STATE OF MICHIGAN
IN THE SUPREME COURT

CAPITAL AREA DISTRICT LIBRARY,

Plaintiff-Appellant,

-vs-

MICHIGAN OPEN CARRY, INC.,

Defendant-Appellee.

Supreme Court No. 146596
Court of Appeals No. 304582
Lower Court Case No. 11-200-CZ

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BRIEF *AMICUS CURIAE* OF THE MICHIGAN MUNICIPAL LEAGUE AND MICHIGAN ASSOCIATION OF POLICE CHIEFS IN SUPPORT OF PLAINTIFF-APPELLANT CAPITAL AREA DISTRICT LIBRARY

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STATEMENT OF THE BASIS OF JURISDICTION

On January 28, 2013, Plaintiff-Appellant Capital Area District Library (CADL) timely filed its application for leave to appeal from the October 25, 2012 decision of the Court of Appeals, reported in *Capital Area District Library v Michigan Open Carry, Inc.*, 298 Mich App 220; 826 NW2d 736 (2102), following denial of reconsideration by the Court of Appeals on December 18, 2012. This Court has jurisdiction to consider and grant the application under MCR 7.301(A)(2).

STATEMENT OF THE QUESTIONS PRESENTED

I. MCL 123.1102 prohibits a local unit of government from adopting an ordinance or other regulation relating to "the ownership, registration, purchase, sale, transfer, transportation, or possession of pistols or other firearms . . . except as otherwise provided by federal law or a law of the state." MCL 123.1101 defines a local unit of government as "a city, village, township, or county." The Court of Appeals correctly concluded that CADL, as a district library authority, was not *expressly* preempted by MCL 123.1102 from adopting a weapons policy prohibiting firearms within the library. However, the Court of Appeals went on to find that CADL was still subject to preemption rules and that the policy was preempted under an *implied* field preemption analysis using the four-part test in *People v Llewellyn*. ***Should this Court grant leave to appeal and reverse the Court of Appeal's finding of implied preemption on the basis that MCL 123.1102 by its terms does not apply to district libraries, which should have ended the preemption inquiry?***

Plaintiff/Appellant CADL answers: Yes
Defendant/Appellee MOC answers: No
The Court of Appeals would answer: No
Amici Curiae MML and MAPC answer: Yes

II. The Court of Appeals' implied field preemption analysis relies heavily on its earlier decision in *Michigan Coalition of Responsible Gun Owners v Ferndale*, and as a result (1) incorrectly concludes that CADL is a local unit of government even though MCL 123.1101 says it is not; (2) reads the prohibitive language of MCL 123.1102 too broadly, and CADL's authority to enact the policy too narrowly; and (3) ignores the exception language in MCL 123.1102 providing that the prohibition applies "except as otherwise provided by...a law of this state," which would include the District Library Establishment Act, a law of this state that otherwise allows CADL to control conduct on its own property, consistent with the constitutional authority for its enactment. ***Should the Court grant leave to appeal and reverse the Court of Appeals' finding of implied field preemption because it did not properly read or apply MCL 123.1102?***

Plaintiff/Appellant CADL answers: Yes
Defendant/Appellee MOC answers: No
The Court of Appeals would answer: No
Amici Curiae MML and MAPC answer: Yes

II. CADL alleges—and Appellee MOC does not disagree—that individuals entered CADL's property with a shotgun/rifle and holstered handguns. MOC also does not disagree that the individuals were in the library for the primary purpose of displaying the fact that they were carrying guns. CADL argues that, under the circumstances, such activity constitutes brandishing a firearm, which is prohibited by law. The circuit court did not reach that question, because it ruled in CADL's favor on preemption; the Court of Appeals did not address this issue. ***Should this Court grant leave to appeal to address whether the described activity constitutes brandishing a firearm?***

Plaintiff/Appellant CADL answers: Yes
Defendant/Appellee MOC answers: No
The Court of Appeals would answer: No
Amici Curiae MML and MAPC answer: Yes

INTRODUCTION

The Court of Appeals in this case found that the Capital Area District Library (CADL) does not have the right to enact or enforce, as to pistols and other firearms, a policy banning all weapons "from Library premises"—that is, entirely on its own properties, and in its own buildings—because the policy is preempted by MCL 123.1102, part of the state's firearms laws. This Court should grant CADL's application for leave to appeal because the Court of Appeals' published decision is clearly wrong.

The Court of Appeals makes three core rulings in its opinion:

- That CADL in fact had the general authority to adopt a weapons policy under Const 1963, art 8, §9, which authorizes legislation required to create a district library, and CADL's enabling legislation, the District Library Establishment Act (DLEA), MCL 397.171 *et seq.* *CADL v Michigan Open Carry, Inc.*, 298 Mich App 220, at 228.

- That the weapons policy is not *expressly* preempted by the provision of the state's gun laws at issue, MCL 123.1102, because a related section of the same law, MCL 123.1101 separately narrowly defines a local unit of government to be "a city, village, township, or county," and the CADL does not fit that definition. *Id.* at 231.

- That, even though the CADL is not a "local unit of government" for purposes of the Court's express preemption analysis under MCL 123.1102, its weapons policy is nonetheless preempted under the separate concept of *implied preemption* known as "field preemption," which would still apply to the CADL as a "quasi-municipal corporation"—and, apparently, as a local unit of government despite the definition to the contrary—that is subject to general state law preemption. The Court of Appeals finds implied field preemption on the basis that the state has fully occupied "the field of regulation that the library's weapons policy attempts to regulate: the possession of firearms." *Id.* at 238.

The first two conclusions are correct and should be upheld. The state constitution and the DLEA clearly establish CADL's authority to adopt a weapons policy. And MCL 123.1102 by its terms applies only to a "local unit of government," which is defined in MCL 123.1101 as "a city, village, township, or county." CADL is a district library authority, and therefore does not fit that definition.

The third conclusion is incorrect. The Court of Appeals should not have applied the doctrine of implied preemption in this case, given the clear definition in MCL 123.1101. But even if engaging in an implied preemption analysis was appropriate or permissible, the Court's conclusion was incorrect in large part because of the Court's reliance on its decision in an earlier Court of Appeals case, *Mich Coalition for Responsible Gun Owners v Ferndale*, 256 Mich App 401; 662 NW2d 864 (2003), in which the Court held that the City of Ferndale was preempted by MCL 123.1102 from enacting or enforcing an ordinance against weapons in its municipal buildings. *Mich Coalition* was also wrongly decided, and this Court could, by granting leave to appeal, correct the misreading of MCL 123.1102 that began with that case.

MCL 123.1102 says exactly to whom it was intended to apply. District libraries like CADL are not on that list. The Court of Appeals' decision should therefore have ended with its acknowledgment of that fact. For the Court of Appeals to continue its analysis and find that the Legislature *impliedly* intended to cover district libraries like CADL within that list violates every canon of statutory construction requiring courts to apply statutory language as written. This Court should adopt the position of the dissent in this case, which would have stopped the analysis after the review of the actual terms of MCL 123.1101 and MCL 123.1102.

But the Court of Appeals majority also gets the implied preemption analysis wrong, repeating and compounding the errors it made a decade ago in the *Mich Coalition* case. First, the language of MCL 123.1102 is not as clear and unambiguous as the Court asserts:

> 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.

This case of course focuses on the effect of the above provision on a policy that precludes "possession" of a weapon. But a closer examination—one that considers the full list

of activities listed in the statute—reveals that the scope and effect of the specific language of MCL 123.1102 is not as clear as it might seem. The Court of Appeals' broad application of the language prohibiting certain ordinances and regulations to include even policies governing conduct on CADL's own properties or in its own buildings produces a prohibition so extensive that it clearly exceeds the Legislature's intended result.

Does the Court of Appeals really mean to conclude, for example, that the CADL must allow its visitors to "purchase" guns in its buildings? Say, in the lobby or in the bathroom? Or that someone may set up a table in the children's section of the library to conduct the "sale" of guns and CADL may not "regulate in any...manner" that activity? Does CADL now need to allow people to use its loading area to facilitate the "transportation" of firearms? The Court of Appeals' too-broad reading of the statute would require those questions to be answered in the affirmative—a result not likely intended by the Legislature.

