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STATE OF MICHIGAN
IN THE SUPREME COURT

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

Plaintiffs-Appellants,

v

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

Defendants-Appellees.

Supreme Court Docket No.: 155196

Court of Appeals Docket No.: 329632

WCCC Case No.: 15-427-CZ

_____/

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CITY OF ANN ARBOR'S *AMICUS CURIAE* BRIEF IN SUPPORT OF DEFENDANTS-APPELLEES ANN ARBOR PUBLIC SCHOOLS and JEANICE K. SWIFT

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COUNTER-STATEMENT OF ISSUES PRESENTED

The City defers to the statement of issues set forth by Defendants-Appellees.

STATEMENT OF JURISDICTION

The City defers to the statement of jurisdiction set forth by Defendants-Appellees.

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INTRODUCTION

School safety is the overwhelmingly critical issue for many school districts in Michigan. Despite this reality, the Plaintiffs-Appellants ("Plaintiffs") in this case seek to negate the full statutory authority under Michigan law that a local school district has to protect the students entrusted to it by enacting a policy to bar person from possessing weapons and firearms on school property. The City of Ann Arbor ("City") agrees that the Circuit Court and Court of Appeals rulings below correctly rejected the Plaintiffs' arguments and submits this *amicus curiae* brief because Plaintiffs' arguments are without any legal merit.

Very simply, the Defendant-Appellee Ann Arbor Public Schools ("AAPS") has this broad statutory authority to "provide for the safety and welfare of pupils while at school" under MCL 38.11a(3)(b). This statutory authority allows a local school district to implement those policies that would further school safety. Importantly, this authority does not mandate any particular action by a school district, but leaves such policy determinations to local control. For the safety of its students, the AAPS enacted a district policy to prohibit the possession of guns in the AAPS schools. The City agrees with the conclusion of the Court of Appeals that, "the AAPS policy ensures that the learning environment remains uninterrupted by the invocation of emergency procedures that would surely be required each and every time a weapon is openly carried by a citizen into a school building." *Michigan Gun Owners, Inc. v Ann Arbor Pub Sch.,* 318 Mich App 338, 354 (2016).

Despite Plaintiffs' convoluted arguments on appeal, the policy of the AAPS does not run afoul of another statutory provision, which limits the ability of **local governments** to regulate firearms, MCL 123.1101. As the Court of Appeals correctly held, a school district is not defined as a "local government" under MCL 123.1101. *Michigan Gun Owners, Inc. v Ann Arbor Pub Sch.,*

318 Mich App at 350. Further, there is no state law which directly conflicts with the AAPS policies and further there is no field pre-emption at issue in this case.

Therefore, the City of Ann Arbor respectfully requests that the Supreme Court deny Plaintiffs-Appellants' application for leave to appeal and let the Court of Appeals decision stand.

COUNTER-STATEMENT OF FACTS

The City concurs with the Defendants' recitation of the facts in its case. The City provides the following facts to demonstrate the interest the City has in the substantive issue.

On February 5, 2018, the Ann Arbor City Council passed a Resolution for the City to file an amicus curiae brief in support of the AAPS' position in this case. The City's interest is evident. Within the City's boundaries are 20 public elementary schools, 5 middle schools, and 5 high schools. A total of over 18,000 students attend those schools, and over 2,000 employees (teachers and staff) are located (mostly) in the schools. The AAPS is a "general powers school district" pursuant to MCL 380.11a(3)(a) and (b), and is tasked with not only educating students, but "providing the safety and welfare" of their students.

On April 15, 2015, the AAPS Board of Education enacted three policies to make the school district's properties "Dangerous Weapon & Disruption-Free Zones." Policy 5400 provides that the Board of Education is "to formulate policies and procedures that effectively protect students and employees from potential acts or threats of violence . . ." Policy 5400 further provides that "the presence of a dangerous weapon" on school property would meet the definition of "emergency" as defined by the Michigan Department of Education. Policy 5410 "designates all property owned or leased by the [AAPS] 'Dangerous Weapon & Disruption-Free Zones.'" Policy 5420 bars any person in possession of a dangerous weapon from remaining "on property owned or leased by AAPS at any time when students are at school . . . ." As a practical matter, if a person does not

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abide by the AAPS policy, the principal has a right to instruct that person to leave the school property. If that person did not leave, that person would be in violation of the City's school trespass ordinance, Ann Arbor City Ordinance 9:64, as well as the state's trespass statute, MCL 750.552. Given the significant concern of the AAPS over student safety, the City supports the school district's policy.

