

STATE OF MICHIGAN
COURT OF APPEALS

MICHIGAN GUN OWNERS, INC., and
ULYSSES WONG,

Plaintiffs-Appellees,

v

ANN ARBOR PUBLIC SCHOOLS and JEANICE
K. SWIFT,

Defendants-Appellants.

FOR PUBLICATION
December 15, 2016
9:10 a.m.

No. 329632
Washtenaw Circuit Court
LC No. 15-000427-CZ

Advance Sheets Version

Before: K. F. KELLY, P.J., and GLEICHER and SHAPIRO, JJ.

GLEICHER, J.

The issue presented is whether state law preempts Ann Arbor Public School policies banning the possession of firearms in schools and at school-sponsored events. We hold that it does not, and we affirm the judgment of the circuit court.

I

In April 2015, defendant Ann Arbor Public Schools (AAPS) promulgated three policies that together ban the possession of firearms on school property and at school-sponsored activities. Policy 5400 empowers the board of education and the superintendent “to formulate policies and procedures that effectively protect students and employees from potential acts or threats of violence and that also protect the District against potential lawsuits that might result from that potential or threat of violence.” Policy 5400 further provides that “the presence of a dangerous weapon” on school property constitutes an emergency as defined by the Michigan Department of Education, *MI Ready Schools: Emergency Planning Toolkit* (2011),¹ “pending the removal of that dangerous weapon from the premises.” The Toolkit sets forth “three common

¹ The Toolkit is available online at <http://www.michigan.gov/documents/safeschools/MI_Ready_Schools_Emergency_Planning_Toolkit_370277_7.pdf> (accessed November 30, 2016) [<https://perma.cc/4J48-U4RT>].

response strategies” applicable in emergencies: evacuation, sheltering within a building, and a lockdown to restrict the movement of persons.²

Policy 5410 “designates all property owned or leased by the [AAPS] ‘Dangerous Weapon & Disruption-Free Zones.’ ” This regulation announces the district’s “commitment to the least disruptive school environment possible by refusing” access to school property to any person who “causes either actual or a reasonable forecast of material disruption to the educational process.” Policy 5420 “declares all properties owned or leased by AAPS as Dangerous Weapon and Disruption-Free Zones” and bars any “person in possession of a dangerous weapon,” including a firearm, from “remain[ing] on property owned or leased by AAPS at any time when students are at school, en route to or from school or at a school sponsored activity” Officers of public law enforcement agencies are excluded from the reach of this rule. Licensed concealed pistol carriers are prohibited from carrying a concealed pistol on school property “except . . . as expressly authorized by MCL 28.425o.”

Shortly after AAPS announced these policies, plaintiffs, Michigan Gun Owners, Inc., and Ulysses Wong, challenged them. Wong possesses a concealed pistol license and is the parent of a minor child who attends AAPS. Plaintiffs’ complaint asserts that Michigan law allows Wong to openly carry a pistol on school property because “[s]tate law preempts a local unit of government from regulating the possession” of firearms. According to Wong and Michigan Gun Owners, AAPS qualifies as a “local unit of government.”

By filing dispositive cross-motions, the parties submitted the sole legal issue in this case—preemption—to the circuit court.³ AAPS argued that Michigan law confers on public school districts the right to address the safety and welfare of the students and prevent disruption to the educational environment by enacting policies such as those in question. No state statute conflicts with this authority, AAPS urged, and caselaw governing preemption does not undermine school districts’ power to regulate firearms on their premises.

Primarily relying on this Court’s decision in *Capital Area Dist Library v Mich Open Carry, Inc*, 298 Mich App 220; 826 NW2d 736 (2012) (CADL), plaintiffs contended that state law allows certain individuals to carry guns on school property in specific circumstances and preempts any attempts by local units of government to regulate firearms. Michigan’s statutory regulation of firearms is so pervasive, plaintiffs insist, that the entire firearms field is preempted and school districts are foreclosed from any rulemaking regarding firearms.

² See page 27 of the Toolkit.

³ The parties agree that the Second Amendment has no role to play in this case. See *Dist of Columbia v Heller*, 554 US 570, 626; 128 S Ct 2783; 171 L Ed 2d 637 (2008) (“[N]othing in our opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons and the mentally ill, or laws forbidding the carrying of firearms in sensitive places such as schools and government buildings . . .”).

The circuit court began its analysis with the statute at the heart of *CADL*, MCL 123.1102, which states:

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.^[4]

In relation to this statute, the Legislature defined a “local unit of government” as “a city, village, township, or county.” MCL 123.1101(a). A school district is not included in that list, the circuit court observed, and is not an entity controlled or authorized by “a city, village, township, or county.” Therefore, the court concluded, MCL 123.1101 does not control the outcome of this case.