Part of the problem is the Court of Appeals' misidentification of the "field of regulation" at issue. The library's weapons policy is not, in the common sense of the term, a "firearms regulation." The "field" in question is the conduct of individuals on property and in buildings that CADL owns and controls. CADL is controlling, on its own property and in the exercise of its rights of ownership and control thereof, conduct that it has determined affects its provision of public services, through a policy that it has concluded gives some measure of order to its operations and protection to its patrons and its employees. By contrast, the Legislature in MCL 123.1102 is concerned with a much broader field of legislative activities by local governments who might otherwise regulate in such a way as to affect guns sales and purchases, gun possession, etc., on a wide and general basis.

CADL is a creature of both the state constitution (Const 1963, art 8, § 9) and a state statute, the DLEA, both of which authorize the weapons policy, as even the Court of Appeals admits. CADL's policy relating to weapons in its buildings is one of purely local concern—and of

local *responsibility*—and had the Court of Appeals in this case given the required deference to CADL's broad constitutional and statutory authority under those laws it would have had to reach a finding of no implied preemption.

The Court of Appeals also completely ignores the fact that MCL 123.1102 contains an exception clause: "except as otherwise provided by . . . a law of this state." The DLEA is a law of this state, and it gives CADL the right to adopt a weapons policy applicable to the use of its property. There is nothing in the exception that states that it means or only applies to *other gun and firearms laws*. There is no basis, in other words, to conclude that the Court can only look at other statutory regulations for concealed carry, or limitations on possession in arenas or schools or bars or the like. As to its own properties and buildings, governmental entities should have no fewer rights than do private property owners to make sure that their premises are safe, secure, accessible, and inviting to those who have business there. By ignoring it, the Court of Appeals' decision effectively reads the exception language out of the statute, contrary to all well-established rules of statutory construction.

The Court apparently felt obligated by the *Mich Coalition* decision to reach the erroneous conclusion that it did. It read the finding of preemption in that case—which involved a city, therefore triggering MCL 123.1102 directly—to necessarily extend to a district library. The Court decided that it would "def[y] the purpose of" MCL 123.1102 if two cities could combine and adopt as an authority a weapons policy that they could not themselves separately adopt. That is a fair point—but the Court of Appeals unfortunately draws the wrong conclusion from it. Instead of concluding that a district library authority must somehow be a local unit of government even though the definition says otherwise, the Court of Appeals should have stopped to consider that, perhaps, the finding of local preemption a decade ago in *Mich Coalition* is where the problem lies.

Both this case and the *Mich Coalition* case are published decisions. They involve legal principles of major significance to the state's jurisprudence. MCR 7.302(B)(3). This Court should grant leave to appeal in this case to correct the clear errors of law and the misconstruction of MCL 123.1102 found in this most recent Court of Appeals decision, and to confirm the constitutional and statutory authority of CADL—and similarly-situated local government units—to control their own properties.

STATEMENT OF FACTS/COURT OF APPEALS DECISION

Amici adopt the Statement of Facts set forth in the CADL's application for leave to appeal, but submit the following additional discussion of the Court of Appeals' decision.

The Court of Appeals begins by noting that the state Constitution, at Const. 1963, art 8, § 9, contemplates the establishment of public libraries, including district libraries. *CADL, supra*, at 228. The Court also acknowledges the existence of the DLEA, MCL 397.171, *et seq.*, and that MCL 397.182(1)(f) specifically allows a district library to "supervise and control district library property," and that MCL 397.182(1)(h) allows it to adopt by-laws and rules. *Id.* at 228-229. The Court of Appeals thus concludes that CADL had the general authority to adopt the weapons policy in the course and conduct of its regular business. *Id.* at 230.

The Court then moves on to its preemption discussion. Its first conclusion is that there is no express preemption under MCL 123.1102, because CADL is not a local unit of government as defined in the section preceding it, MCL 123.1101(a), which reads in relevant part: "'Local unit of government' means a city, village, township, or county." The Court points out that a district library is not "owned" by any one city, village, township, or county, but is instead created as an authority by two more of those entities. It therefore concludes that the CADL is "not expressly barred by MCL 123.1102 from imposing firearms regulations." *Id.* at 230-231.

While the dissent suggests that the majority opinion should have stopped at that point in its analysis, the Court instead moves on to an implied preemption analysis under the four-

part test in *People v Llewellyn*, 401 Mich 314; 257 NW2d 902 (1977),[1] which relates to "field preemption":

> Because we are dealing with regulation by a governmental agency in an area that is regulated by the state, we are bound to apply Michigan's doctrine of field preemption in determining whether the state has occupied the field of gun regulation to the exclusion of other local units of government such as a district library. *Id.* at 231.

In other words, the Court here concludes that, even though MCL 123.1102 does not apply to CADL directly or expressly, because it is not a local unit of government as defined in that law, that does not mean that the CADL is not a local unit of government for a different, broader preemption analysis.

After explaining that the CADL is a quasi-municipal corporation subject to regulation by the state and possible preemption under *Llewellyn*, the Court applies the four-part test and finds that the state has occupied the entire field of "gun regulation." *Id.* at 234. The Court then finds as follows:

(1) While the Legislature failed to include district libraries in the definition of local unit of government, a district library "is nevertheless a local unit of government," and the legislative history of MCL 123.1102 "supports a finding that *the purpose of the statute would only be served by leaving it to the state to regulate firearm possession in all buildings established by local units of government, including district libraries.*" (Emphasis added.) *Id.* at 236.

(2) The state's regulatory scheme, including all of the various gun laws, is pervasive and demonstrates that the Legislature intended to occupy "the field of firearms regulation that the library's weapons policy attempts to regulate: the possession of firearms." *Id.* at 239.

(3) The nature of the regulated subject matter requires uniformity to be achieved, because otherwise citizens would not know where they were permitted to carry guns in buildings owned by local units of government. *Id.* at 240.

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[1] The implied preemption test in *People v Llewellyn* requires a court to evaluate (1) whether there is an express intent to occupy the field of regulations; (2) whether the legislative history of that law at issue discloses such an intent; (3) whether the legislative scheme is so pervasive that there is no room left for a local regulations; and (4) whether the legislative scheme reflects a need for uniformity of regulation within the state as a whole.

Judge Gleicher, in dissent, agrees only with the initial conclusion that district libraries do not fall within the definition of local unit of government in MCL 123.1101. According to Judge Gleicher, by failing to concede that the Legislature *intentionally* left district libraries and other authorities off that list, the majority is essentially substituting its opinion on a matter of policy (i.e., which units of local government the prohibition will apply to) for the Legislature's stated exercise of discretion. *Id.* at 245.

The Court of Appeals' decision overturns the circuit court's grant of declaratory and injunctive relief to CADL that had upheld the weapons policy and permanently enjoined Appellee MOC's members from open carrying in the CADL's buildings. The Court does not address CADL's alternative argument that the open carrying of rifles or holstered pistols constitutes in the CADL's buildings brandishing; the circuit court did not reach that issue either.

STANDARD OF REVIEW

The trial court below granted summary disposition to CADL on its request for declaratory and injunctive relief, finding that CADL was authorized to adopt the weapons policy and that the policy is not preempted by state law, including MCL 123.1102. A trial court's determination to grant summary disposition is reviewed by an appellate court *de novo*. Issues of statutory interpretation and other questions of law are reviewed *de novo*. *DEQ v Worth Twp*, 491 Mich 227, 237-238; 814 NW2d 646 (2012); *2000 Baum Family Trust v Babel,* 488 Mich 136, 143; 793 NW2d 633 (2010); *Eggleston v Bio–Med. Applications of Detroit, Inc.,* 468 Mich 29, 32, 658 N.W.2d 139 (2003). The determination whether a local regulation is preempted is a question of law. *Ter Beek v City of Wyoming*, 297 Mich App 446, 452; 823 NW2d 571 (2007). Issues of constitutional interpretation are also reviewed *de novo*. *Wayne County v Hathcock*, 471 Mich 445, 455; 684 NW2d 765 (2004).

ARGUMENT

I.

