



*Alphonsus C. Murphy
Michael S. Brenton
Vincent P. Spagnuolo

**Gary L. Bender
Richard A. Cascarilla

***John W. Cotner
Debra A. Clementino
****Jayson A. Chizick
Lindsay N. Dangel

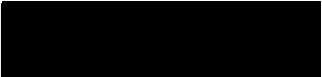
*Also admitted in Wisconsin
**Also admitted in District of Columbia
***Also admitted in Indiana
****Also admitted in Florida

February 16, 2011
Certified Mail, Return Receipt Requested

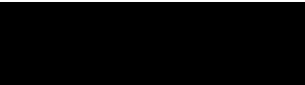
Jeffrey Lee Sayers



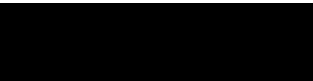
Scott Webb, Resident Agent



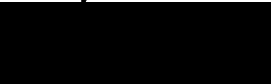
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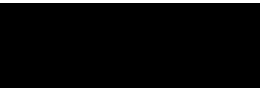
Rob Harris



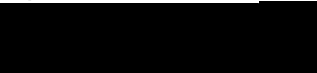
Randy Krantz



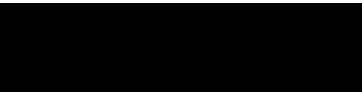
Brian Jeffs



Ryan Ransom



Jason Reese



RE: Capital Area District Library v Michigan Open Carry, Inc.
Ingham County Circuit Court Case No.: 11-200-CZ
Judge: Rosemarie Aquilina

To the above interested parties:

Enclosed please copies of the following documents which have been filed with the Court:

1. Summons
2. Complaint for Declaratory Judgment and Injunctive Relief
3. Affidavit of Lance Werner
4. Certificate of Attorney Pursuant to MCR 03.310(B)(1)(b) For Ex Parte Temporary Restraining Order
5. Ex-Parte Emergency Motion for Temporary Restraining Order
6. Brief in Support of Plaintiff's Ex Parte Emergency Motion for Temporary Restraining Order
7. Ex Parte Temporary Restraining Order
8. Plaintiff's Motion for Preliminary and Permanent Injunctive Relief
9. Brief In Support of Plaintiff's Motion for Preliminary and Permanent Injunctive Relief,

Please note that a February 24, 2011 hearing is indicated in the Ex Parte Temporary Restraining Order.

Sincerely,
MURPHY, BRENTON & SPAGNUOLO, P.C.


Gary L. Bender

GLB\rdn
Enclosures

STATE OF MICHIGAN JUDICIAL DISTRICT 30th JUDICIAL CIRCUIT COUNTY PROBATE	SUMMONS AND COMPLAINT	CASE NO. 11- 200 CZ JUDGE:
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Court address: 313 W. Kalamazoo, Lansing, MI 48901

ROSEMARIE E. AQUILINA Court telephone no. (517) 483-6500

Plaintiff's name(s), address(es), and telephone no(s).
CAPITAL AREA DISTRICT LIBRARY
 401 S. Capitol Ave.
 Lansing, MI
 517-367-6300

Defendant's name(s), address(es), and telephone no(s).
MICHIGAN OPEN CARRY, INC.

Resident Agent: Scott A. Webb
 Registered Office Address:
 [REDACTED]

Plaintiff's attorney, bar no., address, and telephone no.
 Vincent P. Spagnuolo(P30350)/GARY L. BENDER(P31557)
 MURPHY, BRENTON & SPAGNUOLO, P.C.
 4572 S. Hagadorn Rd., Ste 1A
 East Lansing, MI 48823
 517-351-2020

SUMMONS NOTICE TO THE DEFENDANT: In the name of the people of the State of Michigan you are notified:

1. You are being sued.
2. **YOU HAVE 21 DAYS** after receiving this summons to file a written answer with the court and serve a copy on the other party or take other lawful action with the court (28 days if you were served by mail or you were served outside this state). (MCR 2.111(C))
3. If you do not answer or take other action within the time allowed, judgment may be entered against you for the relief demanded in the complaint.

Issued FEB 15 2011	This summons expires MAY 17 2011	Court clerk MIKE BRYANTON
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*This summons is invalid unless served on or before its expiration date.
 This document must be sealed by the seal of the court.

COMPLAINT Instruction: The following is information that is required to be in the caption of every complaint and is to be completed by the plaintiff. Actual allegations and the claim for relief must be stated on additional complaint pages and attached to this form.

Family Division Cases

There is no other pending or resolved action within the jurisdiction of the family division of circuit court involving the family or family members of the parties.

An action within the jurisdiction of the family division of the circuit court involving the family or family members of the parties has been previously filed in _____ Court.

The action remains is no longer pending. The docket number and the judge assigned to the action are:

Docket no.	Judge	Bar no.

General Civil Cases

There is no other pending or resolved civil action arising out of the same transaction or occurrence as alleged in the complaint.

A civil action between these parties or other parties arising out of the transaction or occurrence alleged in the complaint has been previously filed in _____ Court.

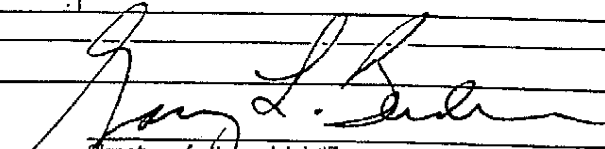
The action remains is no longer pending. The docket number and the judge assigned to the action are:

Docket no.	Judge	Bar no.

VENUE

Plaintiff(s) residence (include city, township, or village) Lansing, Michigan	Defendant(s) residence (include city, township, or village) Roseville, Michigan
Place where action arose or business conducted Lansing, Michigan	

02/15/2011
 Date


 Signature of attorney/plaintiff **GARY L. BENDER (P31557)**

If you require special accommodations to use the court because of a disability or if you require a foreign language interpreter to help you fully participate in court proceedings, please contact the court immediately to make arrangements.

STATE OF MICHIGAN

IN THE 30TH CIRCUIT COURT FOR THE COUNTY OF INGHAM

CAPITAL AREA DISTRICT LIBRARY,

Plaintiff,

Case No. 11-200-CZ

v

HON. ROSEMARIE AQUILINA

MICHIGAN OPEN CARRY, INC.,

Defendant.