The court then turned to the question of whether by enacting MCL 123.1101 the Legislature intended to completely preempt the field of firearm legislation, thereby precluding a school district’s firearm policies. The circuit court correctly recognized that this inquiry hinges on the application of four factors set forth in *People v Llewellyn*, 401 Mich 314, 323-324; 257 NW2d 902 (1977):

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. While the pervasiveness of the state regulatory scheme is not generally sufficient by itself to infer pre-emption, it is a factor which should be considered as evidence 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. [Citations omitted.]

Considering these factors, the circuit court concluded that there was no express preemption, no legislative history supporting preemption, no single body of law or cohesive scheme regulating guns such that preemption could be implied, and that the nature of firearm regulation did not demand exclusive state regulation. The court subsequently entered an order granting AAPS’s

⁴ The statute was amended to add pneumatic guns after *CADL* issued. See 2015 PA 29.

motion for summary disposition and dismissing plaintiffs' complaint with prejudice. Plaintiffs appeal that order.

II

Plaintiffs first contend that the AAPS weapons policies directly contradict MCL 28.425o(1)(a). That statute provides, in relevant part, as follows:

(1) Subject to subsection (5), an individual licensed under this act to carry a concealed pistol, or who is exempt from licensure under [MCL 28.432a(1)(h)], shall not carry a concealed pistol on the premises of any of the following:

(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 . . . MCL 750.237a.

* * *

(5) Subsections (1) and (2) do not apply to any of the following:

(a) An individual licensed under this act who is a retired police officer, retired law enforcement officer, or retired federal law enforcement officer.

(b) An individual who is licensed under this act and who is employed or contracted by an entity described under subsection (1) to provide security services and is required by his or her employer or the terms of a contract to carry a concealed firearm on the premises of the employing or contracting entity.

(c) An individual who is licensed as a private investigator or private detective under the professional investigator licensure act, 1965 PA 285, MCL 338.821 to 338.851.

(d) An individual who is licensed under this act and who is a corrections officer of a county sheriff's department or who is licensed under this act and is a retired corrections officer of a county sheriff's department, if that individual has received county sheriff approved weapons training.

(e) An individual who is licensed under this act and who is a motor carrier officer or capitol security officer of the department of state police.

(f) An individual who is licensed under this act and who is a member of a sheriff's posse.

(g) An individual who is licensed under this act and who is an auxiliary officer or reserve officer of a police or sheriff's department.

(h) An individual who is licensed under this act and who is any of the following:

(i) A parole, probation, or corrections officer, or absconder recovery unit member, of the department of corrections, if that individual has obtained a Michigan department of corrections weapons permit.

(ii) A retired parole, probation, or corrections officer, or retired absconder recovery unit member, of the department of corrections, if that individual has obtained a Michigan department of corrections weapons permit.

(i) A state court judge or state court retired judge who is licensed under this act.

(j) An individual who is licensed under this act and who is a court officer.

Plaintiffs argue that because MCL 28.425o(1)(a) addresses the right of concealed pistol license holders to carry a concealed pistol on school property in certain circumstances, AAPS's policy banning weapons is expressly preempted.

We read the statute differently. 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. More to the point, AAPS policy 5420 specifically references and acknowledges that MCL 28.425o controls the ability of concealed pistol license holders to carry a concealed pistol under the distinct circumstances conforming to the statute. We find no conflict between the statute and the AAPS policies, and thus no express preemption. Moreover, as discussed in greater detail in the next section, this statute's virtually categorical *limitation* of the presence of weapons in educational settings strongly implies that the Legislature intended this enactment to curtail the carrying of weapons in public schools.

III

Plaintiffs' second argument centers on their contention that *CADL* governs this case. We find *CADL* readily distinguishable.

As always, we begin with the language of the statute. In MCL 123.1101(b), the Legislature defined the term "local unit of government" to mean "a city, village, township, or county."⁵ In *CADL*, this Court held that although a district library established pursuant to the District Library Establishment Act, MCL 397.171 *et seq.*, is not "a city, village, township, or county," a district library is "a quasi-municipal corporation" and therefore a "local unit of government." *CADL*, 298 Mich App at 231-232, 236. *CADL* reasoned that because a district

⁵ At the time *CADL* was issued, the pertinent definition was located in Subdivision (a) of the statute.

library is established by two local units of government, it is swept within the reach of MCL 123.1102, which expressly prohibits the enactment of any regulation relating to the possession of firearms by “local units of government.” *Id.* at 237.