MCL 123.1102 prohibits a local unit of government from adopting an ordinance or other regulation relating to "the ownership, registration, purchase, sale, transfer, transportation, or possession of pistols or other firearms . . . except as otherwise provided by federal law or a law of the state." MCL 123.1101 defines a local unit of government as "a city, village, township, or county." The Court of Appeals correctly concluded that CADL, as a district library authority, was not *expressly* preempted by MCL 123.1102 from adopting a weapons policy prohibiting firearms within the library. However, the Court of Appeals went on to find that CADL was still subject to preemption rules, and that the policy was preempted under an *implied* field preemption analysis using the four-part test in *People v Llewellyn*. ***This Court should grant leave to appeal and reverse the Court of Appeal's finding of implied preemption on the basis that MCL 123.1102 by its terms does not apply to district libraries, which should have ended the preemption inquiry.***

CADL's authority to enact policies relating to the regulation of its property is not disputed by MOC, and was in fact conceded by the Court of Appeals itself at the outset of its analysis. The Court of Appeals properly cited CADL's broad authority under Const 1963, art 8, § 9:

> The legislature shall provide for the establishment and support of public libraries which shall be available to all residents of the state under *regulations adopted by the governing bodies thereof.* (Emphasis added.)

This language allows for the creation of a district library and, according to the Court itself, grants such a library, once established, the "discretion to adopt regulations pertaining to the library's governance, function, and management of its resources." *Goldstone v Bloomfield Township Public Library*, 268 Mich App 642, 647; 708 NW2d 740 (2005).

The Court of Appeals also acknowledged the DLEA, and more specifically MCL 397.182(1), which contains a broad list of authority and responsibilities the import of which is to grant district libraries absolute control of their facilities; taken together, the list clearly envisions the adoption by a district library of regulations relating to conduct of individuals while they are on its properties:

(1) A board may do 1 or more of the following:

(a) Establish, maintain, *and operate a public library* for the district.

* * *

(f) *Supervise and control district library property.*

* * *

(h) *Adopt bylaws and regulations, not inconsistent with this act, governing the board and the district library.*

* * *

(m) *Do any other thing necessary for conducting the district library service, the cost of which shall be charged against the district library fund.* (Emphasis added.)

This Court discussed the extent of a library's local authority in *Goldstone v Bloomfield Twp Public Library, 479 Mich 554, 563; 737 NW2d 476 (2007)*:

> Acting pursuant to its constitutional obligation to "provide by law for the establishment and support of public libraries which shall be available to all residents of the state," the Legislature has enacted numerous laws. *The premise of these laws appears to be that the mandate of the constitution can best be achieved by (a) the encouragement of local control.* . . . (Emphasis added.)

So, the Court of Appeals' conclusion below that "the trial correctly held that CADL has the authority under the DLEA to adopt the weapons policy," is clearly correct and should be affirmed.

The Court of Appeals also correctly concludes that MCL 123.1102 does not by its terms "bar" (i.e., preempt) CADL's weapons policy, because the CADL is not a "local unit of government" as defined in MCL 123.1101. The principles of statutory construction could not be clearer on this point. When interpreting statutory language, a court ascertains the legislative intent that may be reasonably inferred from the words expressed in the statute. *Wickens v Oakwood Health Care System*, 465 Mich 53, 60; 631 NW2d 686 (2001). Courts then "effect the Legislature's intent, relying on the plain language of the . . . statute itself." *Joseph v Auto Club Ins Assoc*, 491 Mich 200, 215; 815 NW2d 412 (2012). To arrive at the legislative intent, a court

must "interpret th[e] words in [the statute in] light of their ordinary meaning and their context within the statute and read them harmoniously to give effect to the statute as a whole." *People v Peltola*, 489 Mich 174, 181; 803 NW2d 140 (2011).

Courts must also read *all* the words in a statute. As this Court stated in *Koontz v Ameritech Services, Inc.*, 466 Mich 304, 312 (2002), "Courts must give effect to every word, phrase, and clause in a statute, and must avoid an interpretation that would render any part of the statute language surplusage."

CADL is not a city, village, township, or county. It is an authority created by statute. The Legislature did not include an authority in the definition in MCL 123.1101. It explicitly used *only* the words "city, village, township, and county." The Legislature certainly knows how to include local government authorities in definition of local unit of government. It has done so, for example, in the Land Bank Fast Track Act, MCL 124.753; the State Disbursements to Local Unit of Government Act, MCL 21.233; the Michigan Campaign Finance Act, MCL 169.209; the General Property Tax Act, MCL 211.24f; the Budget and State Accounts Act, MCL 21.233. No doubt there are more examples.

By going beyond the definitional language of MCL 123.1101 to see if the Legislature really meant to do something else, the Court of Appeals impermissibly exceeded its review authority. "Generally, when language is included in one section of a statute, but omitted from another section, it is presumed that the drafters acted intentionally and purposely in their inclusion or exclusion." *Id.* at 146. Courts "cannot assume that the Legislature inadvertently omitted from one statute the language that it placed in another statute, and then, on the basis of that assumption, apply what is not there." *Id.* at 147. Rather, "where the language of a statute is clear, it is not the role of the judiciary to second-guess a legislative policy choice; a court's constitutional obligation is to interpret, not rewrite, the law." *Ambs v Kalamazoo County Road Comm*, 255 Mich App 637, 650; 662 NW2d 424 (2003).

The Court of Appeals apparently believes that that the Legislature somehow failed to make itself clear on the question whether other types of governmental entities are to also be precluded from enacting certain regulations. In fact, the Legislature has said *exactly* who shall not enact or enforce an ordinance or regulation—a city, village, township, or county. Moreover, given the language chosen for MCL 123.1102, it is fairly easy to conclude that the Legislature actually meant what it said as far as its limitation to cities, villages, townships, and counties. Those entities are truly "regulatory" agencies. They have legislative bodies that enact legislation by way of ordinances; library authorities do not. They also often have the ability to regulate the registration, sale, purchase, and transportation of things; library authorities do not.

When the whole list of activities that a local unit "shall not" regulate—the ownership, registration, purchase, sale, transfer, transportation, or possession of pistols or other firearms—is read together and in context with what cities, villages, townships, and counties typically do that district libraries do not, it is perfectly rational to conclude that the prohibition at issue has to do with the exercise of broad police power authority, and not the mere regulation of conduct on a district library's own properties and buildings. When read in that larger context, it is apparent that the Legislature fully *intended* not to include authorities like the CADL in the list of local government entities expressly covered from the statutory prohibitions.

The Court of Appeals' task was to read the language that the Legislature actually wrote. If the Legislature had not defined the term "local unit of government" then the machinations that the Court of Appeals has to go through to find a library authority to be preempted might make more sense. Since the Legislature did expressly define that term in MCL 123.1101, though, what the Court's decision amounts to is, at best, simply rewriting the statute instead of applying it, or, at worst, second-guessing it. *Ambs, supra.*

After finding that MCL 123.1102 does not expressly apply to CADL, the Court of Appeals should have stopped its analysis and affirmed the circuit court's ruling below. Its decision to

continue its analysis to see if a different legislative intent could be rooted out somehow by reference to something other than the words of the statute took it down the same confusing path that it first trod in *Mich Coalition*—and led to the same set of erroneous conclusions that give insufficient weight and consideration to local authority in the management and control of purely local concerns like conduct within and on municipally-owned property.

II.