Vincent P. Spagnuolo (P30350)
 Gary L. Bender (P31557)
 Lindsay N. Dangl (P73231)
 MURPHY, BRENTON & SPAGNUOLO, PC
Attorneys for CADL
 4572 S. Hagadorn, Suite 1A
 East Lansing, MI 48823
 (517) 351-2020

ATTACHMENT TO SUMMONS

The following is a list of Pleadings Served on Defendant:

1. Summons
2. Complaint for Declaratory Judgment and Injunctive Relief
3. Affidavit of Lance Werner
4. Certificate of Attorney Pursuant to MCR 03.310(B)(1)(b) For Ex Parte Temporary Restraining Order
5. Ex-Parte Emergency Motion for Temporary Restraining Order
6. Brief in Support of Plaintiff's Ex Parte Emergency Motion for Temporary Restraining Order
7. Ex Parte Temporary Restraining Order
8. Plaintiff's Motion for Preliminary and Permanent Injunctive Relief
9. Brief In Support of Plaintiff's Motion for Preliminary and Permanent Injunctive Relief,

STATE OF MICHIGAN
IN THE 30TH CIRCUIT COURT FOR THE COUNTY OF INGHAM

CAPITAL AREA DISTRICT LIBRARY,

Plaintiff,

Case No. 11- 200 -CZ

v

HON.

ROSEMARIE AQUILINA

MICHIGAN OPEN CARRY, INC.,

COMPLAINT

Defendant.

Vincent P. Spagnuolo (P30350)
Gary L. Bender (P31557)
Lindsay N. Dangl (P73231)
MURPHY, BRENTON & SPAGNUOLO, PC
Attorneys for CADL
4572 S. Hagadorn, Suite 1A
East Lansing, MI 48823
(517) 351-2020

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

NOW COMES the Plaintiff, Capital Area District Library, ("CADL"), by and through its attorneys, Murphy, Brenton & Spagnuolo, P.C., and states unto this Honorable Court for its Complaint for Declaratory Judgment and Injunctive Relief as follows:

1. CADL is a duly established district library in accordance with the District Library Establishment Act, MCL §397.171 *et seq.* and has library branches located throughout Ingham County, Michigan.
-

2. Defendant is a Michigan non-profit corporation that operates throughout the state of Michigan, including Ingham County.
3. All of the actions that are the subject of this Complaint occurred in Ingham County, Michigan.
4. By this action CADL seeks a Declaratory Judgment and injunctive relief.

COMMON ALLEGATIONS

5. Pursuant to MCL §397.182, the district library board has the authority to, “Adopt bylaws and regulations...governing the board and the district library.”
6. CADL’s board has adopted a policy, titled SER 103, which states, “All weapons are banned from Library premises to the fullest extent permitted by law” (hereafter “Weapons Policy”).
7. Defendant’s members, in violation of the Weapons Policy, have brought and continue to bring weapons, including rifles and handguns, into CADL’s library branch in downtown Lansing, Michigan, on multiple occasions between December 2010 and the present.
8. On these occasions, Defendant’s members, while armed with firearms, frequented the children’s section and teen section of the library. Patrons have been frightened and disturbed by the presence of guns in the library.
9. Defendant’s members have been told that they are trespassing and have refused to leave the library premises.
- ~~10. Defendant’s members continue to challenge CADL’s Weapons Policy by bringing~~
weapons into the downtown library branch.

11. The Lansing police will not respond to remove Defendant's members from the premises.
12. CADL is left without any further recourse to protect its patrons and enforce the Weapons Policy.

COUNT I
DECLARATORY JUDGMENT

13. CADL restates and incorporates by reference the allegations in paragraphs 1 through 12 above, as though fully set forth.
14. This Court has the power, under MCR 2.605, to adjudicate the matters at issue and enter its judgment declaring the rights of all parties to this action.
15. MCR 2.605 states, "In a case of actual controversy within its jurisdiction, a Michigan court of record may declare the rights and other legal relations of an interested party seeking a declaratory judgment, whether or not other relief is or could be sought or granted."
16. It is the express purpose of a declaratory judgment "to enable parties to have their differences authoritatively settled in advance of any claimed invasion of rights, that they may guide their actions accordingly and often may be able to keep them within lawful bounds, and so avoid the expense, bitterness of feeling and disturbance of the orderly pursuits of life which are so often the incidents of lawsuits." *Merkel v Long*, 368 Mich 1, 13 (1962).
17. An actual controversy has arisen and now exists between CADL and Defendant concerning their respective rights and duties in that CADL asserts its Weapons

Policy is valid, whereas Defendant contends that CADL's Weapons Policy is invalid as preempted by state law.

18. Defendant relies upon MCL §123.1102 of the Firearms and Ammunition Act, which provides, "*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 or other firearms, 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)
19. MCL §123.1101 of the Firearms and Ammunition Act defines a local unit of government as, "a city, village, township, or county."
20. CADL is an authority, separate and distinct from both the City of Lansing and Ingham County.
21. CADL was formed pursuant to the District Library Establishment Act, MCL §397.171 *et seq.*, and a District Library Agreement, dated March 10, 1997, between Ingham County and the City of Lansing.
22. CADL has its own governing board, separate and independent from either of the units of government that created it, pursuant to the District Library Establishment Act, *supra*.
23. CADL's board alone, without the consent or approval of the units of government that established it, has the power to maintain and operate a public library, appoint and remove officers and employees, purchase, sell, convey, lease, or otherwise acquire or dispose of personal property, erect buildings, enter into contracts, adopt

bylaws and regulations, propose and levy a tax, borrow money, issue bonds, and accept gifts. MCL §397.182.

24. A “local unit of government” as used in MCL §123.1102 of the Firearms and Ammunition Act is clearly limited to a “city, village, township, or county.” The Legislature did not include an “authority” in this list.
25. It is a maxim of statutory interpretation that, “*Expressio unius est exclusio alterius*,” the express mention of one thing excludes all others. e)u
26. This maxim is “a rule of construction that is a product of logic and common sense.” *Hoerstman Gen. Contr., Inc. v Hahn*, 474 Mich 66 (2006).
27. The maxim “is a product of ‘logic and common sense.’ It expresses the learning of common experience that when people say one thing they do not mean something else.’...Furthermore, the principle of *expressio est unius exclusio alterius* is well recognized throughout Michigan jurisprudence.” *Feld v. Robert & Charles Beauty Salon*, 435 Mich 352 (1990).
28. “The Legislature is presumed to have written the statute to mean what the Legislature intended it to mean.” *McCahan v Brennan*, ___ Mich App ___ (February 1, 2011, No. 292379).
29. If the Legislature had intended authorities to be included as a local unit of government under MCL §123.1102 of the Firearms and Ammunition Act it would have stated such. The Legislature has included authorities in the definition of local unit of government in other statutes, *See* MCL §124.753 (“‘Local unit of government’ means a city, village, township, county, or any intergovernmental, metropolitan, or local department, agency, or *authority*, or other local political

subdivision.”); MCL §21.233 (“‘Local unit of government’ means a political subdivision of this state, including school districts, community college districts, intermediate school districts, cities, villages, townships, counties, and *authorities...*”); MCL §123.1193 (“‘Local unit of government’ means a political subdivision of this state, including, but not limited to, a county, city, village, township, district, local *authority*, intergovernmental *authority*, or intergovernmental entity.”); MCL §169.209 (“‘Local unit of government’ means a district, *authority*, county, city, village, township, board, school district, intermediate school district, or community college district.”).