STANDARD OF REVIEW

The City defers to the standard of review set forth by Defendants-Appellees.

ARGUMENT

I. The AAPS has the Statutory Authority to Regulate the Possession of Weapons on School Property.

A. The Court of Appeals properly found that MCL 123.1102 Prohibits only Local Units of Government from Firearm Regulation, not School Districts.

The Legislature has prohibited local governments from regulating firearms. The Legislature specifically defined local government as "cities, villages, townships, and counties." MCL 123.1101(b). This definition is unambiguous and it does not cover school districts. "When a statute specifically defines a term, that definition alone controls." *Haynes v Neshewat,* 477 Mich 29, 35 (2007). The Plaintiffs admit this: "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." Plaintiff's Supplemental Brief on Appeal, at p. 13.

B. The Court of Appeals Properly Rejected the Appellant's Pre-emption Argument.

Rather than stop at this obvious point, the Plaintiffs have constructed a convoluted argument that the AAPS policy is pre-empted under the state's regulatory framework. This brief will not repeat the full analysis provided by the brief of the Defendants-Appellees. But the Court of Appeals correctly analyzed each of the four factors for field preemption under *People v*

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Llewellyn, 401 Mich. 314, 323-324 (1977). First, the Court of Appeals reiterated that the firearms regulation statute is not an exclusive regulation, stating "it bears repeating that the statute on which plaintiffs rely does not include schools or school districts in its list of 'local units of government,' despite that for many other purposes, the Legislature has explicitly identified school districts as 'local units of government.'" *Michigan Gun Owners, Inc. v Ann Arbor Pub Sch.,* 318 Mich App at 350.

The Court of Appeals then reviewed the second *Llewellyn* factor, consideration of legislative history, and correctly found that the legislative history relied upon by the plaintiffs to be "useless, as it speaks to ordinances and local units of government rather than to schools." *Id.* at 351.

As to the third *Llewellyn* factor, "the pervasiveness of the state regulatory scheme," the Court of Appeals correctly noted that "firearms are pervasively regulated in Michigan." But the Court of Appeals determined that "relevant segments of a multifaceted statutory framework evince the Legislature's intent to *prohibit* weapons in schools rather than to rein in a district's ability to control the possession of weapons on its campuses." *Id.* at 353.

Finally, as to the fourth *Llewellyn* factor, whether the regulated subject matter demands exclusive state regulation to achieve the uniformity necessary to serve the state's purpose or interest, the Court of Appeals found no merit in the argument that a "patchwork" of differing school policies will create "confusion" and will "burden" the police and the public. *Id.* at 354. The City specifically agrees with this conclusion of the Court of Appeals and, as to the City's police, represents that this AAPS policy provides no such confusion or burden. In fact, within the jurisdiction of the City's police force, the AAPS policy creates a distinct uniform policy that guns are not allowed in the AAPS schools. Therefore, if a school principal calls to have a violator of the

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school policy removed by the police for trespass, the police immediately can provide a uniform response. The Court of Appeals correctly found that the AAPS policy created "no possibility of meaningful "confusion" or burdening of law enforcement. *Id.* at p. 355. In fact, as the Court of Appeals described, the AAPS policy is "consistent with the "weapon free school zone" concept referenced in 26 different state laws. *Id.* at pp. 353-354. This fact demonstrates continuity, not confusion. This "patchwork" argument does not hold up to any logical scrutiny also as it relates to parents of students in the schools, the non-students most likely on school property. What causes confusion and a burden for parents is not the AAPS policy, but the emergency procedures required by the schools when a resident openly carries a weapon into a school building containing their children.