> The Court of Appeals' implied field preemption analysis relies heavily on its earlier decision in *Michigan Coalition of Responsible Gun Owners v Ferndale*, and as a result (1) incorrectly concludes that CADL is a local unit of government when MCL 123.1101 says it is not; (2) reads the prohibitive language of MCL 123.1102 too broadly, and CADL's authority to enact the policy too narrowly; and (3) ignores the exception language in MCL 123.1102 providing that the prohibition applies "except as otherwise provided by...a law of this state," which would include the District Library Establishment Act, a law of this state that otherwise allows CADL to control conduct on its own property, consistent with the constitutional authority for its enactment. ***The Court should grant leave to appeal and reverse the Court of Appeals' finding of implied field preemption because it did not properly read or apply MCL 123.1102.***

The Court of Appeals starts its field preemption analysis by stating that, as a district library, CADL is a quasi-municipal corporation, and that as such it is subject to preemption rules. *CADL, supra*, at 232. Citing *Mich Coalition,* the Court then finds that, while MCL 123.1102 does not expressly *say* that it is occupying the field of gun regulation, it does in fact expressly—albeit indirectly—occupy the field of gun regulation as applied to cities, villages, townships, and counties, by virtue of its exclusion of those particular units of local government from that field:

> With the pronouncement in § 1102, the Legislature stripped local units of government of all authority to regulate firearms by ordinance or otherwise with respect to the areas enumerated in the state, except as particularly provided in other provisions of the act and unless federal or state law provided otherwise. Unlike some other statutes, § 1102 does not use language to the effect that the act "occupies the whole field of regulation," but rather expressly removes the power of local units of government to regulate in the field. *The effect is to occupy the field to the exclusion of local units of government. In other words, although*

> *stated in the negative, rather than the affirmative, the statutory language of § 1102 demonstrates that, in effect, state law completely occupies the field of regulation that the Ferndale ordinance seeks to enter, to the exclusion of the ordinance, although subject to limited exceptions.* See *Llewellyn, supra* at 322, 257 NW2d 902. With the enactment of § 1102, the Legislature made a clear policy choice to remove from local units of government the authority to dictate where firearms may be taken. (Emphasis added.)

Mich Coalition, 256 Mich App at 413-414. In effect, the Court of Appeals says, *Mich Coalition* held that there is a category of "express implied preemption" under *Llewellyn*, and that MCL 123.1102 falls into that.

The Court of Appeals then insists that it is "bound by [the] field preemption analysis in *Mich Coalition*." *Id.* at 232. The Court completes its argument by concluding that, no matter what the actual definition of local unit government is in MCL 123.1101, CADL is for all practical purposes a local unit of government and therefore preempted from enacting its policy by MCL 123.1102. While the Court includes some discussion of other state firearms regulations in its *Llewellyn* analysis, it leaves no doubt that its conclusion is that MCL 123.1102 does in fact apply to CADL despite its narrow definition of local unit of government: "We reverse the trial court's judgment upholding CADL's weapons policy to the extent that it attempts to regulate firearms contrary to the restrictions set forth in MCL 123.1102...."

The Court's reliance on *Mich Coalition* to assist it in deciding this case is problematic for three reasons. First, *Mich Coalition* is plainly inapplicable to the situation before the Court, because the *Mich Coalition* decision flows entirely from the fact that the defendant there, the City of Ferndale, fell squarely within the definition of local unit of government that the Court concedes does not apply here. The analysis—or lack thereof—of MCL 123.1102 in *Mich Coalition* therefore doesn't translate to or fit the CADL.

Second, because the Court in *Mich Coalition* stopped its analysis at the "express" field occupation prong of *Lewellyn*, it did not look at the other factors of the test and therefore did

not discuss the limitations on the application of MCL 123.1102 to local units of government under constitutional rules, including the rules applicable to district libraries and those requiring courts to "liberally construe" the rights and authorities of local units of government. Given the Court of Appeals' finding that, for purposes of its implied preemption analysis, CADL is "nevertheless" a local unit of government, those liberal construction rules should have been applied in its favor.

And, finally, because it did not figure prominently in the *Mich Coalition* analysis, the Court in this case completely ignores the exception language in MCL 123.1102. The existence of a specific exception to a legislative prohibition would be relevant to a court's analysis of field preemption on any subject, not just firearms, and in this case should have caused it to make a finding of no preemption.

Throughout its implied field preemption analysis, the Court struggles to make applicable to district libraries a statute that on its face says otherwise. The Court also goes out of its way at the beginning of its opinion to point out that it is not deciding who has the better "moral argument" (*CADL, supra*, at 224) and at the end of its opinion to note that the idea of guns in district libraries "is alarming and an issue of great concern." (*Id.* at 241). Had it undertaken a full reading of the statute and noted the defects in *Mich Coalition,* the Court in this case might have reached a decision that it could find both less troubling and more in keeping with the Legislature's actual intent.

1. The Court of Appeals incorrectly concludes, on the basis of its earlier decision in *Mich Coalition*, that CADL is a local unit of government when MCL 123.1102 expressly says that it is not.

After concluding that a district library is a quasi-municipal corporation made up of governmental entities that would otherwise be preempted under MCL 123.1102 and then citing its earlier conclusion in *Mich Coalition* that a city like Ferndale is subject to field preemption by virtue of the express language in MCL 123.1102, the Court of Appeals decides that it would

make no sense for two preempted entities to be able to band together to form an authority that would *not* be preempted—and so it simply decides that the Legislature must actually have meant to include local authorities in the concept of local units of government. The Court, in other words, decides that local district libraries are local units of government *no matter what the Legislature says*:

> *Although not included in the definition of "local unit of government" set forth in MCL 123.1101(a), a district library is nevertheless a local unit of government. Excluding a district library from the field of regulation—simply because it is established by two local units of government instead of one—defies the purpose of the statute and would undoubtedly lead to patchwork regulation.* Every district library in the state of Michigan could enact its own unique rules and regulations regarding firearms possession, leaving to the public the obligation of determining where they can bring—or avoid—guns. Thus, while the express language of the statute fails to include a district library in its definition of local units of government, the legislative history supports a finding that the purpose of the statute would only be served by leaving it to the state to regulate firearm possession in all buildings established by *local units of government, including district libraries*. (Emphasis added.)

CADL, supra, at 236-239. At the end of its opinion, the Court confirms its ultimate conclusion: "the same regulations that apply to public libraries established by one local unit of government apply to those established by two or more local units of government." *Id.* at 239. How else, the Court implicitly asks, could the statute be read in light of *Mich Coalition*?

But the preemption analysis in *Mich Coalition* abruptly ended with the Court's finding that Ferndale was a *city*. The *Mich Coalition* Court did not go through the other steps in *Llewellyn*; it did not evaluate the legislative history of MCL 123.1102, or the pervasiveness of the state's laws on the issue sought to be regulated by Ferndale, or the need for uniformity in local regulations. Those things were not relevant to the decision in *Mich Coalition*—but they are relevant in this case if the intent is to find implied preemption. Moreover, and more importantly, as it turns out, *Mich Coalition* did not engage in the kind of detailed analysis of MCL

123.1102 that it should have; it saw that Ferndale's ordinance related to possession of firearms, saw that same word appear in MCL 123.1102, and found preemption. As explained further below, *Mich Coalition's* analysis was lacking in several important respects.

The stated basis for the Court's conclusion here that district libraries are local units of government even though they are not listed in MCL 123.1101 is also odd. Its argument is shoehorned into an analysis of the second prong of *Llewellyn*—dealing with the legislative history of MCL 123.1102. But there is no reference to district libraries in the legislative history for MCL 123.1102. The analyses refer instead to a proliferation of local regulation and concerns about local authority to enact regulations. Again, the Legislature certainly knew how to include authorities in a list defining local units of government as noted above. The language of the legislative history seems instead to contemplate exactly the sort of regulatory entities that it in fact did list in the definition. The use of the words "ordinance," "regulation," and "regulate," for example, makes no sense in the context of a district library, but does when applied to a city, village, township, or county.

As this Court has cautioned on numerous occasions, "The argument that enforcing the Legislature's plain language will lead to unwise policy implications is for the Legislature to review and decide, not [the] Court." *Halloran v Bhan*, 420 Mich 572, 579; 683 NW2d 129 (2004); see also *Jones v Dept. of Corrections*, 468 Mich 646; 664 NW2d 717 (2003). In this case, it's not as though the Court first found the language of MCL 123.1101 to be ambiguous or in need of construction; the Court acknowledges in several places in its opinion that the definition *clearly* does not include CADL.

The Court of Appeals admittedly found itself in an odd position, in which applying the plain language of the definition of local unit of government—an unambiguous, intentional choice of words—"defies the purpose of the statute," because a single local unit of government is seemingly preempted, but an authority created by two preempted units is apparently not.

CADL, supra, at 237. But instead of reconciling that fact somehow, the Court just forges ahead as though the definition did not exist. What it should have done instead is re-evaluate whether *Mich Coalition* really controlled its decision. More specifically, it should have read the language of MCL 123.1102 more closely in light of the constitutional authority of CADL, and it should have paid more attention to the exception language. Had it done so, it would not have had to ignore the clear definition as it did.

