

STATE OF MICHIGAN
COURT OF APPEALS

CAPITAL AREA DISTRICT LIBRARY,

Plaintiff-Appellee/Cross-Appellant,

V

MICHIGAN OPEN CARRY, INC.,

Defendant-Appellant/Cross-
Appellee.

FOR PUBLICATION
October 25, 2012

No. 304582
Ingham Circuit Court
LC No. 11-000200-CZ

Before: GLEICHER, P.J., and SAAD and BECKERING, JJ.

GLEICHER, P.J., (*concurring in part and dissenting in part*).

I concur with the majority’s determination that the Capital Area District Library is not a “local unit of government” as defined in MCL 123.1101(a) and that the library’s weapon policy is permitted by the district library establishment act, MCL 397.171 *et seq.* Precisely because the library is not a local unit of government and has promulgated a policy falling squarely within its rule-making authority, I respectfully dissent from the majority’s conclusion that the field-preemption doctrine nullifies the plain language of the relevant statutes.

The majority’s field-preemption analysis flows from MCL 123.1102, which states:

A local unit of government shall not impose special taxation on, enact or enforce any ordinance or regulation pertaining to, or regulate in any other manner the ownership, registration, purchase, sale, transfer, transportation, or possession of pistols 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 statute applies to “a local unit of government.” The Legislature specifically defined that term to mean “a city, village, township, or county.” MCL 123.1101(a). Conspicuously absent from this definition is a district library or an authority.¹ Thus, a district library is not subject to MCL 123.1102, which prohibits local units of government from enacting or enforcing any regulations pertaining to the possession of firearms.²

Fundamentally, field preemption is a question of legislative intent. See *Walsh v City of River Rouge*, 385 Mich 623, 639; 189 NW2d 318 (1971). Application of the doctrine requires a court to examine sources and values outside the statutory text to divine whether the Legislature intended to occupy a field of regulation. But the Michigan Supreme Court has repeatedly emphasized that the Legislature’s intent in drafting an unambiguous statute is to be gleaned only from the words contained in the text. “[C]ourts may not speculate about an unstated purpose where the unambiguous text plainly reflects the intent of the Legislature.” *Pohutski v City of Allen Park*, 465 Mich 675, 683; 641 NW2d 219 (2002). This is so because “[a]ny other nontextual approach to statutory construction will necessarily invite judicial speculation regarding the probable, but unstated, intent of the Legislature with the likely consequence that a court will impermissibly substitute its own policy preferences.” *People v McIntire*, 461 Mich 147, 153; 599 NW2d 102 (1999). This commitment to the statutory text is not merely a matter of history or prudence; instead, it constitutes a bedrock principle of separation of powers. See *Trentadue v Buckler Automatic Lawn Sprinkler Co*, 479 Mich 378, 406-407; 738 NW2d 664 (2007); *Robertson v DaimlerChrysler Corp*, 465 Mich 732, 758-759; 641 NW2d 567 (2002). Simply put, “our judicial role precludes imposing different policy choices than those selected by the Legislature” *Robertson*, 465 Mich at 759 (quotation marks and citation omitted).

Here, the majority rejects that the plain words of the statute mean what they say. In so ruling, the majority ignores the text, and instead divines from highly-selective legislative history and the majority’s own notion of public good that the Legislature intended to prohibit district

¹ A district library constitutes “an authority separate and apart from either the city or the county” for the purpose of taxation. *Jackson Dist Library v Jackson Co*, 428 Mich 371, 378; 408 NW2d 801 (1987).

² The Legislature has elsewhere defined the term “local unit of government” far more expansively than it chose to do in MCL 123.1101(a). For example, MCL 324.20101(bb) defines the term to mean: “a county, city, township, or village, an agency of a local unit of government, an authority or any other public body or entity created by or pursuant to state law.” Under MCL 257.811i(4)(i), a “local unit of government” includes “[a]n authority or other public body created by or pursuant to state law.” MCL 169.209(6) states, “‘Local unit of government’ means a district, authority, county, city, village, township, board, school district, intermediate school district, or community college district.”

libraries from banning firearms on their premises. In my view, the plain language of MCL 123.1101(a) belies the majority's field-preemption analysis. The Legislature limited the reach of MCL 123.1102 to firearm regulations enacted by cities, villages, townships and counties. To read into that list district libraries or authorities is to cast aside the clearest possible expression of legislative will in the interest of rewriting the statute.

Applied as written, the words of MCL 123.1101(a) and MCL 123.1102 preclude only cities, villages, townships and counties from regulating firearm possession. Because "[t]he most reliable indication of the Legislature's intent is the words in the statute," *People v Peltola*, 489 Mich 174, 181; 803 NW2d 140 (2011), we must presume that the Legislature purposefully selected the entities it included in the term "local unit of government," and elected not to incorporate in the definition district libraries or authorities. "[T]he search for legislative intent begins and ends in the language of the statute." *People v Morton*, 423 Mich 650, 655; 377 NW2d 798 (1985). Accordingly, this Court should simply apply MCL 123.1101(a) and MCL 123.1102 in accordance with their obvious meaning. Doing so compels the conclusion that the Legislature did not intend to extinguish the ability of district libraries and authorities to regulate firearms.

