited to, all of the following:
>
> (a) Educating pupils. In addition to educating pupils in grades K-12, this function may include operation of preschool, lifelong education, adult education, community education, training, enrichment, and recreation programs for other persons. A school district may do either or both of the following:
>
> - *(i)* Educate pupils by directly operating 1 or more public schools on its own.
> - *(ii)* Cause public education services to be provided for pupils of the school district through an agreement, contract, or other cooperative agreement with

[2] 47 Am J1st Sch § 12

another public entity, including, but not limited to, another school district or an intermediate school district.

(b) Providing 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.

(c) Except as otherwise provided in this section, acquiring, constructing, maintaining, repairing, renovating, disposing of, or conveying school property, facilities, equipment, technology, or furnishings.

(d) Hiring, contracting for, scheduling, supervising, or terminating employees, independent contractors, and others, including, but not limited to, another school district or an intermediate school district, to carry out school district powers. A school district may indemnify its employees.

(e) Receiving, accounting for, investing, or expending public school money; borrowing money and pledging public school funds for repayment; and qualifying for state school aid and other public or private money from local, regional, state, or federal sources (***emphasis added***).

MCL § 380.11a (Appendix 576a)

The state legislature has granted certain powers to school districts. A school district is a limited form of government, a quasi-corporation created by the state legislature with a local school board, which is elected to act as a steward over the state's responsibilities to the students living or attending school in the district. As such it has tightly proscribed, limited authority to create policies and rules to further its mandate. This authority is limited to promulgating, after open debate, a Code of Conduct containing policies to meet these limited goals.

MCL 123.1101(b) defines a "local unit of government" as "a city, village, township or county." This is significant in that these entities are all general-purpose governments, *capable of passing ordinances enforceable by criminal penalties*. A school district's power is limited to creating policies to further its very limited goals. This is far less than the powers exercised in the instant case, where the district is attempting to criminalize otherwise legally permissible behavior (Appendix 560a).

Without question, schools can regulate weapons in the possession of students pursuant to the federal Gun Free Schools Act of 1994, 18 USC §921 (Appendix 466a), and Michigan Public Act 158 of 1994.[3] School districts cannot proscribe behavior related to firearms for non-students. School districts cannot enact ordinances. School districts cannot regulate the legal possession of firearms by non-students. School districts cannot create rules or policies punishable under criminal law. Thus, a school district cannot be considered at the same level as these entities as its powers are far less.

This leads to the inescapable conclusion that a school district is not a local unit of government as defined under state law within the meaning of MCL 123.1101 *et seq.* The Ann Arbor Public Schools District is a state actor drawing its authority, or lack thereof, directly from the state legislature through the Revised School Code, PA 451 of 1976, as codified in MCL 380.1 *et seq.*

II. DID THE COURT OF APPEALS PROPERLY ANALYZE THE *LLEWELLYN* FACTORS?

The Court of Appeals did not properly analyze the *Llewellyn* factors.

People v. Llewellyn, 401 Mich. 314, 257 NW2d 902 (1977) requires a two-part test for preemption. The first predicate test under *Llewellyn* is "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 pre-empted." (*Llewellyn*, citing *Noey v Saginaw*, 271 Mich 595; 261 NW 88 (1935)) (Appendix 379a). In *MCRGO v. City of Ferndale*, the Court of appeals held: "In no uncertain terms, § 1102 of the act mandates that "[a] local unit of government *shall not* . . . enact or **enforce any ordinance or regulation** pertaining to, or regulate in any other

[3] *See, e.g.* MCL §§380.1311; 380.1313

manner the ownership, registration, purchase, sale, transfer, transportation, or **possession of pistols or other firearms**, . . . except as otherwise provided by federal law or a law of this state." *Mich Coalition for Responsible Gun Owners v City of Ferndale*, 256 Mich App 401, 413; 662 NW2d 864 (2003) (**emphasis added)** (Appendix 357a).