The Court's analysis should in fact have started with the inquiry whether it was looking at the right "field" of regulation for purposes of a preemption analysis. The policy at issue here is a prohibition of certain conduct on property owned and controlled by CADL. The state has no title to that property, no right to occupy the areas described in the library policy as being regulated. CADL was responsible for the acquisition or construction of the facilities. It maintains them. It is responsible for their security and for the movement and servicing of people inside them. Did the state—when it enacted a law aimed at ordinances and "regulations" that are "enacted" and "enforced" by local governments—really intend to include library conduct policies like this in its prohibition? On closer examination of the question than the Court of Appeals gave it, the answer is that it did not.

2. The Court of Appeals reads the alleged "preemption" language in MCL 123.1102 too broadly, and CADL's own regulatory authority too narrowly.

The state has substantial authority to enact laws that affect—and even interfere with—the operation of local governments, even in terms of their "day-to-day" operations. Open meetings requirements, freedom of information restrictions, laws relating to municipal accounting and financing, etc.—all of these certainly act as limitations on the concept of purely local self-governance. And yet none of those exercises of state authority draws serious challenge at the local level. The reason for this is clear: as to all of these familiar areas the state has an identifiable, articulable interest in the regulation of the business being conducted

by the local government, with respect to both the larger state government and the local citizenry. These issues, although they are certainly matters in which municipalities are constantly engaged, are not issues as to which *only* they have an interest, or in which their interest clearly outweighs anyone else's.

By contrast, the question before the Court in this case is one where no particular state interest is apparent, and as to which a local government should, therefore, be permitted to act as it sees fit. This Court in *Llewellyn* stated, "[W]e do not mean to suggest in this opinion that a municipality is preempted for enacting ordinances outside the field of regulation occupied by the state statutory scheme. . . ." 401 Mich at 330.

The Court of Appeals in this case says the language of MCL 123.1102 represented a "clear policy choice to occupy the field of firearm regulation to the exclusion of local units of government." *CADL, supra*, at 236. That, actually, is not all that clear. Did the Legislature really intend, by virtue of its statement in MCL 123.1102 that a local unit of government shall not 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, a municipality must permit the "purchase," "sale," or "transfer" of guns to occur on municipal property and in all municipal buildings? Without any input into the issue by the municipality itself? Does the prohibition on regulating "transportation" of guns "in any manner" mean that a city must allow gun dealers to commandeer municipal vehicles to move product to and fro?

It is possible that the Court in this case, as it did in *Mich Coalition*, too narrowly focused on the single word "possession" from the longer list of gun-related activities. But the argument in favor of such complete preemption must also work when applied to all the other activities listed in the same statute—e.g., the sale or purchase or transfer of firearms. Surely the Legislature did not mean to allow gun dealers to set up shop in children's section of the library,

or the lobby of city hall or the police department, without those local entities having some say in the matter. And yet, that is where the logical end of the Court of Appeals' position lies.

A court's function in construing the language at issue is to apply a reasonable construction of MCL 123.1102 that accomplishes the Legislature's purpose, while not abandoning "the canons of common sense." *Marquis v Hartford Accident & Indemnity*, 444 Mich. 638, 644; 513 N.W.2d 799 (1994). The Court of Appeals is correct that the preemptive language of MCL 123.1102 is broad; but the Court cannot simply ignore the broader regulatory context in which that language was adopted.

a. CADL's broad constitutional and statutory authority

As noted earlier, CADL is established by Const 1963, art 8, §9. That section broadly confers authority on local issues to the library:

> The legislature shall provide for the establishment and support of public libraries which shall be available to all residents of the state under *regulations adopted by the governing bodies thereof.* (Emphasis added.)

This language is found in the state's constitution; it is not a mere expression of legislative intent of equal stature to that in MCL 123.1102.

The DLEA itself contains broad references to the library's right to undertake "supervision and control of property," the "adoption of bylaws and regulations," and the ability to do "any other thing necessary" to run a library. These are expansive powers, as this Court has explained: "The premise of these laws appears to be that the mandate of the constitution can best be achieved by...the encouragement of local control of public libraries." *Goldstone, supra,* 479 Mich at 562. And as the Court of Appeals itself further elaborated in *Herrick District Library v Library of Michigan*, 293 Mich App 571, 588-591; 810 NW2d 110 (2011):

> The Constitution and this constitutional history underscores two points regarding public libraries. First, the best way to encourage communities to build and maintain libraries is to place public libraries under *local control.*

* * *

> The message of *Goldstone* is clear: local control of libraries, and the different privileges it may entail, is not only constitutionally permissible, but clearly reflects the intent of the delegates who drafted the current Constitution. The drafters believed it to be the best way to provide access to a library to the greatest number of Michigan citizens.

* * *

> Thus, the Legislature, which is presumed to know the meaning of our Constitution, *explicitly afforded local public libraries a large degree of autonomy in their operations.* According to *Goldstone*, this independence—which gives libraries the option of providing different services to residents and nonresidents—was the policy preference of the drafters of our Constitution. (Emphasis added.)

CADL's weapons policy seeks to regulate the conduct of people in its buildings. CADL controls individual conduct in many other ways as well. It has set hours of operation, and internal operating procedures for how patrons are served. It limits and controls access to areas within the buildings. It has rules governing the conduct of business there. These rules are consistent with the constitutional concept that, in the conduct of its business, CADL, like any other local government entity, is autonomous.

The possession of a gun is conduct. It is for purposes of CADL's conduct policies applicable to its properties at least no different the possession of, say, food—an entirely legal activity unless and until someone with the right to do so says it can't be brought into a particular place. CADL has the right to tell those who come into, for example, its downtown branch that they can't bring in a Big Gulp from the local 7-11 store. Or that they can't turn on their cell phones. Or that they can't bring in knives or swords or baseball bats. *Amici* submit that, under the constitutional powers afforded to CADL, these are issues of purely local concern, to be dealt with under the state Constitution by "regulations adopted by the governing bodies" of the libraries themselves.

Is gun possession different in some concrete and articulable way? Is there something inherent about it that takes that particular and singular individual conduct outside the realm of the kinds of things that are acknowledged or intuitively grasped as "local concerns"? The Court of Appeals never conducted such an inquiry or analysis as part of its *Lewellyn* review—not in this case or in *Mich Coalition*. But had it done so, it would likely have reached the conclusion that there is no reason to treat this conduct as outside the realm of local control—that in fact this is an issue that is clearly one of local interest. CADL's policy does not seek to replace existing state laws governing firearms; it seeks only to regulate conduct in its own municipal buildings, a matter that is outside any rational scope or contemplation of the state's firearms statutes.

People other than the CADL's constituents have no appreciable interest in the question whether guns should be allowed in its buildings. The effect of this regulation on those not using the buildings is minimal, if it can be measured at all. For the most part, these buildings serve CADL patrons who *expect* their conduct to be regulated—and, not incidentally, who expect and are entitled to reasonable protection while there. The Court cannot lose sight of the fact that this is a *library*. People leave and never come back if they find the place too loud. A library is a highly regulated, exceedingly polite environment. It makes no sense for a court to bootstrap its way into a finding that a library authority cannot prohibit conduct that it reasonably expects will adversely affect that environment—and that the Court itself finds to be "alarming."

MOC and the Court of Appeals argue that if various local governments were allowed to prohibit weapons in local buildings, this would confuse gun licensees, who would not be able to figure out where they can and cannot carry their guns. Neither the MOC nor the Court of Appeals provides any evidence to that effect, however, and this Court can certainly take judicial notice that the no weapons policy of the state court system does not make it impossible for gun owners to know whether they are allowed to carry a weapon into a courtroom.

Why, then, would a metal detector outside the library, with a sign saying, for example, "No Weapons Allowed Inside This Building," cause such confusion? That ought to be sufficient notice to someone carrying a gun that they should govern their conduct accordingly. To take the question one step further, how would allowing a local library to make its own rules regarding its own properties be more confusing than the fact that *private* property owners can do so now? There are far more businesses who retain the right to have a no weapons policy than there are local governments who ought to have that same authority.