Despite the clarity of the statutes at issue, the majority embarks on a journey through the thicket of preemption to find the library's policy illegal. By applying the field-preemption doctrine to this case, I believe that the majority has strayed from its task of interpreting rather than making law. "Where the statute unambiguously conveys the Legislature's intent, 'the proper role of a court is simply to apply the terms of the statute to the circumstances in a particular case.'" *Mich Dept of Transp v Tomkins*, 481 Mich 184, 191; 749 NW2d 716 (2008) (citation omitted). Rather than confining its analysis to the statutory text, the majority discerns legislative "policy" from legislative history and the existence of other firearm-related statutes, and concludes that "the Legislature intended to extinguish local regulation addressing firearms" This "intent" is certainly not expressed in the statute. To the extent the majority employs the field-preemption doctrine as a vehicle for ignoring the statutory text, I respectfully submit that the majority has erred.

Federal preemption doctrines emanate from the Supremacy Clause of the United States Constitution, which provides: "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof . . . shall be the Supreme Law of the land." US Const, art VI, § 2. "Field preemption does not rest on an express congressional provision, or a conflict between federal and state law . . . but instead occurs 'if federal law so thoroughly occupies a legislative field as to make reasonable the inference that Congress left no room for the States to supplement it.'" *Wisconsin Central, Ltd v Shannon*, 539 F3d 751, 762 (CA 7, 2008), quoting *Cipollone v Liggett Group, Inc*, 505 US 504, 516; 112 S Ct 2608; 120 L Ed 2d 407 (1992) (quotation marks omitted). "Where . . . the field which Congress is said to have pre-empted includes areas that

have been traditionally occupied by the States, congressional intent to supersede state laws must be clear and manifest.” *English v General Elec Co*, 496 US 72, 79; 110 S Ct 2270; 110 L Ed2d 65 (1990) (quotation marks and citations omitted) (alteration in original).

Preemption under Michigan law derives from Const 1963, art 7, § 22, which declares:

Under general laws the electors of each city and village shall have the power and authority to frame, adopt and amend its charter, and to amend an existing charter of the city or village heretofore granted or enacted by the legislature for the government of the city or village. *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.³]

In *People v Llewellyn*, 401 Mich 314, 323-324; 257 NW2d 902 (1977), our Supreme Court articulated a field preemption analysis that considers four factors: (1) whether state law expressly preempts any further law making; (2) whether preemption should be implied based on a court’s examination of legislative history; (3) whether preemption may be implied due to the “pervasiveness of a state regulatory scheme,” and (4) whether “the nature of the regulated subject matter . . . demand[s] exclusive state regulation to achieve the uniformity necessary to serve the state’s purpose or interest.” *Id.* All of these guidelines except the first invite judges to make policy choices. Alternatively stated, *Llewellyn*’s field-preemption methodology encourages courts to depart from the expressed statutory language and to instead decide cases based on “extratextual sources such as legislative testimony, the perceived intent of the Legislature, [or] overarching policy considerations[.]” *Paige v Sterling Hts*, 476 Mich 495, 515; 720 NW2d 219 (2006).

³ The majority does not address the legal basis for applying field-preemption analysis to a policy announced by a district library. Unquestionably, our Constitution sets forth a “supremacy clause” applicable to the “resolutions and ordinances” of cities and villages. Equally obvious is the fact that a governmental entity may not develop and enforce policies that violate Michigan law or federal law. By its nature, field preemption is an imprecise doctrine that seeks to discern, among other vague guideposts, whether a statutory scheme is “pervasive,” and whether the legislative history speaks to an interest in uniform regulation. I question whether this Court should apply field-preemption analysis outside the realm of municipal law. Because the doctrine sweeps so broadly, it may displace perfectly “legal” rules and policies generated by a myriad of quasi-governmental agencies based on judicial notions of overriding interests.

The majority has unquestioningly accepted *Llewellyn's* invitation, implying preemption based on the majority's view of legislative history,⁴ the majority's determination that the Legislature meant to occupy the field of firearm regulation even though it never said so, and the majority's opinion that state-wide regulation would be preferable to permitting district libraries to prohibit guns. In reaching these conclusions, the majority has disregarded our Supreme Court's oft-repeated instruction that "our judicial role precludes imposing different policy choices than those selected by the Legislature[.]" *Johnson*, slip op at 15 (quotation marks and citation omitted).