Ann Arbor Public Schools have created Policies 5400, 5410 and 5420 to block people who would otherwise be legally able to openly carry firearms on school property from doing so and have threatened to enforce these policies through criminal prosecution for trespassing, to wit Ann Arbor City Ordinance 9:64, which provides:

> **9:64 - Unauthorized persons on school property.**
> Any person found to be creating a disturbance in any private, public or parochial school or on the surrounding school grounds, or on fields or recreational areas or other grounds lawfully used for school activities while such activities are in progress, shall leave immediately when so directed by the principal or by any other person designated by the principal.
>
> No person shall enter and remain in any public, private or parochial school building during regular or special sessions or other authorized activities of such schools, who is not a regularly enrolled student, teacher, authorized volunteer or other school district employee, unless he shall have first and immediately proceeded to the administrative offices and identified himself to the principal or the principal's designee.
>
> It shall be unlawful for any person to enter and remain in any public, private or parochial school, or on surrounding school grounds within 250 feet of the school building, after being requested to leave by the principal or his designee.
>
> (Ord. No. 26-73, 6-11-73) (Appendix 591a)

Ann Arbor Public Schools are thus directing the Ann Arbor Police to enforce a gun ban in direct contravention of MCL 123.1102. The "plain meaning" rule in the canons of statutory construction presenting questions of law must be reviewed de novo:

> The goal of statutory construction is to discern and give effect to the intent of the legislature by examining the most reliable evidence of its intent. If the statutory language is unambiguous, appellate courts presume that the legislature intended the

> plainly expressed meaning, and judicial construction is neither permitted nor required.
>
> *Johnson v Johnson*, 276 Mich App 1, 2; 739 NW2d 877 (2007) (Appendix 348a)

The rules of statutory interpretation clearly prevent the Ann Arbor Police or any other law enforcement body from violating MCL 123.1102 by using a general power to regulate access to school premises in violation of the more specific statutory provisions of the statute:

> The general rule of statutory construction that applies here is that if two statutes appear to be in conflict the specific statute prevails as an exception to the general one. *Wayne Co Prosecutor v Wayne Circuit Judge*, 154 Mich App 216, 221; 397 NW2d 274 (1986) (Appendix 447a).
>
> *People v Tucker*, 177 Mich App 174, 179; 441 NW2d 59 (1989) (Appendix 383a)

A city ordinance is void that purports to prohibit what a state statute permits. *Walsh v City of River Rouge*, 385 Mich. 623, 636; 189 N.W.2d 318 (1971) (Appendix 435a). A state statute preempts regulation by an inferior government when the local regulation directly conflicts with the statute, or when the statute completely occupies the regulatory field. *USA Cash # 1, Inc v City of Saginaw*, 285 Mich.App. 262, 267; 776 N.W.2d 346 (2009) (Appendix 399a). By definition, a direct conflict exists between a local regulation and state statute when the local regulation prohibits what the statute permits. Id.

There is no doubt the state has taken unto itself exclusively the power to regulate firearms. This was the sole intent of Public Act 319 of 1990, codified as MCL 123.1101 *et seq* (Appendix 592a). The legislative analysis of PA 319 makes clear that the legislature was concerned "(C)ontinued local authority to enact and enforce gun control ordinances may result in the

establishment of a patchwork of ordinances." *See Legislative Analysis of PA 319* (Appendix 592a). This is precisely the situation we have today after the Court of Appeals' decision[4].

By allowing Ann Arbor Public Schools to use a trespass ordinance to circumvent state law, Ann Arbor Public Schools has instituted an unenforceable policy that threatens law-abiding citizens with criminal prosecution by law enforcement acting *ultra vires*.

It is Appellant's position that the Ann Arbor Public Schools are a state actor and thus expressly preempted from making any rules or policies in contravention of state law and that there is no need for a further analysis under the field preemption test of *Llewellyn*.

III. DID THE COURT OF APPEALS CORRECTLY HOLD THAT THE ANN ARBOR PUBLIC SCHOOL DISTRICT'S POLICIES ARE NOT PREEMPTED?

The Court of Appeals incorrectly held the Ann Arbor School District's firearms policy is permissible under state law. As stated previously, *People v. Llewellyn* requires a two-part test for preemption. The second test, field preemption, was completely disregarded and eviscerated by the Court of Appeals when it failed to properly apply the *Llewellyn* analysis.

The four guidelines in *Llewellyn* are as follows:

> 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 pre-empted.
>
> Second, pre-emption of a field of regulation may be implied upon an examination of legislative history.
>
> Third, the pervasiveness of the state regulatory scheme may support a finding of pre-emption.
>
> Fourth, the nature of the regulated subject matter may demand exclusive state regulation to achieve the uniformity necessary to serve the state's purpose or interest.