Nor does such a policy impermissibly infringe on any guaranteed constitutional right of the individuals affected. Both the Court of Appeals and MOC seem to acknowledge that the right to bear arms is subject to substantial regulation. The policy is uniform and applies equally to all individuals. And because the regulation is applicable only to CADL's buildings, it has no effect on surrounding communities or other local units of government or the state.

CADL is the only entity that can rationally be relied upon to know how to operate its libraries on a day-to-day basis. Under the DLEA—as the state constitution requires—CADL has full and exclusive authority to decide what services and resources to provide the community, what buildings to build, and what conduct rules to adopt. A reading of MCL 123.1102 that says CADL cannot as part of that broad authority prevent people from roaming the children's section with rifles and shotguns strapped to their backs more or less defeats the rest of its authority. Nothing in MCL 123.1102 actually points to the conclusion that the Legislature meant for that to happen, and such a reading of it is not actually required, given the other provisions of law and the constitution governing CADL's right to control of its own properties.

b. The constitutional obligation to "liberally construe" laws in favor of local governments

The *Mich Coalition* case on which the Court so heavily relied here suffered from the same refusal to construe MCL 123.1102 in the larger context of laws and constitutional

authority. As to local units of government like the City of Ferndale, the conferral of broad local autonomy is even greater than that in Const 1963, art 8, §9. And that becomes particularly relevant in this case because the Court of Appeals expressly held that CADL was a local unit of government. If that is in fact the case, then that status affords CADL some further arguments in favor of its ability to adopt the weapons policy.

Const. 1963, art. 7, §22, states:

> Each such city and village shall have power to adopt resolutions and ordinances relating to its *municipal concerns, property and government*, subject to the constitution and law. No enumeration of powers granted to cities and villages in this constitution shall limit or restrict the general grant of authority conferred by this section. (Emphasis added.)

This general grant of authority would include municipal buildings. In addition, the Home Rule City Act, at MCL 117.4j(3), specifically authorizes a city (like, for example, Ferndale in the *Mich Coalition* case) to enact ordinances in order to advance the interests of the City, including the management and control of "municipal property" and "municipal government":

> For the exercise of all municipal powers in the management and control of *municipal property* and in the administration of the municipal government, whether such powers be expressly enumerated or not, for any act to advance the interests of the city, the good government and prosperity of the municipality and its inhabitants and through its regularly constituted authority to pass all laws and ordinances relating to its *municipal concerns* subject to the constitution and general laws of this state. (Emphasis added.)

The language of another constitutional provision, Const. 1963, art. 7, §34, drives the point home:

> The provisions of this constitution and law concerning counties, townships, cities and villages shall be *liberally construed in their favor*. Powers granted to counties and townships by this constitution and by law shall include those *fairly implied and not prohibited* by this constitution. (Emphasis added.)[2]

[2] It should not escape the Court's attention that the list of local government entities in Const. 1963, art. 7, §34 is the same as the list of "local units of government" in MCL 123.1102.

In *Adams Outdoor Advertising, Inc. v City of Holland*, 234 Mich. App. 681, 600 N.W.2d 339 (1999), *aff'd* 463 Mich. 675, 625 N.W.2d 377 (2001), this Court held that "unless a power or right is *specifically proscribed* by law, a Home Rule city has broad authority to enact ordinances for the benefit of the health, safety and welfare of its residents. Home Rule cities are not limited to only those powers expressly enumerated." *Id.* at 689 (emphasis added). The Court expanded on its conclusion by specific reference to Const. 1963, art. 7, §22:

> Accordingly, it is clear that Home Rule cities enjoy not only those powers specifically granted, but they may also exercise all powers not expressly denied. *Home Rule cities are empowered to form for themselves a plan of government suited to their unique needs, and upon local matters, exercise the treasured right of self-governance.* (Emphasis added.)

Id. at 687. The *Adams* Court went on to broadly describe the powers of all local government units in Michigan by stating, "Our municipal governance system has matured to one of general grant of rights and powers, subject only to certain enumerated restrictions instead of the earlier method of granting enumerated rights and powers definitely and specifically." *Id.* at 688. That grant of rights is not simply bestowed on municipalities by the Legislature, it includes authority granted directly, in the 1963 constitution itself.

In *Mich Coalition*, the City of Ferndale had passed a law prescribing the manner in which it intends to use its City-owned facilities. It had determined to make its buildings "weapons free." It had determined that it wants its citizens to participate in the local political process—given its often daunting public exchanges and its sometimes-heated rhetoric—without armed opposition, on the reasonable theory that arming those who come into its public buildings might well chill the frank and free exchange of information and ideas that is essential to local self-government.

Regardless of whether that determination by Ferndale was good or bad public policy, it is difficult to imagine something that is more obviously a question of purely local concern, one

to be decided by the elected representatives of the people most immediately affected by the question—and that means not through general state legislation. Ferndale had the right to pass that law under the Home rule City Act, MCL 117.4j(3), which allowed it to "exercise...all municipal powers in the *management and control of municipal property* and in the administration of the municipal government..." That provision was never clearly addressed in the *Mich Coalition* case, and it should have been.

This Court has described Michigan as a "strong Home Rule state," one in which the "dignity and power of a city commission cannot be lightly construed away." *Alco Universal v City of Flint,* 386 Mich. 359, 363 (1971). Yet that is exactly what the Court of Appeals does in this case. The constitutional provision for public libraries says that it is *the Legislature's* obligation to make available "libraries which shall be available to all residents of the state under *regulations adopted by the governing bodies thereof.*" Const 1963, art 8, §9. The Court of Appeals in this case—as it did in *Mich Coalition*—was required to give this constitutional authority and its legislative results more than a passing glance on its way to a finding of preemption.

When the Court of Appeals here found CADL to be "nevertheless" a local unit of government, that should have invoked the broad constitutional deference to those local entities discussed above. What the Court of Appeals should have done here, given CADL's constitutional authority and statutory powers a liberal construction in its favor, is concluded that the language of MCL 123.1102, which refers to an ordinance or regulation pertaining to possession of pistols or other firearms" did not extend to a library policy governing weapons on property *owned and controlled by the library itself*, as to which—not unlike for any private property owner—the authority to prescribe rules of conduct is solely a matter of local library concern and responsibility.

3. The Court of Appeals fails to give any effect whatsoever to the exception language in MCL 123.1102, which should be read broadly.

MCL 123.1102 contains an exception stating that the prohibition on enacting or enforcing ordinances or regulations applies to local units of government "except as otherwise provided by federal law or a law of this state." The DLEA and the Home Rule City Act are both laws of this state, and both are backed up by the state constitution itself.

In considering the possible application of this exception language, the Court of Appeals in *Mich Coalition* discussed—but not at any length or in any depth—exactly one other law: the 2000 amendments to the state's firearms laws, and more specifically MCL 28.425c relating to concealed carry. The Court found that the amendments did not authorize Ferndale's weapons ordinance. The Court never evaluated the provisions of the Home Rule City Act, MCL 117.1, *et seq.*, that would have authorized the ordinance. Had it done so, *Amici* believe—and had it considered that authority under the "liberal construction" rules of the state constitution—it would have found ample authority for the City's ordinance as discussed above.

The same is true in this case. The Court of Appeals did not even mention—let alone construe and apply—the exception language. It thus failed to acknowledge the broad statutory authority, under the DLEA, of district libraries to regulate conduct on its own property.

Exceptions to a statute are not treated any differently from general statutory language. The goal when construing any statutory provision is to ascertain the Legislature's intent. *Robinson v City of Lansing,* 486 Mich 1, 15; 782 NW2d 171 (2010). To determine that intent, statutory provisions are not to be read in isolation, but rather are to be read together to harmonize their meaning and give effect to the act as whole. *Id.* at 15. "[W]ords and phrases used in an act should be read in context with the entire act and assigned such meanings as to harmonize with the act as a whole." *People v Couzens,* 480 Mich 240, 249, 747 NW2d 849 (2008) (quotation marks and citation omitted).