30. Since CADL is not a city, township, county or village, CADL is not a “local unit of government” as defined by statute and is not preempted by MCL §123.1102 of the Firearms and Ammunition Act.
31. CADL’s policy prohibits weapons on its premises, “to the fullest extent permitted by law.” The Firearms and Ammunition Act only prohibits a local unit of government, i.e., a city, village, township, or county, from regulating the use of firearms. As CADL is not prohibited from enacting such a policy pursuant to the Firearms and Ammunition Act, CADL’s Weapons Policy is valid and enforceable.
32. CADL’s downtown Lansing library branch qualifies as a gun free school zone pursuant to MCL §750.237a.
33. MCL §750.237a specifically prohibits possession of any form of a gun in a weapon free school zone.
34. A “weapon free school zone” is defined as, “school property.” MCL §750.237a.

35. "School property" is defined as, "a building, playing field, or property *used* for school purposes to impart instruction to children *or used* for functions and events sponsored by a school." MCL §750.237a.
36. Using the definitions above, a weapon free school zone includes a building, playing field, or other property that is *used* in connection with a public, private, or other parochial school for purposes of instructing children *or* for functions and events sponsored by a school. The definition of a weapon free school zone is based on what purpose the property is used for.
37. As the definition is based on *use* of the property, the Legislature intended that property owned by someone else, but used in connection with educational purposes of children be included in the weapons free school zone.
38. The purpose of CADL's library branches is as a place of learning and instruction to both children and adults.
39. CADL's downtown Lansing library branch is leased from the Lansing School District.
40. As CADL's library branches are used in connection with the instruction of children, CADL's buildings and branches qualify as gun free school zones and weapons are not permitted on those premises.
41. CADL desires a judicial determination of its rights and duties, and a declaration as to whether its Weapons Policy is valid.
42. A judicial declaration is necessary and appropriate at this time under the circumstances to guide CADL's future conduct with regard to enforcement of its Weapons Policy and preserve legal rights.

COUNT II
INJUNCTIVE RELIEF

43. CADL restates and incorporates by reference the allegations in paragraphs 1 through 42 above, as though fully set forth.
44. Unless injunctive relief is granted preventing Defendant from entering CADL's library premises, CADL and its patrons will face immediate and irreparable harm.
45. Defendant's members have shown their intent to continue entering the library premises with their weapons. The latest confrontation by Defendant's members occurred on Monday, February 14, 2011.
46. It is the express purpose of Michigan Open Carry, Inc. to, "educate and desensitize the public and members of the law enforcement community about the legality of the open carry of a handgun in public; To exercise a natural right to self defense using the most efficient and common tool, a handgun; To demonstrate to the public at large that gun owners are one of the most lawful segments of society and they have nothing to fear from the lawful carry of a firearm; [and] To protect our right to self-defense." (www.michiganopencarry.org).
47. According to Defendant's website, the "methods to accomplish objectives" include "To have periodic and informal gatherings in public places throughout the state *while open carrying our handguns.*" (www.michiganopencarry.org, *emphasis added*).
48. Defendant, through its members, has come into CADL's library with weapons on multiple occasions and refuses to abide by CADL's Weapons Policy.

49. CADL requires injunctive relief in order to protect its patrons and uphold its policy, which was validly enacted, until the legality of the policy is declared by this Court.
50. Neither Defendant nor the public interest will be harmed by the granting of injunctive relief.
51. Defendants will only be prohibited from carrying their weapons in CADL's library branches, as is currently prohibited, until this Court can decide on the legality of the policy. Injunctive relief would maintain the status quo of the parties.
52. Any harm to Defendants by the granting of injunctive relief is outweighed by the harm to CADL and its patrons in the absence of injunctive relief.
53. CADL is seeking to protect the safety of its patrons. Numerous dangers are inherent in having guns in a public location where children and adults are present, including the accidental discharge of a weapon.
54. CADL has a substantial likelihood of success on the merits.
55. According to the law above, CADL is an "authority" and not a "local unit of government" as defined by the Legislature in this circumstance.
56. Further, CADL's library branches are used for the education of children and the downtown Lansing library branch is leased from the Lansing School District, wherefore CADL's downtown Lansing library branch qualifies as a gun free school zone under MCL §750.237a.

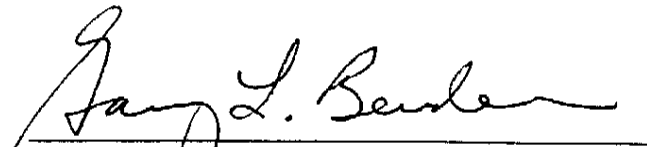
WHEREFORE, CADL requests this Honorable Court enter a declaratory judgment, as follows:

- A. Declare that CADL's Weapons Policy is valid and has not been preempted by MCL §123.1102;
- B. Restrain Defendants from entering any of CADL's library buildings and branches while carrying or brandishing a weapon, firearm, or handgun until a judicial declaration is made as to the validity of CADL's Weapons Policy; and
- C. Grant any such other and further relief as the Court deems just and proper.

Respectfully Submitted,

MURPHY, BRENTON & SPAGNUOLO, P.C.
Attorneys for Plaintiff CADL

Date: Feb 15, 2011



Vincent P. Spagnuolo (P30350)
Gary L. Bender (P31557)
Lindsay N. Dangl (P73231)

Business Address:

4572 S. Hagadorn, Suite 1A
East Lansing, MI 48823
(517) 351-2020

STATE OF MICHIGAN

IN THE 30TH CIRCUIT COURT FOR THE COUNTY OF INGHAM

CAPITAL AREA DISTRICT LIBRARY,

Plaintiff,

Case No. 11- 200

-CZ

v

HON.

ROSEMARTE E. AQUILINA

MICHIGAN OPEN CARRY, INC.,

Defendant.

