



# LOCAL vs. STATE

## *Point*

**Local Control of Firearms  
is a Constitutional Right**

|| By Jack L. Hoffman ||

## *Counterpoint*

**Local Control of Firearms  
Remains Preempted  
by State Law**

|| By Carol Bambery ||

*Counterpoint*

## Local Control of Firearms Remains Preempted by State Law

|| By Carol Bambery ||

**R**ecent commentary suggests that despite Michigan's firearms preemption statute—MCL 123.1102—local units of government can regulate the possession of firearms on public property and in public buildings by virtue of the authority guaranteed to localities in Article 7, Section 29 of the Michigan Constitution.<sup>1</sup> While this novel argument may appear attractive at first blush, a careful review of the caselaw analyzing the reach of Art 7, § 29 demonstrates that localities remain preempted from regulating firearms and related activity on property under their control.

Art 7, § 29 of the Michigan Constitution provides:

No person, partnership, association or corporation, public or private, operating a public utility shall have the right to the use of the highways, streets, alleys or other public places of any county, township, city or village for wires, poles, pipes, tracks, conduits or other utility facilities, without the consent of the duly constituted authority of the county, township, city or village; or to transact local business therein without first obtaining a franchise from the township, city or village. **Except as otherwise provided in this constitution the right of all counties, townships, cities and villages to the reasonable**

**control of their highways, streets, alleys and public places is hereby reserved to such local units of government.**<sup>2</sup>

While the first clause of Art 7, § 29 focuses on public utilities and their access to locally owned property, the Michigan Supreme Court has held the closing sentence to apply to the regulation of general conduct by local units of government. In *People v McGraw*,<sup>3</sup> the Court addressed the permissibility of localities to enact traffic regulations under the similarly worded predecessor of Art 7, § 29—Art 8, § 28 of the 1908 constitution. The Court ruled that this guarantee of authority extended well beyond the field of public utilities and that “local authorities may control within reason the use of their streets for any purposes whatsoever not inconsistent with the state law.”<sup>4</sup>

While the *McGraw* ruling appears to recognize a guarantee of authority over any and all activities—which would presumably cover firearms regulation—the Court was careful to condition this authority on the existence of other constitutional provisions and relevant state statutes:

Taking the [constitutional] sections together, they should be so construed as to give the power to municipalities to pass such ordinances and regulations with reference to their highways



MCL 123.1102 continues to preempt local units of government from regulating firearms and related activities on locally owned public property.

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and bridges as are not inconsistent with the general state law. In other words, the municipality retains *reasonable control* of its highways, which is such control as cannot be said to be unreasonable and inconsistent with regulations which have been established, or may be established, by the state itself with reference thereto.<sup>5</sup>

The Court, therefore, recognized that Art 8, § 28 (now Art 7, § 29) does not exist in a vacuum; its provisions, including the “reasonable control” provision, do not provide carte blanche for localities to regulate conduct or activities where other constitutional provisions or statutes prohibit such regulation. The plain language of Art 7, § 29 also makes this abundantly clear: “Except as otherwise provided in this constitution...” unquestionably constrains reasonable control to that which does not contravene other constitutional provisions, many of which directly address local units of government and their authority to regulate issues of concern. As explained by the Michigan Supreme Court in *City of Taylor v The Detroit Edison Company*,<sup>6</sup> the authority guaranteed by Art 7, § 29 necessarily implicates other constitutional provisions, most notably Art 7, § 22,<sup>7</sup> which is viewed as a traditional source of policing power for local units of government. The Court explained:

Thus, the authority reserved to local units of government to exercise reasonable control over the enumerated subject areas is explicitly made subject to the other provisions of the Constitution. One such provision is art. 7, § 22, which empowers cities and villages “to adopt resolutions and ordinances *relating to its municipal concerns*, property and government, *subject to the constitution and law*.”<sup>8</sup>

Based on clear precedent, the argument that Art 7, § 29 provides a new source of authority for localities to enact firearms regulations is not persuasive. Local units of government remain “subject to the constitution and law” when they attempt to regulate in any field, including firearms and related activities. Art 7, § 29 cannot be read to exclude the requirements of Art 7, § 22 or any other constitutional provision.

MCL 123.1102 clearly preempts, with few exceptions, local regulation of firearms and related activities.

A local unit of government shall not impose special taxation on, enact or enforce any ordinance or regulation pertaining to, or regulate in any other manner the ownership, registration, purchase, sale, transfer, transportation, or possession of pistols, other firearms, or pneumatic guns, ammunition for pistols or other firearms, or components of pistols or other firearms, except as otherwise provided by federal law or a law of this state.<sup>9</sup>

In *Michigan Coalition for Responsible Gun Owners v City of Ferndale*,<sup>10</sup> the Court of Appeals addressed the breadth of MCL 123.1102 directly, finding:

Section 1102 provides that a local unit of government shall not enact an ordinance pertaining to the transportation or possession of firearms, but the city of Ferndale does just that....A state statute that prohibits a local unit of government from enacting “any ordinance or regulation” or regulating “in any other manner” the transportation or possession of firearms cannot reasonably be interpreted to exclude local ordinances that address the carrying of firearms in municipal buildings.<sup>11</sup>