Nor is this a situation in which a court might apply the maxim that "specific provisions... prevail over any arguable inconsistency with the more general rule...." *Jones v Enertel, Inc.*, 467 Mich 266, 271; 650 NW2d 334 (2002). It is true that MCL 123.1102 is a specific limitation of certain authority as to local units of government. But, that *specific prohibition* is itself subject to a *specific exception.* There is nothing in the language of MCL 123.1102 that should lead the Court to believe that it is limited to state statutes specifically regulating firearms. It says *a* law of the state. By definition, that includes "a public act of the legislature," MCL 8.8, and thus both the DLEA and the Home Rule City Act.

Amici understand that the states gun laws are extensive. The Court of Appeals in this case rattled of a long list of those laws in its opinion. *CADL, supra*, at 238. *Amici* also understand that some of those laws deal specifically with where guns can be possessed and carried, and that they set up areas where guns cannot be carried (like the provisions in MCL 28.425c that the Court in *Mich Coalition* discussed). And, finally, *Amici* understand that "municipal buildings" are not specifically listed in among those places.

But it is *Amici's* position that listing municipal or local government properties in among the places where the state Legislature has said guns or firearms are not permitted is not necessary, because *municipalities and local governmental entities already have separate authority, both constitutional and legislative, to make those determinations for themselves.* Those are the sources of authority that the exception language in MCL 123.1102 must be read to give force to. And, again, when applying that exception language, the Court in this case and in *Mich Coalition* had a constitutional *obligation* to liberally construe it in favor of the local governmental entity.

The constitutional provisions cited above, stating that libraries have broad authority to enact local regulations (Const. 1963, art 8, § 9); that local governments control their own property (Const. 1963, art 7, § 22); and that constitutional and statutory provisions will be

"liberally construed in [a local government's] favor" (Const. 1963, art 7, § 34) are in any event not just general provisions of law. They describe the manner in which a court is *obligated* to construe any purported statutory limitation. Here, those constitutional provisions—plus the DLEA in the case of CADL and the Home Rule City Act in the case of Ferndale and the *Mich Coalition* case—provide broad general authority to regulate conduct, and that broad authority has to be read *into* a court's analysis of MCL 123.1102, not out of it.

There is nothing in MCL 123.1102 evidencing an intention by the state Legislature to insert itself in a manner so obviously of a local concern. The state has no overriding interest in seeing that individuals who visit the public buildings of CADL may carry weapons in the course of conducting their public business therein. CADL (and Ferndale) should be free, under the local sovereignty authority described in the state constitution and laws, to decide that question for itself. At issue are its property, its patrons or residents, its employees, and its officials.

The state may have an interest in prohibiting a city, village, township, or county from enacting a broad ordinance or regulation affecting firearms throughout the whole community—i.e., from acting as a regulatory body in a manner inconsistent with the state's own regulations. But the state has no conceivable interest in saying that such entities, or a district library, may not act to protect those people who come to use their local properties to a greater degree than the state already does while they are present on the local government entity's own property. The state has no interest in preventing a local government from providing services in the best manner it decides it can, to the most constituents it can. And yet, the Court of Appeals' opinion fails to even consider the broad constitutional and statutory that brings the express language of the exception in MCL 123.1102 into play.

The Court of Appeals in this case should have found no such preemption of CADL's basic, historical authority to control conduct on its own properties and in its own buildings.

III.

CADL alleges—and Appellee MOC does not disagree—that individuals entered CADL's property with a shotgun/rifle and holstered handguns. MOC also does not disagree that the individuals were in the library for the primary purpose of displaying the fact that they were carrying guns. CADL argues that, under the circumstances, such activity constitutes "brandishing" a firearm. The circuit court did not reach that question, because it ruled in CADL's favor on preemption; the Court of Appeals did not address this issue. ***This Court should grant leave to appeal to address whether the described activity constitutes brandishing a firearm.***

MCL 750.234e precludes the brandishing of a firearm in public. It states in relevant part:

> (1) Except as provided in subsection (2), a person shall not knowingly brandish a firearm in public.
>
> (2) Subsection (1) does not apply to any of the following:
>
> (a) A peace officer lawfully performing his or her duties as a peace officer.
> (b) A person lawfully engaged in hunting.
> (c) A person lawfully engaged in target practice.
> (d) A person lawfully engaged in the sale, purchase, repair, or transfer of that firearm.

MCL 750.234e was enacted by Public Act 321 of 1990. It was enacted on the same day as Public Act 319, which created MCL 123.1102, the provision of state law primarily at issue in this case. Thus, the Legislature "took away" from "local units of government" the right to enact ordinances and other regulations relating to, among other things, the possession of firearms—at least according to MOC and the Court of Appeals—but at the same time created this brandishing restriction.

There is no appellate case law that discusses what brandishing means. A Michigan Attorney General Opinion, *OAG 7101 (2002)*, asserts that the word "brandish" must be given its ordinary and typical dictionary definition. This is consistent with the principle of statutory construction stated in MCL 8.3a:

> All words and phrases shall be construed and understood according to the common and approved usage of the language; but technical words and phrases, and such as may have acquired a peculiar and appropriate meaning in the law, shall be construed and understood according to such peculiar and appropriate meaning.

One dictionary definition of "brandish" is:

> 1: to shake or wave (as a weapon) menacingly
> 2: to exhibit in an ostentatious or aggressive manner
> (http://www.merriam-webster.com/dictionary/brandish)

"Ostentatious" is in turn defined as:

> marked by or fond of conspicuous or vainglorious and sometimes pretentious display
> (http://www.merriam-webster.com/dictionary/ostentatious)

"Aggressive" means:

> 1. *a*: tending toward or exhibiting aggression
>   *b*: marked by combative readiness
> 2. *a*: marked by obtrusive energy
>   *b*: marked by driving forceful energy or initiative : enterprising
> 3: strong or emphatic in effect or intent
> 4: growing, developing, or spreading rapidly
> 5: more severe, intensive, or comprehensive than usual especially in dosage or extent
> (http://www.merriam-webster.com/dictionary/aggressive)

CADL has enacted a policy against the possession of a firearm within its buildings. Firearms are not wanted in its buildings. Firearms are not expected in its buildings. The individuals from MOC, according to the facts as established at the hearing, entered CADL's building with either a shotgun/rifle or an openly-carried (albeit holstered) pistol. Under all of the circumstances presented, it appears that the individuals were well aware of the policy and CADL's intention and expectation. Further, it appears that the very point of their presence in the library was to display that they had a weapon. Their point, in other words, was to be seen with a weapon, and their purpose was to be emphatic and combative about their right to carry weapons in the library despite the library's determination that it did not want weapons in its

buildings. That constitutes the exhibition of a weapon in both an ostentatious and aggressive manner.

Which, not coincidentally, gets the Court back to the actual language of MCL 123.1102. That provision purports to preempt ordinances and regulations relating to the possession of firearms ". . . except as provided . . . by state law." Under the circumstances—as a local body that is given under both the constitution and its enabling legislation the right to regulate conduct on its own property—CADL had every right, upon determining that the display of firearms was disrupting the library's activities, to demand that those responsible for the disruption leave.

MOC asserts that "brandishing" is a crime, and that the individuals could not, by their mere presence, have been committing a crime; it asserts that brandishing means waving the gun around in a menacing fashion only. But that raises the very question that this lawsuit is about: did the Legislature really mean that, when it comes to the possession of firearms, a library could only prohibit—in its buildings, on its property—people from engaging in crimes? That it had no authority to regulate their conduct—no matter how disruptive that activity is, and no matter how such conduct adversely affects the library's operation, unless they were subject to prosecution by the state for "brandishing" under MCL 750.234e? The Legislature did not, in fact, intend that, and this Court should grant leave to affirm the basic, historical, and necessary understanding of how a library is supposed to operate.

CONCLUSION AND RELIEF REQUESTED

Despite its length, the Court of Appeals' decision is ultimately an uncritical application of a statute that on its face does not support the conclusion that the Legislature intended it to apply to a local district library authority. By carefully and narrowly defining the term "local unit of government" in MCL 123.1101, the Legislature said exactly whom it intended to regulate in MCL 123.1102, and a district library is not one of those entities.