[4] This writer found it interesting that the Michigan Legislature introduced PA 319 in reaction to an attempt by the city of Ann Arbor to introduce local gun control ordinances.

Michigan Coalition for Responsible Gun Owners v. City of Ferndale; 256 Mich.App. 401, 414 (2003); cert. den. 469 Mich. 880 (2003) citing *People v Llewellyn*, 401 Mich 314, 322 (1977).

Any firearms regulation by AAPS is expressly and impliedly preempted by Michigan firearms regulations. It is a long held rule of law that where the legislature has enacted laws allowing and regulating certain conduct, it is presumed that the legislature intended to *allow* that conduct, and local ordinances and rules cannot completely disallow the same conduct. In *National Amusement Co. v Johnson*, 270 Mich. 613, 259 N.W. 342 (1935) (Appendix 375a), a local public health and safety ordinance *prohibiting* endurance competitions was held invalid in the face of a state law *allowing* such competitions *if state requirements are met*. The court stated, "[w]hat the Legislature permits, the city cannot suppress, without express authority therefore. . . [T]he ordinance attempts to prohibit what the statute permits. Both statute and ordinance cannot stand. Therefore, the ordinance is void.").

In *Michigan Restaurant Association v City Of Marquette*, 245 Mich.App. 63, 626 N.W.2d 418 (2001) (Appendix 369a), a local public health ordinance completely *banning* smoking in restaurants was held to be directly in conflict with state statute *allowing* smoking in restaurants that provide for a certain percentage of nonsmoking tables, and was, therefore, preempted. "The ordinance creates a general prohibition on smoking as opposed to, for example, creating a higher percentage of nonsmoking tables. . . [The statute] directly addresses smoking and nonsmoking seats in restaurants by requiring a certain number of seats to be nonsmoking seating. The Marquette ordinance . . . involves an area already specifically covered by state statute and it directly opposes what the state statute specifically allows."

The legislative history of MCL §123.1101, the pervasiveness of state firearms regulation, and the need for uniformity in firearms regulation in Michigan, militate towards a determination

that AAPS has no authority to regulate firearms in its facilities. In adopting MCL §123.1101, the Legislature recognized the need to preempt firearms regulation by local units of government because, as stated in the first sentence of the first paragraph to the Second Analysis for 1991 House Bill 5437, Legislative Analysis Section, Lansing, MI (the "1991 Legislative Analysis"), "[c]urrent [i.e., before 1991] local units of government have the authority to enact and enforce gun control ordinances." The 1991 Legislative Analysis then provides a description of efforts by several municipalities to enact gun control ordinances (Appendix 592a).

Michigan firearms laws are intended to occupy the field of firearms regulation insofar as an entity of limited rulemaking power, such as AAPS, is concerned, and therefore, impliedly preempts firearms regulation by the school district. As the 1991 Legislative Analysis asserts in its statement of the apparent problem:

> The narrow defeat of [local firearms] ordinances has resulted in concern that continued local authority to enact and enforce gun control ordinances may result in the establishment of a patchwork of ordinances. Many fear that the enactment of several gun control ordinances will make it hard for officers to enforce the laws and that gun enthusiasts will be unfairly prosecuted for not knowing the laws and the areas to which they apply.
>
> Second Analysis, 1991 House Bill 5437 at 1.

The Court of Appeals first sought to analyze whether or not AAPS's policy directly contradicts state law and found that "MCL 28.425o(1)(a) imposes a blanket *prohibition* on carrying a concealed pistol on school grounds ("shall not") subject to certain specific and limited exceptions. The statute does not expressly forbid additional regulation, or declare that its subparts supersede any other school-related firearm rules (Appendix 495a).

MCL 28.425c provides:

> (3) Subject to section 5o and except as otherwise provided by law, a license to carry a concealed pistol issued by the county clerk authorizes the licensee to do all of the following:
>
> > (a) Carry a pistol concealed on or about his or her person anywhere in this state.
> >
> > (b) Carry a pistol in a vehicle, whether concealed or not concealed, anywhere in this state. (Appendix 567a)

Section 5o that is referenced in MCL 28.425c refers to MCL 28.425o. Section 5o lists nine so-called concealed pistol free zones. Also listed at Section 5o(5)(a) through (k) are certain classifications of individuals who are not subject to the restrictions on carrying into eight of the concealed pistol free zones.