CADL’s holding rested on a judgment that district libraries are so closely akin to the local units of government listed in MCL 123.1101(b) that the same regulatory scheme should apply. In essence, the *CADL* Court determined that because the city and county that formed the Capital Area District Library were precluded from regulating firearms pursuant to MCL 123.1102, it made no sense to permit their stepchild—a library—from doing so. No corresponding parallels exist here. School districts are not formed, organized, or operated by cities, villages, townships, or counties; school districts exist independently of those bodies. “Leadership and general supervision over all public education, including adult education and instructional programs in state institutions, except as to institutions of higher education granting baccalaureate degrees, is vested in a state board of education.” Const 1963, art 8, § 3. While a district library enjoys a general ability to “[s]upervise and control” its property, MCL 397.182(1)(f), the Legislature has specifically allocated to school districts very broad powers of self-governance, which specifically include “[p]roviding for the safety and welfare of pupils while at school or a school sponsored activity”:

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. . . .

* * *

(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. [MCL 380.11a(3).]

The close connection between district libraries and the cities or counties that established them informed *CADL*’s analysis of the *Llewellyn* factors. The distinct differences between local units of government and school districts likewise influence our calculus and our conclusion that *CADL* does not govern this case.

IV

We turn to plaintiffs’ final argument—that MCL 123.1102 impliedly preempts any school-district-generated firearm policy because the statute fully occupies the regulatory field.

The *Llewellyn* framework guides our evaluation of this question. We agree with the circuit court that application of the *Llewellyn* factors counsels against a finding of field preemption.

The first *Llewellyn* factor asks whether the state law cited as preemptive “expressly provides that the state’s authority to regulate in a specified area of the law is to be exclusive” *Llewellyn*, 401 Mich at 323. As we have stated, no such provision exists. 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.” See, e.g., MCL 550.1951 (including “school districts” within the definition of “local unit of government” in an act providing that certain entities are subject to the Patient’s Right to Independent Review Act, MCL 550.1901 *et seq.*); MCL 286.942(g) (including “school district[s]” within the definition of “local unit of government” for purposes of the Rural Development Fund Act, MCL 286.941 *et seq.*); and MCL 123.381 (including “school district[s]” within the definition of “local unit of government” in an act concerning the construction of water and waste supply systems).

The second *Llewellyn* factor requires us to consider legislative history.⁶ Plaintiffs point to the House Legislative Analysis we cited in *CADL*, reciting that MCL 123.1102 “was designed to address the ‘proliferation of local regulation regarding firearm ownership, sale, and possession’ and the ‘concern that continued local authority to enact and enforce gun control ordinances may result in the establishment of a patchwork of ordinances.’” *CADL*, 298 Mich App at 236. We find this fragment of legislative history useless, as it speaks to ordinances and local units of government rather than to schools. As no other legislative history has been presented to us, we conclude that this factor does not support preemption.

The third *Llewellyn* factor concerns “the pervasiveness of the state regulatory scheme.” *Llewellyn*, 401 Mich at 323. Firearms are indeed pervasively regulated in Michigan. In MCL 28.425a(5), the Legislature commanded that the Legislative Service Bureau “compile the firearms laws of this state, including laws that apply to carrying a concealed pistol, and . . . provide copies of the compilation in an electronic format to the department of state police.”⁷

⁶ We note that in the almost 40 years that have passed since our Supreme Court’s decision in *Llewellyn*, the Supreme Court’s views regarding the propriety of judicial reliance on legislative history have changed considerably. For example, in *People v Gardner*, 482 Mich 41, 57, 58; 753 NW2d 78 (2008), the Court discussed the many “problems inherent in preferring judicial interpretation of legislative history to a plain reading of the unambiguous text” and expressed a decided preference for “historical facts” about “the Legislature’s affirmative acts” rather than “staff analyses of legislation.” “[R]esort to legislative history of any form is proper *only* where a genuine ambiguity exists in the statute. Legislative history cannot be used to create an ambiguity where one does not otherwise exist.” *In re Certified Question from US Court of Appeals for Sixth Circuit*, 468 Mich 109, 115 n 5; 659 NW2d 597 (2003).

⁷ That compilation is available to all at <<https://www.legislature.mi.gov/Publications/Firearms.pdf>> (accessed November 30, 2016) [<https://perma.cc/3ZSE-SWQK>].