Vincent P. Spagnuolo (P30350)
Gary L. Bender (P31557)
Lindsay N. Dangl (P73231)
MURPHY, BRENTON & SPAGNUOLO, PC
Attorneys for CADL
4572 S. Hagadorn, Suite 1A
East Lansing, MI 48823
(517) 351-2020

AFFIDAVIT OF LANCE WERNER


Comes now, LANCE WERNER, affiant herein, and being duly sworn upon his oath, states as follows:

1. I, Lance Werner, am the Director of the Capital Area District Library ("CADL").
2. I have personal knowledge regarding the matters stated herein.
3. CADL was created pursuant to the District Library Establishment Act, MCL §397.171 *et seq.*, and is an authority pursuant to that Act. CADL is not a city, village, township, or county.

4. CADL's board has adopted a policy, titled SER 103, which states, "All weapons are banned from Library premises to the fullest extent permitted by law" (hereafter "Weapons Policy").
5. Defendant's members, in violation of the Weapons Policy, have brought weapons, including rifles and handguns, into CADL's library branch in downtown Lansing, Michigan, on multiple occasions between December 2010 and the present.
6. On these occasions, Defendant's members, while armed with firearms, have frequented the children's section and teen section of the library. Patrons have been frightened and disturbed by the presence of guns in the library.
7. Specifically, an individual entered the CADL downtown Lansing library branch on December 11, 2010 with a shotgun strapped to his back.
8. Another individual entered the CADL downtown Lansing library branch on January 3, 2011. Security responded to a complaint that there was a man in the children's area with a handgun.
9. Numerous individuals gun carrying then entered the CADL downtown Lansing library branch on February 7, 2011, the night of the most recent Lansing City Council meeting. Members of Michigan Open Carry were in the children's section and the teen's section of the library while armed with weapons.
10. Another individual entered the CADL downtown Lansing library branch on February 13, 2011, again carrying a handgun and sitting in the children's section of the library.

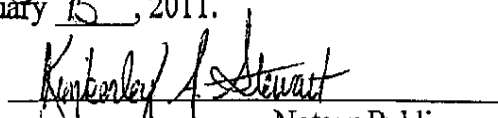
11. At the times these individuals have been in the library with guns, patrons have been alarmed and on February 13, 2011, a patron shouted at the man carrying a gun to, "get the hell out of the library."
12. The Weapon Policy violations are escalating. On February 14, 2011, a young adult male came into the CADL downtown Lansing library branch with a concealed weapon. Upon information and belief, this individual is eighteen years of age and is not statutorily eligible to obtain or carry a concealed handgun.
13. Defendant's members have been told that they were trespassing and have refused to leave the library premises.
14. Defendant's members continue to challenge CADL's Weapons Policy by bringing weapons into the downtown library branch with the most recent challenge being on Monday, February 14, 2011.
15. The Lansing police will not respond to remove Defendant's members from the premises when called by CADL.
16. CADL fears that the violations of its Weapons Policy will result in injury or death and requires immediate judicial intervention to prevent such an irreparable catastrophe.

Further Affiant Saith Not:



Lance Werner, CADL Director

Subscribed and sworn to before me on February 15, 2011.



Notary Public

My Commission Expires: 6/20/2012

KIMBERLEY A. STEWART
NOTARY PUBLIC - STATE OF MICHIGAN
COUNTY OF EATON
My Commission Expires June 20, 2012
Acting in the County of Livonia

STATE OF MICHIGAN
IN THE 30TH CIRCUIT COURT FOR THE COUNTY OF INGHAM

CAPITAL AREA DISTRICT LIBRARY,

Plaintiff,

Case No. 11- 200 -CZ

v

HON.

ROSEMARIE E. AQUILINA

MICHIGAN OPEN CARRY, INC.,

Defendant.

Vincent P. Spagnuolo (P30350)
Gary L. Bender (P31557)
Lindsay N. Dangi (P73231)
MURPHY, BRENTON & SPAGNUOLO, PC
Attorneys for CADL
4572 S. Hagadorn, Suite 1A
East Lansing, MI 48823
(517) 351-2020

**CERTIFICATION OF ATTORNEY PURSUANT TO
MCR 3.310(B)(1)(b) FOR EX PARTE TEMPORARY RESTRAINING ORDER**

Pursuant to MCR 3.310(B)(1)(b), with regard to a temporary restraining order granted without notice to the adverse party, I, Gary L. Bender, attorney for Plaintiff, certify that the following efforts have or have not been made to give notice of Plaintiff's request for an ex parte temporary restraining order:

- A. I did not notify Defendant or its members that we intended to request this Honorable Court for a restraining order to restrain Defendants from violating CADL's Weapons Policy for the reasons that Plaintiff is fearful that notice will cause Defendants to harm CADL and public by accelerating its non-conforming activities.

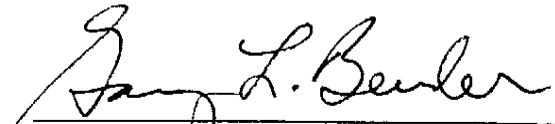
B. Defendant's members have entered CADL's library branch in mass previously in an attempt to convey their message regarding the open carrying of weapons on the day of the Lansing City Council meeting. Plaintiff fears that if notified of the relief requested, Defendant's members will increase their efforts to bring weapons into CADL's library branches thereby increasing the chance of injury or harm to patrons and staff.

Since it is not possible to provide the adverse party with notice prior to that time or to have a hearing before your Honor, Plaintiff requests issuance of an Ex Parte Temporary Restraining Order.

Respectfully Submitted,

MURPHY, BRENTON & SPAGNUOLO, P.C.
Attorneys for Plaintiff CADL

Date: Feb 15, 2011



Gary L. Bender (P31557)

Business Address:
4572 S. Hagadorn, Suite 1A
East Lansing, MI 48823
(517) 351-2020

STATE OF MICHIGAN

IN THE 30TH CIRCUIT COURT FOR THE COUNTY OF INGHAM

CAPITAL AREA DISTRICT LIBRARY,

Plaintiff,

Case No. 11-

200

-CZ

v

HON.

ROBERT L. AQUILINA

MICHIGAN OPEN CARRY, INC.,

Defendant.

Vincent P. Spagnuolo (P30350)
Gary L. Bender (P31557)
Lindsay N. Dangi (P73231)
MURPHY, BRENTON & SPAGNUOLO, PC
Attorneys for CADL
4572 S. Hagadorn, Suite 1A
East Lansing, MI 48823
(517) 351-2020

**EX-PARTE EMERGENCY MOTION FOR TEMPORARY
RESTRAINING ORDER**

NOW COMES, Plaintiff Capital Area District Library ("CADL"), by and through its attorneys, Murphy, Brenton & Spagnuolo, P.C., and hereby moves this Court to grant an ex-parte temporary restraining order, and in support thereof states the following:

1. Concurrently with the filing of this Motion, Plaintiff filed a Complaint for Declaratory and Injunctive Relief with the Court.