Further, the court of appeals also failed to analyzed statutes under the canon of contruction with the concept of *in pari materia* to MCL 28.425o (Appendix 495a), including MCL 750.237a (Appendix 557a).

> Statutes in *pari materia* are those which relate to the same person or thing, or the same class of persons or things, or which have a common purpose. It is the rule that in construction of a particular statute, or in the interpretation of its provisions, all statutes relating to the same subject, or having the same general purpose, should be read in connection with it, as together constituting one law, although enacted at different times, and containing no reference one to the other. *State Treasurer v. Schuster*, 456 Mich. at 417, 572 NW2d 628 (1998) (Appendix 389a) citing *Detroit v. Michigan Bell*, 374 Mich. 543, 558, 132 NW2d 660 (1965)

Both MCL 28.425o(1)(a) and MCL 750.237a(5)(c) deal with the possession of weapons in a "Weapon Free School Zone" by an individual who is licensed to carry a concealed weapon. Not only do the statutes relate to the same subject, MCL 28.425o(1)(a) references MCL 750.237a.

> (a) 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. As used in this section, "school" and "school property" mean those terms as defined in section 237a of the Michigan penal code, 1931 PA 328, MCL 750.237a.

MCL 750.237a(4) generally prohibits the possession of a weapon (i.e. all forms of having a weapon, being it "open", "concealed", or otherwise) in a "weapon free school zone", but is subject to Subsection (5) (MCL 750.237a(5)) which explicitly exempts numerous classes, including "(c) An individual licensed by this state or another state to carry a concealed weapon (Appendix 557a)."

MCL 28.425o(1)(a) generally prohibits the carrying of a concealed weapon onto school property, except while in one's vehicle while picking up or dropping off their child. Like the previous statute mentioned from the penal code, this one too contains further exemptions, such as parking areas (MCL 28.425o(4)) and those with "exempt" licenses (MCL 28.425o(5)) (Appendix 495a).

When reading the statutes in concert, they permit not only the possession of concealed firearms by certain enumerated classes of individuals who are licensed to carry a concealed weapon, but also the possession of non-concealed firearms (i.e. openly carried), by an individual who is licensed to carry a concealed weapon, on school property.

AAPS's flagrant disregard for state law was ignored by the Court of Appeals when they found no conflict to exist. Had the court of appeals properly analyzed AAPS' policy against not just MCL 28.425o, but other mentioned state laws *in pari materia*, the Court would have found that AAPS' policy is in direct conflict with state law and therefore preempted, without the need to venture into a field preemption analysis.

In *MCRGO v. City of Ferndale*, 256 Mich. App. 401 (2001) (Appendix 357a), the courts established that the Legislature intended to occupy fully the field of firearms regulation:

> With the pronouncement in [MCL 123.1103] the Legislature stripped local units of government of all authority to regulate firearms by ordinance or otherwise with respect to the areas enumerated in the statute, except as particularly provided in other provisions of the act and unless federal or state law provided otherwise. Unlike some other statutes, [MCL 123.1102] does not use language to the effect that the act "occupies the whole field of regulation,"

Plaintiff admits that Defendants have a grave responsibility to care for the safety of the children educated in the district. Plaintiff further admits that Defendants have authority to promulgate rules and policies to safeguard the children in its care. Such authority, however, in no way allows Defendants to violate state law, which Policies 5400, 5410 and 5420 clearly do. The legislature decided it alone holds the power to regulate firearms. Michigan laws occupy the entire field of regulation relating to the possession and carrying of firearms. State regulation of firearms is pervasive. The possession and carrying of firearms is already regulated in numerous ways under State statute with respect to both place and manner of carry. Some examples are the following:

- Possession of firearm on certain premises prohibited. MCL §750.234d;
- Premises on which carrying concealed weapon prohibited. MCL §28.425o;
- Carrying a firearm or dangerous weapon with unlawful intent. MCL §750.226;
- Possession of firearm by a person convicted of felony. MCL §750.224f;
- Carrying a pistol without having first obtained a license to purchase (which entails a background check by local law enforcement) is prohibited. MCL §28.422. A violation is a misdemeanor under MCL §750.232a(1).
- Carrying a concealed pistol without a concealed pistol license is a felony. MCL §750.227(2).
- Possessing a weapon in a weapon free school zone (without a concealed pistol license) is a misdemeanor. MCL §750.237a(4).