C. **The City's potential enforcement of state and local trespass laws does not transform the AAPS policies into an action in violation of the statute prohibiting local governments from regulating firearms.**

Citing the City of Ann Arbor's trespass ordinance, the Plaintiffs argue that the "are thus directing the Ann Arbor Police to enforce a gun ban in direct contravention of MCLA 123.1102." Plaintiffs' Supplemental Brief on Appeal at p. 13. The City has no ordinance or regulation that violates MCLA 123.1102. In fact the City's ordinance concerning firearms regulation states: "Possession of weapons or firearms in public places shall be governed by state law." Ann Arbor City Ordinance 9:262.

The Plaintiffs complain that the AAPS would enforce their policy through invocation of the City's trespass ordinance, and this would, in effect, require the City police to "enforce" an ordinance or regulation in violation of MCLA 123.1102. Plaintiffs' Supplemental Brief on Appeal at p. 14. However, the City's trespass ordinance says nothing about firearm's regulation. Ann Arbor City Ordinance 9:64 provides:

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"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." [1]

Even if "ordinance or regulation" were read to include enforcing a City trespass ordinance against a person possessing a gun on school property in violation of the school district policy, that exact provision of the statute has a clear exception: "except as otherwise provided by . . . law of this state." The AAPS schools gun policy was enacted under the power of the school district authorized under state law. If the policy was properly enacted under state law, then this prohibition would not preclude the City from enforcing its trespass ordinance against a person directed by a school principal to leave school property for violation of the school district's policies. The City's school trespass ordinance is not related to weapons at all, it is related to the school principal's authority to determine who should be on school property.

Plaintiffs argue that the AAPS "are thus directing the Ann Arbor Police to enforce a gun ban in violation of the statute prohibiting local regulation of firearms under MCL 123.1102." Plaintiffs' Supplemental Brief on Appeal at p. 14. The City is not enforcing a gun ban. At most, the City would be enforcing a trespass violation under local ordinance or under state law. The argument that the City may not enforce a trespass ordinance incorrectly frames the issue. This argument assumes that the school district cannot enact the current safety policy. This begs the

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[1] Likewise, State law has a similar trespass statute and can be enforced by the AAPS, For example, MCL 750.552 mandates the following:

(1) Except as otherwise provided in subsection (2), a person shall not do any of the following:
  (a) Enter the lands or premises of another without lawful authority after having been forbidden to do so by the owner or occupant or the agent of the owner or occupant.
  (b) Remain without lawful authority on the land or premises of another after being notified to depart by the owner or occupant or the agent of the owner or occupant.

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entire issue in this case. The AAPS policy is created under the statutory authority it has. It does not violate state law as set forth above. The AAPS has enacted a school policy, and a violator would simply be directed by the principal to leave the property and if the person did not do so, the policy would trigger the City's trespass ordinance.

CONCLUSION AND RELIEF REQUESTED

The Michigan legislature gave local school districts broad statutory authority to ensure the safety of its students. This case attempts to undermine that statutory authority. It is a sad irony that this case is filed at a time where school safety issues are paramount. In fact, because of repeated school tragedies across the country, young students themselves have now taken to the streets to plea for a safe learning environment, including in Ann Arbor.[2] The legislature never prohibited local school district from restricting the possession of guns on school property. The Plaintiffs seek to have this Court alter the current statutory scheme in place. This Court should decline the invitation to do so and deny the Plaintiffs' application for leave.

Respectfully submitted,

CITY OF ANN ARBOR

By: _____

Date: March 13, 2018

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[2] See http://time.com/5165794/student-protests-walkouts-florida-school-shooting/, describing wide-ranging student protests across the nation in March, 2018. Likewise, a database search shows these same student protests are in schools across Michigan. See for example, http://www.mlive.com/news/ann-arbor/index.ssf/2018/02/ann_arbor_high_school_students_4.html

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PROOF OF SERVICE

I hereby certify that I e-filed and served a true and correct copy of the foregoing City of Ann Arbor's *amicus curiae* brief in support of defendants-appellees Ann Arbor Public Schools and Jeanice K. Swift, which filing will electronically serve all interested parties, and sent via first class mail a copy of the City's brief to counsel in *Michigan Open Carry, Inc v Clio Area School District, Docket No. 155204,* this 13th day of March, 2018.

/s/Jane Allen
Jane Allen, Legal Assistant