In similar fashion, the Court of Appeals struck down a prohibition against firearm possession on district library property in *Capital Area District Library v Michigan Open Carry, Inc.*<sup>12</sup> In finding a district library was a quasi-municipal corporation because it was created by agreement between multiple local units of government, the district was preempted from regulating firearms and related activities:

The Legislature, through MCL 123.1102, has expressly prohibited local government regulation of firearms and ammunition generally in cities, villages, townships, and counties, including in their libraries. Although a district library is not a local unit of government as defined by MCL 123.1101(a), legislative history, the pervasiveness of the Legislature’s regulation of firearms, and the need for exclusive, uniform state regulation of firearm possession as compared to a patchwork of inconsistent local regulations indicate that the Legislature has completely occupied the field that CADL seeks to enter.<sup>13</sup>

Against this precedent, those advocating for localities to employ Art 7, § 29 authority to regulate firearms and related activities argue that because an Art 7, § 29 claim was not before the Court of Appeals in *Michigan Coalition* or *CADL*, these rulings do not apply. Yet this argument fails to recognize existing caselaw on the nature of the authority guaranteed by Art 7, § 29, which requires that such authority not contravene other constitutional provisions or existing state law.<sup>14</sup> Moreover, the Court of Appeals carefully analyzed the Ferndale ordinance as it related to the city’s authority under Art 7, § 22, and because such authority was “subject to the constitution and law,” MCL 123.1102 preempted the ordinance. The *CADL* decision likewise addressed the underlying authority of library districts to regulate behavior on their property derived from Art 8, § 9, and ruled against the district’s prohibition.

Clearly, local regulations promulgated under Art 7, § 29 authority can no more contravene state law than can those enacted pursuant to the authority guaranteed under Art 7,

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§ 22 or Art 8, § 9. In all such cases, the *Michigan Coalition* and *CADL* rulings remain directly on point where a locality seeks to invoke Art 7, § 29 authority to regulate firearms and related activity.

Lastly, it is argued that the final clause of MCL 123.1102, “except as otherwise provided by federal law or a law of this state,” should be read to include the general guarantee of authority provided in Art 7, § 29. If this circular reasoning were to prevail, it would not only render MCL 123.1102 nugatory in its entirety, but would also make the legislative intent to generally preempt the firearms field, as described at great length in *Michigan Coalition* and *CADL*, utterly superfluous.

To protect against this type of talismanic reasoning where preemption of local regulation would be subject to continual challenge based on Art 7, § 29’s reasonable control clause, the Supreme Court established in *McGraw* a bright line that where local authority is guaranteed in the constitution, state legislation seeking to remove local control *in its entirety* is void and unenforceable. But this removal must be complete:

It follows, therefore, that the provisions of the ordinance which contravene the state law must be held to be invalid and void. But as section 9, Act 318, Public Acts 1909, clearly attempts to take away from the cities *all control* of their highways... [it] must be held to be unconstitutional and void.<sup>15</sup>

So while the Court reiterated its ruling that local ordinances which contravene state law are invalid, the state cannot exclude local control in its entirety. In the case of MCL 123.1101 *et seq.*,<sup>16</sup> however, limited exceptions to the general preemption of local regulation are provided,<sup>17</sup> allowing local units of

government to engage in regulatory behavior in the delineated areas “as otherwise provided by...a law of this state.”<sup>18</sup> MCL 123.1102 is therefore in accord with all aspects of the *McGraw* ruling.

Despite arguments to the contrary, MCL 123.1102 continues to preempt local units of government from regulating firearms and related activities on locally owned public property. As with other constitutional provisions guaranteeing to local units of government the authority to regulate certain conduct, the authority guaranteed by Art 7, § 29 is limited by other constitutional provisions and state law. Localities that seek to regulate firearms, including the possession and carrying of firearms on public property, will fare no better in the Michigan courts than those localities which have attempted to do so in the past, new and novel arguments notwithstanding. ■



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## ENDNOTES

1. Const 1963, art 7, § 29.
2. *Id.* (emphasis added).
3. *People v McGraw*, 184 Mich 233; 150 NW 836 (1915).
4. *Id.* at 238.
5. *Id.*
6. *City of Taylor v The Detroit Edison Co*, 475 Mich 109; 715 NW2d 28 (2006).
7. Const 1963, art 7, § 22.
8. *City of Taylor*, 475 Mich at 116.
9. 1990 PA 319.
10. *Michigan Coalition for Responsible Gun Owners v City of Ferndale*, 256 Mich App 401; 662 NW2d 864 (2003).
11. *Id.* at 414.
12. *Capital Area District Library v Michigan Open Carry, Inc*, 298 Mich App 220; 826 NW2d 736 (2012).
13. *Id.* at 747.
14. *City of Taylor*, 475 Mich at 117–118.
15. *McGraw*, 184 Mich at 238–239.
16. 1990 PA 319.
17. MCL 123.1103 and MCL 123.1104 provide limited exceptions, including allowing local units of government to circumscribe criminal activity otherwise prohibited under state law, regulate employee conduct, and allowing cities or charter townships to prohibit the discharge of pistols.
18. MCL 123.1102.