- Brandishing of firearms is prohibited. MCL § 750.234e (Appendices 461a-559a).

Allowing a school district to regulate firearms would enable local governments to "create a crazy quilt patchwork scheme of [firearms] regulation," City of Brighton v Township Of Hamburg, 260 Mich.App. 345, 346, 677 N.W.2d 349, 351 (2004), creating the precise situation the legislature sought to avoid. Any attempt by AAPS at firearm regulation is preempted as a result of Michigan's complete occupation of the field of firearms regulation.

The Court of Appeals addressed a similar issue in the case *of Wade v. University of Michigan*, 320 Mich. App. 1 (2017) (Appendix 414a). Although that case addressed a public university rather than a K-12 school district, Judge Sawyer's dissenting opinion is directly on point:

> I do not disagree with the majority that this case is not strictly controlled by the preemption provision in MCL 123.1102. That statute bans local units of government from enacting their own laws regulating firearms. But, as the majority points out, "local unit of government" is defined under MCL 123.1101(b) as "a city, village, township, or county." And, of course, defendant is none of those. But that does not end the analysis. Rather, in looking to this Court's decision in Capital Area Dist Library v Mich Open Carry, Inc[5], I conclude that both the trial court and the majority misapprehend the effect of field preemption in resolving this case.
>
> In CADL, this Court rejected the direct application of the preemption provisions of MCL 123.1102 because a district library was not contained within the definition of a "local unit of government" under MCL 123.1101(a). The opinion then goes on to provide a detailed analysis of the applicability of field preemption and the application of the factors under *People v Llewellyn*. I need not extensively review the issue of field preemption here as the CADL opinion does an admirable job of doing just that. I need only refer to its ultimate conclusion: "the pervasiveness of the Legislature's regulation of firearms, and the need for exclusive, uniform state regulation of firearm possession as compared to a patchwork of inconsistent local regulations indicate that the Legislature has completely occupied the field that CADL seeks to enter." …

[5] *Capital Area Dist. Library v. Michigan Open Carry, Inc.*, 298 Mich.App. 220; 826 NW2d 736 (2012) lv. denied 495 Mich 898, 839 NW2d 198 (2013)

> The majority attempts to distinguish CADL on the basis that it relied upon the fact that a district library is created by two local units of government, as defined in MCL 123.1101(1) and defendant here was not created by two local units of government. The majority relies on this Court's decision in *Mich Gun Owners, Inc v Ann Arbor Public Schools*, to reject the field preemption argument. I respectfully submit that both the majority in this case and the Court in Mich Gun Owners ignore the binding precedent of *CADL* and violate the requirements of MCR 7.215(J)(1). As discussed above, this Court in *CADL* concluded that the Legislature intended to completely occupy the field of the regulation of firearm possession and prevent a patchwork of local regulations in the state…
>
> (O)nce a court reaches the conclusion that field preemption applies, then it applies to all units of government that attempt to invade the Legislature's regulation of that field. Indeed, the entire concept of field preemption is that it demands "exclusive state regulation to achieve the uniformity necessary to serve the state's purpose or interest." It is patently absurd to conclude that the Legislature intended to preempt an entire field of regulation, yet it only applies to some, but not all, governmental entities.
>
> *Wade v. Univ of Mich.*, 320 Mich. App 1, 23-27 (2017) (*pet. for cert. stayed*).

STATEMENT REGARDING ORAL ARGUMENT

Pursuant to MCR 7.214(E), Plaintiff-Appellants submit that the factual and legal issues in this appeal are sufficiently complex, such that this case should not be selected for decision without oral argument, because the Court will be aided in its decision if it hears oral arguments from counsel. MCR 7.214(E)(2)

REQUEST FOR RELIEF

WHEREFORE, for the reasons stated in this responsive brief on appeal, Plaintiff-Appellants Ulysses Wong Herman and MGO respectfully request this Honorable Court reverse the decision of the trial court and the Court of Appeals granting summary judgment to Defendant-Appellees. Plaintiff-Appellants submit that the law is well-established with respect to direct and field preemption in this State and that Defendants-Appellees position is not legally justifiable.

Therefore, Plaintiffs-Appellants respectfully request Defendant-Appellees be assessed and ordered to pay legal costs and expenses of Plaintiff-Appellants.

Dated January 31, 2017 /s/ James J. Makowski P62115