It is not difficult to construct an argument that the language used in MCL 123.1102—"enact," "ordinance," "regulation"—apply to local entities with broad regulatory powers like cities, villages, townships, and counties, but not to a local library authority like CADL. Similarly, the list of activities for which regulation is proscribed—ownership, registration, purchase, sale, transfer, transportation, or possession—are the kinds of things that such entities might want to undertake on a broad, community-wide scale. The Court of Appeals' decision to expand the language, through an implied preemption analysis, to cover other entities that fall within the general category of local government bodies or quasi-municipal corporations effectively rewrites the statute to the Court's own satisfaction and therefore exceeds its review authority.

As for the Court's implied preemption analysis, it fails to accord CADL the right of local self-government that this Court has consistently upheld—whether that local government is a district library or a city, village, township, or county. That the state has authority to regulate on issues that significantly affect local governments is not contested. But the statutory provision at issue, MCL 123.1102, can be read in a manner that is more consistent with CADL's own constitutional and statutory authority to regulate conduct occurring *on its own properties and in its own buildings*.

It is in fact alarming, as the Court said in its opinion, that the law would allow people to bring weapons into libraries and disrupt what is supposed to occur there—learning, interacting, relaxing, or whatever—in a safe and controlled environment. But it is no less alarming that the law would allow similar activity to disrupt what goes on in other publicly-owned places: public parks; city or township halls where people come to conduct local business; the council or board chambers where people come to speak and do not expect to encounter armed individuals; the counter from which the clerk, treasurer, building official, etc., give and receive information. *Amici* assert that, read in the context of *all* applicable statutes and constitutional authority, the law does not in fact require that be allowed.

This Court should grant leave to appeal to CADL and reverse the Court of Appeals' decision that its weapons policy is preempted by MCL 123.1102.

Respectfully submitted,

JOHNSON, ROSATI, SCHULTZ & JOPPICH, P.C.

Dated: April 24, 2013

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STATE OF MICHIGAN
IN THE SUPREME COURT

CAPITAL AREA DISTRICT LIBRARY,

Plaintiff-Appellant,

Court of Appeals No. 304582
Lower Court Case No. 11-200-CZ

-vs-

MICHIGAN OPEN CARRY, INC.,
Defendant-Appellee.

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MOTION FOR LEAVE TO FILE AMICUS BRIEF IN SUPPORT OF PLAINTIFF-APPELLANT CADLS' APPLICATION FOR LEAVE TO APPEAL

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Amicus curiae, the Michigan Municipal League and the Michigan Association of Police Chiefs, hereby respectfully request leave to of the Court to file the attached Amicus curiae Brief in Support of Plaintiff-Appellant Capital Area District Library's Application for Leave to Appeal. In support of their motion, *amici* state:

Amicus Michigan Municipal League (MML) is a non-profit Michigan corporation whose purpose is the improvement of municipal government and administration through cooperative effort. Its membership is comprised of hundreds of Michigan cities and villages, many of which are also members of the Michigan Municipal League Legal Defense Fund. The Michigan Municipal League operates the Legal Defense Fund through a board of directors[1], which is broadly representative of its members. The purpose of the Legal Defense Fund is to represent the member cities and villages in litigation of statewide significance.

Amicus Michigan Association of Police Chiefs (MACP) was founded in 1983 as an association of police chiefs and law enforcement professionals representing over 400 police agencies in the State of Michigan. MAPC has over 1000 members, who represent municipal agencies as well as the Michigan State Police, county sheriffs, tribal police, federal agencies, railroad police, and public safety directors for colleges and universities. The purpose of MAPC is to advance the science and art of police administration and crime prevention; to develop and disseminate approved administrative and technical practices and promote their use in police work; to foster police cooperation, unity of action, and the exchange of information and experience among police officers of this state; to bring about the recruitment and training in the

[1] The 2012-2013 Board of Directors of the Legal Defense Fund are: Randall L. Brown, Chair, City Attorney, Portage; Lori Grigg Bluhm, Vice-Chair, City Attorney, Troy; Stephen P. Postema, Immediate Past-Chair, City Attorney, Ann Arbor; Eric D. Williams, City Attorney, Big Rapids; Clyde J. Robinson, City Attorney, Kalamazoo; James O. Branson, City Attorney, Midland; James J. Murrary, City Attorney, Boyne City and Petoskey; Robert J. Jamo, City Attorney, Menominee; John C. Schrier, City Attorney, Muskegon; Thomas R. Schultz, City Attorney, Farmington and Novi; Karen Majewski, Mayor, Hamtramck, Michigan Municipal League President; Daniel P. Gilmartin, Executive Director and CEO of Michigan Municipal League; and William C. Mathewson, General Counsel, Michigan Municipal League and Fund Administrator.

police profession of qualified persons; to seek legislation of benefit to the citizens of the state or law enforcement in general; and to encourage adherence of all police officers to high professional standards of conduct.[2]

1. The issue in this case is whether MCL 123.1102 preempts the weapons policy adopted by CADL to the extent that it applies to pistols and other firearms. The Court of Appeals held that the statute does preempt CADL's policy, albeit not directly or expressly, but rather under an "implied" preemption analysis. *Amici's* interest in the issue is simple: the Court of Appeals' decision in this case perpetuates a misreading of MCL 123.1102 that the Court of Appeals initially made in 2003, when it decided the *Mich Coalition for Responsible Gun Owners v Ferndale*, 256 Mich App 401; 662 NW2d 864 (2003), which held a local ordinance adopted by the City of Ferndale to be preempted by the same statute. This Court declined to grant leave to appeal from the *Mich Coalition* decision, and the case now figures prominently in the Court of Appeals' decision in this case. Its continued misapplication of preemption rules is something that this Court should now take the opportunity to correct.

2. The Court of Appeals' position fails to apply the clear language of MCL 123.1101, which defines a "local unit of government" as a "city, village, township, or county." CADL does not fall within that definition. While the Court of Appeals acknowledged that, it went on to conduct an implied preemption analysis and to find that MCL 123.1102 still precluded CADL's weapons policy because the state had "occupied the field" of firearms regulation to the exclusion of all types of local government entities, including a library authority like CADL.

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[2] The current President of MAPC is Chief Brian Hill from Gerrish Township Police Department; First Vice President is Chief Donald Pussehl from Saginaw Township. The current Board of Directors also includes the Chief of Police of the City of Detroit Police Department and Col. Etue of the Michigan State Police. A complete list of the Board of Directors can be obtained at michiganpolicechiefs.org

3. The Court of Appeals should not have applied the doctrine of implied preemption in this case, given the clear definitional language of MCL 123.1101. MCL 123.1102 says exactly to whom it was intended to apply. District libraries like CADL are not on that list. The Court of Appeals' decision should therefore have ended with its acknowledgment of that fact. For the Court of Appeals to continue its analysis and find that the Legislature *impliedly* intended to cover district libraries like CADL within that list violates every canon of statutory construction requiring courts to apply statutory language as written.

4. But even if engaging in an implied preemption analysis was appropriate or permissible, the Court's conclusion was incorrect in large part because of the Court's reliance on its decision in *Mich Coalition.* The Court's implied preemption analysis, based on its earlier decision, fails to accord CADL the right of local self-government that this Court has consistently upheld—whether that local government is a district library or a city, village, township, or county. That the state has authority to regulate on issues that significantly affect local governments is not contested. But the statutory provision at issue, MCL 123.1102, can be read in a manner that is more consistent with CADL's own constitutional and statutory authority to regulate conduct occurring on its own properties and in its own buildings. The Court of Appeals' finding of implied preemption in this case unnecessarily wrests the physical control of public buildings from their local governmental owners by virtue of its refusal to broadly construe that authority and to apply the exception language specifically written in the statute.

6. *Amici*, though not parties to this case, have a strong interest in the subject matter generally and the specific issue on appeal. The issue before the Court is an important one to the hundreds of MML communities and to the roughly a thousand members of the MAPC. If the decision of the Court of Appeals is allowed to stand, the loss of local control on this important issue will continue to place local governments and their employees, official, residents,

and patrons at risk and the court's opportunity to overturn a clearly incorrect statutory interpretation will be lost.

WHEREFORE, *Amici* respectfully pray that this Court will grant this motion and accept the proposed *amicus curiae* brief for filing and consideration.

Respectfully submitted,

JOHNSON, ROSATI, SCHULTZ & JOPPICH, P.C.

Dated: April 24, 2013

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