The statutes referencing firearms consume almost 200 pages of paper. Included are several provisions in The Revised School Code, MCL 380.1 *et seq.* For example, MCL 380.1163 requires schools to develop “model gun safety instruction program[s].” MCL 380.1311(2) permits a school board to expel a pupil who “possesses in a weapon free school zone a weapon that constitutes a dangerous weapon” MCL 380.1313(2) authorizes a school official to confiscate a dangerous weapon in the possession of a pupil. And the full compilation includes MCL 28.425o(1)(a), which we cited earlier, as well as penal statutes such as MCL 750.234d, which provides:

(1) Except as provided in subsection (2), a person shall not possess a firearm on the premises of any of the following:

(a) A depository financial institution or a subsidiary or affiliate of a depository financial institution.

(b) A church or other house of religious worship.

(c) A court.

(d) A theatre.

(e) A sports arena.

(f) A day care center.

(g) A hospital.

(h) An establishment licensed under the Michigan liquor control act, [MCL 436.1 to MCL 436.58].

(2) This section does not apply to any of the following:

(a) A person who owns, or is employed by or contracted by, an entity described in subsection (1) if the possession of that firearm is to provide security services for that entity.

(b) A peace officer.

(c) A person licensed by this state or another state to carry a concealed weapon.

(d) A person who possesses a firearm on the premises of an entity described in subsection (1) if that possession is with the permission of the owner or an agent of the owner of that entity.

(3) A person who violates this section is guilty of a misdemeanor punishable by imprisonment for not more than 90 days or a fine of not more than \$100.00, or both.^[8]

Yet another penal statute relevant to this case addresses “weapon free school zones,” which are defined as “school property and a vehicle used by a school to transport students to or from school property.” MCL 750.237a(6)(e). This statute sets out penalties for individuals who engage in firearm offenses in a weapon free school zone and specifically provides that “an individual who possesses a weapon in a weapon free school zone is guilty of a misdemeanor” MCL 750.237a(4). This subsection does not apply, however, to individuals licensed to carry a concealed weapon, a “peace officer,” or certain designated others. MCL 750.237a(5).

Given this panoply of firearm laws, we most certainly agree that firearms are pervasively regulated in Michigan. But this fact, standing alone, does not compel us to infer preemption. “While the pervasiveness of the state regulatory scheme is not generally sufficient by itself to infer pre-emption, it is a factor which should be considered as evidence of pre-emption.” *Llewellyn*, 401 Mich at 324. Here, 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.

Among the statutes regulating firearms compiled by the Legislative Service Bureau are 26 different laws specifically referencing “weapon free school zones.” These four words telegraph an unmistakable objective regarding guns and schools; indeed, we find it hard to imagine a more straightforward expression of legislative will. The Legislature contemplated that this repeatedly invoked phrase would be interpreted to mean exactly what it says—no weapons are allowed in schools. Viewing the AAPS policies against this statutory backdrop, we infer that firearm policies consistent with the “weapon free school zone” concept are unobjectionable. Field preemption analysis does not permit us to ignore this statutory language simply because there are many statutes regulating firearms. To the contrary, the pervasiveness of the Legislature’s use of the phrase “weapon free school zones” presses against the preemption of a district policy affirming that its schools will remain “weapon-free.”

Llewellyn’s fourth factor asks whether “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.” *Id.* Given that the Legislature has never expressly reserved to itself the

⁸ Despite that MCL 750.234d(2)(c) permits concealed weapon holders to carry concealed weapons in “[a] court,” our Supreme Court has promulgated an administrative order barring the presence of *all* weapons in court facilities unless approved by the chief judge. Administrative Order No. 2001-1, 463 Mich cliii (2001). Many circuit courts have issued their own policies banning the presence of weapons. See, e.g., Oakland County Circuit and Probate Courts, Joint Administrative Order No. 2012-06J <<https://www.oakgov.com/courts/circuit/Documents/ao/2012-06J.pdf>> (accessed November 30, 2016) [<https://perma.cc/N4UM-EZX3>].

ability to regulate firearms in schools, our evaluation of this factor requires us to weigh policy choices.

Plaintiffs insist that a “patchwork” of differing school policies will create “confusion” and will “burden” the police and the public. We find no merit in this argument. The Legislature has broadly empowered school districts to “[p]rovid[e] 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.” MCL 380.11a(3)(b). Indisputably, the Legislature recognized that different school districts would employ different methods and strategies to accomplish this goal. Most parents of school-age children send those children to schools located within a single school district. Most parents easily learn and adapt to the policies and procedures applicable to their children’s schools and district. We discern no possibility of meaningful “confusion” or burdening of law enforcement. To the contrary, 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.

We affirm.

/s/ Elizabeth L. Gleicher
/s/ Kirsten Frank Kelly
/s/ Douglas B. Shapiro