2. As stated in Plaintiff's Complaint, Defendant, through its members, has and continues to unlawfully and improperly bring weapons, including handguns and other firearms, into CADL's buildings and branches in violation of CADL's Weapons Policy prohibiting all weapons on the premises to the fullest extent permitted by law ("Weapons Policy").
3. CADL has advised Defendant and its members on numerous occasions that they were in violation of CADL's Weapons Policy and that their continued presence on CADL's premises is a trespass. However, Defendant's members have refused to leave.
4. The Lansing police will not respond to remove these trespassers from CADL's premises.
5. CADL has no adequate remedy at law.
6. Unless injunctive relief is granted preventing Defendant and its members from entering CADL's premises, CADL and its library patrons will face immediate and irreparable harm.
7. Defendant's members have shown their intent to continue entering the library premises with their weapons despite CADL's Weapons Policy.
8. It is the express purpose of Michigan Open Carry, Inc. to, "educate and desensitize the public and members of the law enforcement community about the legality of the open carry of a handgun in public; To exercise a natural right to self defense using the most efficient and common tool, a handgun; To demonstrate to the public at large that gun owners are one of the most lawful segments of society and they have nothing to fear from the lawful carry of a

firearm; [and] To protect our right to self-defense.”
(www.michiganopencarry.org).

9. According to Defendant’s website, the “methods to accomplish objectives” include “To have periodic and informal gatherings in public places throughout the state *while open carrying our handguns.*” (www.michiganopencarry.org, *emphasis added*).
10. Defendant has come into CADL’s library with weapons on multiple occasions and refuses to abide by CADL’s Weapons Policy. The most recent violation of the Weapons Policy occurred on Monday, February 14, 2011.
11. CADL requires injunctive relief in order to protect its patrons and uphold its policy, which was validly enacted, until the legality of the policy is declared by this Court.
12. Neither Defendant nor the public interest will be harmed by the granting of injunctive relief.
13. Defendants will only be prohibited from carrying their weapons in CADL’s library branches, as is currently prohibited, until this Court can decide on the legality of the policy. Injunctive relief would maintain the *status quo* of the parties.
14. Any harm to Defendants by the granting of injunctive relief is outweighed by the harm to CADL and its patrons in the absence of injunctive relief.
15. CADL is seeking to protect the safety of its patrons. Numerous dangers are inherent in having guns in a public location where children are present, including accidental discharge of the weapon.

16. CADL has a substantial likelihood of success on the merits.
17. Further, any delay in the issuance of a temporary restraining order until the hearing on the preliminary injunction will result in the following and immediate irreparable harm: Defendant will continue to bring weapons into CADL's buildings and branches in violation of CADL's Weapons Policy, thereby endangering the safety and welfare of CADL patrons.
18. Defendant has been given notice of the Weapons Policy.
19. Defendant has not been given notice of the request for ex-parte injunctive relief as it is feared that defendant will accelerate its violation of the Weapons Policy and endanger library patrons if notice is given.
20. The affidavit of CADL Library Director Lance Warner is attached. (**Exhibit A**).
21. CADL further relies upon its brief in support, incorporated by reference herein.

WHEREFORE, Plaintiff requests that this Honorable Court order the following:

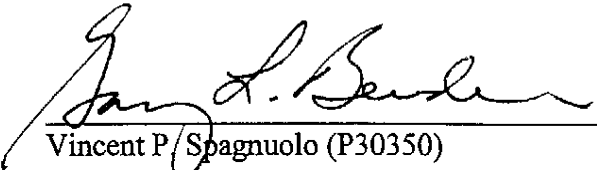
- A. Enter an Ex-Parte Order so that Defendant and any of its members shall be immediately enjoined and restrained, directly and indirectly, whether alone or in concert with others, including any officer, agent, employee and/or representative of Defendant and/or any of its members, until further order of this Court, from bringing, carrying, or brandishing any weapon or firearm in CADL's buildings and branches in violation of CADL's Weapons Policy;

- B. The order shall remain in full force and effect until this Court specifically orders otherwise;
- C. Defendant shall show cause before this Court why a preliminary injunction should not be entered according to the terms and conditions set forth above. Said show cause date shall be on ___ day of _____, 2011 at _____ .m.; and
- D. Order any such other and further relief as the Court deems just and proper.

Respectfully Submitted,

MURPHY, BRENTON & SPAGNUOLO, P.C.
Attorneys for Plaintiff CADL

Date: Feb 15, 2011



Vincent P. Spagnuolo (P30350)
Gary L. Bender (P31557)
Lindsay N. Dangl (P73231)

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East Lansing, MI 48823
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STATE OF MICHIGAN
IN THE 30TH CIRCUIT COURT FOR THE COUNTY OF INGHAM

CAPITAL AREA DISTRICT LIBRARY,

Plaintiff,

Case No. 11-200 -CZ

v

HON. ROSEMARIE E. AQUILINA

MICHIGAN OPEN CARRY, INC.,

Defendant.

Vincent P. Spagnuolo (P30350)
Gary L. Bender (P31557)
Lindsay N. Dangi (P73231)
MURPHY, BRENTON & SPAGNUOLO, PC
Attorneys for CADL
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**BRIEF IN SUPPORT OF PLAINTIFF'S EX PARTE EMERGENCY MOTION
FOR TEMPORARY RESTRAINING ORDER**

The following rule governs issuance of ex parte temporary restraining orders and authorizes the relief sought in Plaintiff's accompanying motion:

(B) Temporary Restraining Orders.

- (1) A temporary restraining order may be granted without written or oral notice to the adverse party or the adverse party's attorney only if
 - (a) it clearly appears from specific facts shown by affidavit or by a verified complaint that immediate and irreparable injury, loss, or damage will result to the applicant from the delay required to effect

notice or from the risk that notice will itself precipitate adverse action before an order can be issued;

- (b) the applicant's attorney certifies to the court in writing the efforts, if any, that have been made to give the notice and the reasons supporting the claim that notice should not be required.
MCR 3.310(B)(1)(a), (b).

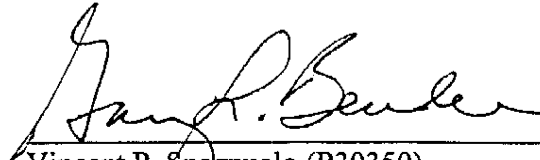
WHEREFORE, Plaintiff requests that this Honorable Court order the following:

- A. Enter an Ex-Parte Order so that Defendant and any of its members shall be immediately enjoined and restrained, directly and indirectly, whether alone or in concert with others, including any officer, agent, employee and/or representative of Defendant and/or any of its members, until further order of this Court, from bringing, carrying, or brandishing any weapon or firearm in CADL's buildings and branches in violation of CADL's Weapons Policy;
- B. The order shall remain in full force and effect until this Court specifically orders otherwise;
- C. Defendant shall show cause before this Court why a preliminary injunction should not be entered according to the terms and conditions set forth above. Said show cause date shall be on ___ day of _____, 2011 at _____.m.; and
- D. Order any such other and further relief as the Court deems just and proper.

Respectfully Submitted,

MURPHY, BRENTON & SPAGNUOLO, P.C.
Attorneys for Plaintiff CADL

Date: Feb 15, 2011



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STATE OF MICHIGAN

IN THE 30TH CIRCUIT COURT FOR THE COUNTY OF INGHAM

CAPITAL AREA DISTRICT LIBRARY,

Plaintiff,

Case No. 11- *200* -CZ

v

HON.

MICHIGAN OPEN CARRY, INC.,

ROSEMARIE E. AQUILINA

Defendant.

Vincent P. Spagnuolo (P30350)
Gary L. Bender (P31557)
Lindsay N. Dangl (P73231)
MURPHY, BRENTON & SPAGNUOLO, PC
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2011 FEB 16 P 1:32
FILED

EX-PARTE TEMPORARY RESTRAINING ORDER

At a session of said Court held in the City of Lansing, Ingham
County, Michigan, on this *16* day of *Feb*, 2011.

PRESENT: HONORABLE

Rosemarie E. Aquilina

This matter having come before this Court pursuant to Plaintiff Capital Area District
Library's ("CADL") Complaint, Motion for Ex-Parte Relief, Affidavit, and Brief in Support
thereof, and the Court being fully advised in the premises;

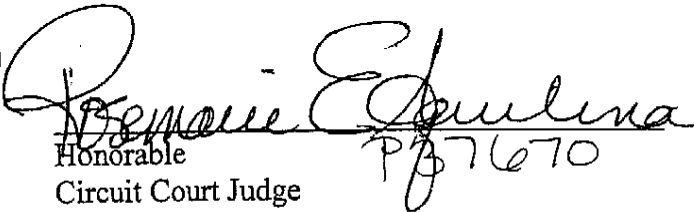
NOW, THEREFORE;

IT IS ORDERED THAT Defendant and its members be immediately enjoined and
restrained, directly and indirectly, whether alone or in concert with others, including any officer,

agent, employee and/or representative of Defendant and/or any of its members, until further order of this Court, from entering any of Plaintiff CADL's buildings or library branches while carrying, brandishing, or concealing without a proper permit, any form of weapon or firearm in violation of CADL's Weapons Policy.

This order shall remain in full force and effect until this Court specifically orders otherwise. Defendants shall show cause before this Court on 24 Feb 11, 2011, at 11⁰⁰ AM or as soon thereafter as counsel may be heard why a preliminary injunction should not be entered according to the terms and conditions as set forth in Plaintiff's motion. No bond is required pursuant to MCR3.310(D).

IT IS SO ORDERED


Honorable
Circuit Court Judge

STATE OF MICHIGAN

IN THE 30TH CIRCUIT COURT FOR THE COUNTY OF INGHAM

CAPITAL AREA DISTRICT LIBRARY,

Plaintiff,

Case No. 11- 200

-CZ

v

HON.

ROSEMARIE E. AQUILINA

MICHIGAN OPEN CARRY, INC.,

Defendant.

Vincent P. Spagnuolo (P30350)
Gary L. Bender (P31557)
Lindsay N. Dangl (P73231)
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**PLAINTIFF'S MOTION FOR PRELIMINARY
AND PERMANENT INJUNCTIVE RELIEF**

NOW COMES Plaintiff, Capital Area District Library ("CADL") by and through its attorneys, Murphy, Brenton & Spagnuolo, P.C., and hereby moves this Honorable Court for preliminary and permanent injunctive relief, pursuant to MCR 3.310 and order Defendants to show cause why a preliminary injunction should not issue for the following reasons:

1. Prior to the filing of this Motion, CADL filed a Complaint, supported by an Affidavit, for Declaratory and Injunctive Relief with the Court.

2. CADL stated in its Complaint that Defendant, through its members, has and continues to unlawfully and improperly bring weapons, including handguns and other firearms, into CADL's buildings and branches in violation of CADL's weapons policy prohibiting all weapons on the premises to the fullest extent permitted by law ("Weapons Policy"). While armed, they have frequented the children's section and teen section of the library.
3. CADL has advised Defendant and its members on numerous occasions that they were in violation of CADL's Weapons Policy and that their continued presence while armed on CADL's premises is a trespass. However, Defendant's members have refused to leave.
4. The Lansing police will not respond to remove these trespassers from CADL's premises.
5. CADL has no adequate remedy at law.
6. Unless injunctive relief is granted preventing Defendant and its members from entering CADL's premises, CADL and its library patrons will face immediate and irreparable danger and harm.
7. Defendant's members have shown their intent to continue entering the library premises while carrying their weapons.

8. It is the express purpose of Michigan Open Carry, Inc. to, “educate and desensitize the public and members of the law enforcement community about the legality of the open carry of a handgun in public; To exercise a natural right to self defense using the most efficient and common tool, a handgun; To demonstrate to the public at large that gun owners are one of the most lawful segments of society and they have nothing to fear from the lawful carry of a firearm; [and] To protect our right to self-defense.” (www.michiganopencarry.org).
9. According to Defendant’s website, the “methods to accomplish objectives” include “To have periodic and informal gatherings in public places throughout the state *while open carrying our handguns.*” (www.michiganopencarry.org, *emphasis added*).
10. Defendant has come into CADL’s library with weapons on multiple occasions and refuse to abide by CADL’s Weapons Policy. The most recent violation of the Weapons Policy occurred on Monday, February 14, 2011.
11. CADL requires injunctive relief in order to protect its patrons and uphold its policy, which was validly enacted, until the legality of the policy is declared by this Court.
12. Neither Defendant nor the public interest will be harmed by the granting of injunctive relief.

13. Defendants will only be prohibited from carrying their weapons in CADL's library branches, as is currently prohibited, until this Court can decide on the legality of the policy. Injunctive relief would maintain the status quo of the parties.
14. Any harm to Defendants by the granting of injunctive relief is outweighed by the harm to CADL and its patrons in the absence of injunctive relief.
15. CADL is seeking to protect the safety of its patrons. Numerous dangers are inherent in having guns in a public location where children are present, including accidental discharge of the weapon.
16. CADL has a substantial likelihood of success on the merits.
17. CADL further relies upon its brief in support, incorporated by reference herein.

WHEREFORE, Plaintiff CADL requests that this Honorable Court order the following:

- A. Defendant and its members immediately be enjoined and restrained, directly and indirectly, whether alone or in concert with others, including any officer, agent, employee and/or representative of Defendant or any of its members, from continuing to unlawfully and improperly enter and remain on CADL's premises while carrying, brandishing, or unlawfully concealing firearms, in violation of CADL's Weapons Policy.
- B. Defendant and its members be permanently enjoined and restrained, directly and indirectly, whether alone or in concert with others, including any officer, agent, employee and/or representative of Defendant or any of its members, from continuing to unlawfully and improperly enter and remain on CADL's premises while carrying, brandishing, or unlawfully concealing firearms, in violation of CADL's Weapons Policy.

Respectfully submitted,

MURPHY, BRENTON & SPAGNUOLO, P.C.
Attorneys for Plaintiff GADL

Dated: February 15, 2011

By: 

Vincent P. Spagnuolo (P30350)

Gary L. Bender (P31557)

Lindsay N. Dangl (P73231)

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STATE OF MICHIGAN

IN THE 30TH CIRCUIT COURT FOR THE COUNTY OF INGHAM

CAPITAL AREA DISTRICT LIBRARY,

Plaintiff,

Case No. 11- 200 -CZ

v

HON. ROSEMARIE E. AQUILINA

MICHIGAN OPEN CARRY, INC.,

Defendant.

Vincent P. Spagnuolo (P30350)
Gary L. Bender (P31557)
Lindsay N. Dangi (P73231)
MURPHY, BRENTON & SPAGNUOLO, PC
Attorneys for CADL
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**BRIEF IN SUPPORT OF PLAINTIFF'S MOTION FOR
PRELIMINARY AND PERMANENT INJUNCTIVE RELIEF**

NOW COMES Plaintiff, Capital Area District Library ("CADL") by and through its attorneys, Murphy, Brenton & Spagnuolo, P.C., and for its Brief in support of its Motion for Preliminary and Permanent Injunctive Relief states:

FACTS

CADL is a duly established district library in accordance with the District Library Establishment Act, MCL §397.171 *et seq.* and has offices located throughout Ingham County, Michigan. Pursuant to MCL §397.182 of the District Library Establishment Act, the district

library board has the authority to, “Adopt bylaws and regulations...governing the board and the district library.” In accordance with the above, CADL’s board has adopted a policy, titled SER 103, which states, “All weapons are banned from Library premises to the fullest extent permitted by law” (hereafter “Weapons Policy”).

Defendant is a Michigan non-profit corporation that supports the open carrying of firearms in all public places. It is the express purpose of Defendant and its members to, “educate and desensitize the public and members of the law enforcement community about the legality of the open carry of a handgun in public; To exercise a natural right to self defense using the most efficient and common tool, a handgun; To demonstrate to the public at large that gun owners are one of the most lawful segments of society and they have nothing to fear from the lawful carry of a firearm; [and] To protect our right to self-defense.” (www.michiganopencarry.org). According to Defendant’s website, the “methods to accomplish objectives” include “To have periodic and informal gatherings in public places throughout the state *while open carrying our handguns.*” (www.michiganopencarry.org, *emphasis added*).

In supposed furtherance of the above objectives, Defendant’s members, in violation of the Weapons Policy, have brought weapons, including rifles and handguns, into CADL’s library branch in downtown Lansing, Michigan, on multiple occasions between December 2010 and the present. On these occasions, Defendant’s members, while armed with firearms, have been in the children’s section and teen section of the library. Patrons have been frightened and disturbed by the presence of guns in the library. Defendant’s members have been told that they were trespassing and told to leave CADL’s premises. Defendant’s members have refused to leave the library premises.

Defendant's members continue to challenge CADL's Weapons Policy by bringing weapons into the downtown library branch. The Lansing police will not respond to remove Defendant's members from the premises, despite the illegal trespass. CADL is left without any further recourse to protect its patrons and enforce the Weapons Policy.

I. PENDING DECLARATORY JUDGMENT, THE COURT SHOULD MAINTAIN STATUS QUO OF PARTIES

CADL has requested the Court to determine whether its Weapons Policy is valid and enforceable. Pending the determination by the Court of that issue, it is important that the *status quo* of the parties be maintained. The Court has broad equitable powers to temporarily enjoin the conduct of the parties until such final order is issued declaring the relative rights and obligations of the parties.

CADL's Weapons Policy already prohibits Defendant and its members from bringing any form of weapons or firearms into CADL's buildings and library branches. CADL is requesting this Court enjoin Defendant and its members from violating the Weapons Policy until this Court enters a declaratory judgment regarding the validity of the policy.

CADL's Weapons Policy was validly enacted by CADL's board and should be enforced until a declaratory judgment is entered regarding the validity of the Weapons Policy. Neither Defendant nor the public interest will be harmed by the granting of injunctive relief. Defendants will only be prohibited from carrying their weapons in CADL's library branches, as is currently prohibited. Injunctive relief would simply maintain the status quo of the parties and ensure the safety of CADL's patrons.

II. ALL OF THE PERTINENT FACTORS WEIGH IN FAVOR OF GRANTING INJUNCTIVE RELIEF IN THIS CASE

To be entitled to a preliminary injunction, a plaintiff must ordinarily show that (1) the public interest will not be harmed if an injunction issues; (2) any harm to plaintiff in the absence of injunctive relief outweighs any harm to defendants if injunctive relief is granted; (3) it is likely that plaintiff will prevail on the merits; and (4) plaintiff will suffer irreparable injury if preliminary injunctive relief is not granted. See *Michigan State Employees Ass'n v Dep't of Mental Health*, 421 Mich 152, 157, 365 NW2d 83, 96 (1984).

First, the public interest will not be harmed if an injunction issues in this case. On the contrary, the public interest will be protected by enforcement of CADL's valid Weapons Policy unless declared otherwise by this Court.

Second, any harm to Plaintiff in the absence of injunctive relief outweighs any harm to Defendant if injunctive relief is granted. Defendant will be temporarily enjoined from violating the policies properly adopted by CADL's board. Defendant and its members will suffer no harm other than Defendant will be required to comply with the current Weapons Policy until the Court declares otherwise. Simply put, CADL is seeking to protect the safety of its patrons. Numerous dangers are inherent in having guns in a public location where children are present, including accidental discharge of the weapon. This is especially true when Defendant and its members are in the children's section of the library. Enforcing CADL's policy, until this Court confirms it is legally valid, will protect CADL patrons from immediate harm to their physical safety. Further, Plaintiff is only requesting injunctive relief until the disputed Weapons Policy can be properly construed through Plaintiff's request for a declaratory judgment.

Third, CADL has a substantial likelihood of success on the merits. Defendant and its members have challenged the legality of this policy, on the grounds that the policy is preempted by the Firearms and Ammunition Act, MCL §123.1101 *et seq.*

Defendant, in challenging the Weapons Policy relies upon MCL §123.1102 of the Firearms and Ammunition Act, which provides,

“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 or other firearms, 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*).

MCL §123.1101 of the Firearms and Ammunition Act defines a **local unit of government** as, “**a city, village, township, or county.**” CADL is an authority, separate and distinct from both the City of Lansing and Ingham County and therefore does not fit the definition of a local unit of government as defined by statute.

CADL, as a district library, is an **authority**. MCL §397.177. CADL was formed pursuant to the District Library Establishment Act, MCL §397.171 *et seq.*, and a District Library Agreement, dated March 10, 1997, between Ingham County and the City of Lansing. CADL has its own governing board, separate and independent from either of the units of government that created it, pursuant to the District Library Establishment Act, *supra*. CADL’s board alone, without the consent or approval of the units of government that established it, has the power to maintain and operate a public library, appoint and remove officers and employees, purchase, sell, convey, lease, or otherwise acquire or dispose of personal property, erect buildings, enter into contracts, adopt bylaws and regulations, propose and levy a tax, borrow money, issue bonds, and accept gifts. MCL §397.182.

A “local unit of government” as used in MCL §123.1102 of the Firearms and Ammunition Act is clearly limited to a “city, village, township, or county.” The Legislature did not include an “authority” in this list. It is a maxim of statutory interpretation that, “*Expressio unius est exclusio alterius*,” the express mention of one thing excludes all others. This maxim is “a rule of construction that is a product of logic and common sense.” *Hoerstman Gen. Contr., Inc. v Hahn*, 474 Mich 66 (2006). The maxim “is a product of ‘logic and common sense.’ It expresses the learning of common experience that when people say one thing they do not mean something else.’...Furthermore, the principle of *expressio est unius exclusio alterius* is well recognized throughout Michigan jurisprudence.” *Feld v. Robert & Charles Beauty Salon*, 435 Mich 352 (1990). “The Legislature is presumed to have written the statute to mean what the Legislature intended it to mean.” *McCahan v Brennan*, ___ Mich App ___ (February 1, 2011, No. 292379).

If the Legislature had intended authorities to be included as a local unit of government under MCL §123.1102 of the Firearms and Ammunition Act it would have stated such. The Legislature has included authorities in the definition of local unit of government in other statutes, *See* MCL §124.753 (“‘Local unit of government’ means a city, village, township, county, or any intergovernmental, metropolitan, or local department, agency, or *authority*, or other local political subdivision.”); MCL §21.233 (“‘Local unit of government’ means a political subdivision of this state, including school districts, community college districts, intermediate school districts, cities, villages, townships, counties, and *authorities*...); MCL §123.1193 (“‘Local unit of government’ means a political subdivision of this state, including, but not limited to, a county, city, village, township, district, local *authority*, intergovernmental *authority*, or intergovernmental entity.”); MCL §169.209 (“‘Local unit of government’ means a

district, *authority*, county, city, village, township, board, school district, intermediate school district, or community college district.”). The Legislature knows how and has included authorities in the definition of local unit of government in other statutes. It did not do so here.

Since CADL is an authority, not a city, township, county or village, CADL is not a “local unit of government” as defined by statute and is not preempted by MCL §123.1102 of the Firearms and Ammunition Act. CADL’s policy prohibits weapons on its premises, “to the fullest extent permitted by law.” The Firearms and Ammunition Act only prohibits a local unit of government, i.e., a city, village, township, or county, from regulating the use of firearms. As CADL is not prohibited from enacting such a policy pursuant to the Firearms and Ammunition Act, CADL’s Weapons Policy is valid and enforceable.

In addition to the above, CADL’s downtown Lansing library branch qualifies as a gun free school zone pursuant to MCL §750.237a. MCL §750.237a specifically prohibits possession of any form of a gun in a weapon free school zone.

A “weapon free school zone” is defined as, “school property.” MCL §750.237a. “School property” is defined as, “a building, playing field, or property *used* for school purposes to impart instruction to children *or used* for functions and events sponsored by a school.” MCL §750.237a. Using the definitions above, a weapon free school zone includes a building, playing field, or other property that is *used* in connection with a public, private, or other parochial school for purposes of instructing children *or* for functions and events sponsored by a school. The definition of a weapon free school zone is based on what purpose the property is used for. As the definition is based on *use* of the property, the Legislature intended that property owned by someone else, but used in connection with educational purposes of children be included in the weapons free school zone. The purpose of CADL’s library branches is as a place of learning and

instruction to both children and adults. CADL's downtown Lansing library branch is leased space from the Lansing School District. As CADL's library branches are used in connection with the instruction of children, CADL's buildings and branches qualify as gun free school zones and weapons are not permitted on those premises.

CADL and its patrons will suffer irreparable injury and immediate harm if injunctive relief is not granted. CADL is seeking to protect the safety of its patrons. Numerous dangers are inherent in having guns in a public location where children are present, including accidental discharge of the weapon. Patron safety, especially the safety of children, is of the utmost importance. CADL's Weapons Policy prohibiting all weapons on the premises, to the fullest extent permitted by law, protects its patrons from the inherent dangers of firearms while the patrons are using the library. Even if the person carrying the weapon does not intend to do harm, the weapon could be taken away from him by someone else or could accidentally fire. The sight of guns in the library is alarming patrons. In order to protect the safety of its patrons and to ensure the uninterrupted continuation of library purposes, CADL's Weapons Policy must be enforced.

Given the above, Defendant and its members should be immediately enjoined from bringing weapons into CADL's buildings and library branches until Plaintiff's Declaratory Action is decided by the Court.

CONCLUSION

For the reasons set forth above, Plaintiff prays that this Honorable Court enter appropriate orders for equitable relief as prayed for in Plaintiff's Motion.

Respectfully submitted,

MURPHY, BRENTON & SPAGNUOLO, P.C.
Attorneys for Plaintiff

Dated: February 15, 2011

By: 

Vincent P. Spagnuolo (P30350)

Gary L. Bender (P31557)

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