When the Legislature has expressed the intent that state law supplant local regulation, courts must give effect to legislative will. But our Legislature has never expressly provided that it possesses an exclusive ability to regulate firearms. Instead, the Legislature enacted an admittedly comprehensive statute prohibiting an expansive range of local regulations, and specifically limited the reach of that statute to cities, villages, townships or counties. That limitation is fully corresponds with an intent to preserve the authority of other quasi-governmental units to regulate firearms. Given that in MCL 123.1101(a) the Legislature unambiguously set forth the "field" relevant to MCL 123.1102, I discern no basis for applying field-preemption analysis. By doing so, the majority interposes judicial considerations above and beyond the words selected by the Legislature.

Czymbor's Timber, Inc v Saginaw, 478 Mich 348; 733 NW2d 1 (2007), illustrates a textually-sensitive approach to field preemption. The allegedly preemptive statute in *Czymbor's Timber* was found in part 419 of the Natural Resources and Environmental Protection Act, MCL 324.1701 *et seq.* It provided that the Department of Natural Resources "may regulate and prohibit hunting, and the discharge of firearms and bow and arrow . . . on those areas established under this part[.]" MCL 324.41901(1). Saginaw enacted ordinances banning the discharge of firearms and arrows within city limits. *Czymbor's Timber*, 478 Mich at 350. The plaintiffs sought to hunt on their private land located within the city of Saginaw. They challenged the validity of the ordinances, contending that "because neither ordinance contains a hunting exception, the ordinances conflict with and are preempted by MCL 324.41901[.]" *Id.*

The Supreme Court observed that the Legislature specifically circumscribed the application of MCL 324.41901 to "property established under part 419." *Id.* at 356 (quotation marks omitted). Because plaintiffs had not made the requisite showing that their property was a hunting area "established under" part 419, the Supreme Court declined to employ a preemption

⁴ By way of legislative history, the majority cites House Legislative Analysis, HB 5437, January 30, 1991. Our Supreme Court has characterized a house legislative analysis as "a staff-prepared summary of the law . . . entitled to little judicial consideration in the construction of statutes." *Johnson v Recca*, __ Mich __; __ NW2d __ (Docket No. 143088, filed July 30, 2012) (quotation marks and citation omitted), slip op at 17.

analysis. *Id.* at 357. In other words, the Supreme Court examined the statutory language before considering whether the Saginaw ordinances were preempted. Preemption analysis then became irrelevant, as the Legislature had specifically limited the statute's reach. *Czymbor's Timber* teaches that simple application of guiding statutory construction principles may eliminate the relevance of field-preemption analysis. I suggest that the plain language of MCL 123.1101(a) similarly renders preemption analysis superfluous in this case.

By applying the *Llewellyn* guidelines, the majority disregards MCL 123.1101(a) and instead embarks on a judicial excursion into a dark cavern. The majority perceives a legislative intent not from the statutory text, which conclusively refutes any notion that the Legislature has expressly and solely occupied the field of firearm regulation. Rather, the majority finds that the district library's weapon policy runs afoul of legislative history, contradicts a statutory scheme the majority characterizes as "a broad, detailed, and multifaceted attack' on the possession of firearms," contravenes a legislative "policy choice" gleaned from the majority's interpretation of legislative history and the statutory scheme, and violates the majority's view that "regulation of firearm possession undoubtedly calls for . . . exclusive state regulation." Thus, the majority imposes on clear and unambiguous statutory language its view of what the law *should* be, despite that the text clearly states otherwise.

We may not presume that the Legislature mistakenly or inadvertently omitted district libraries or authorities from the definition of "a local unit of government." When "statutory language is certain and unambiguous, judicial construction is neither required nor permitted, and courts must apply the statute as written." *Turner v Auto Club Ins Ass'n*, 448 Mich 22, 27; 528 NW2d 681 (1995). "Courts cannot assume that the Legislature inadvertently omitted from one statute the language that it placed in another statute[.]" *People v Monaco*, 474 Mich 48, 58; 710 NW2d 46 (2006) (quotation marks and citation omitted). The rules governing statutory construction also forbid this Court from deducing that the Legislature "mistakenly utilized one word or phrase instead of another." *Chaney v Dep't of Transp*, 447 Mich 145, 165; 523 NW2d 762 (1994). Nor may courts "assume that the Legislature inadvertently omitted from one statute the language that it placed in another, and then, on the basis of that assumption, apply what is not there." *Peltola*, 489 Mich at 185 (quotation marks and citation omitted). See also *Reichert v Peoples State Bank*, 265 Mich 668, 672; 252 NW 484 (1934) ("It is to be assumed that the legislature . . . had full knowledge of the provisions of [the relevant statute] and we have no right to enter the legislative field and, upon assumption of unintentional omission . . . , supply what we may think might well have been incorporated.").

This case illustrates that when applied in a manner untethered to the text, the *Llewellyn* guidelines empower judges to inject their own policy preferences into the task of statutory construction. Given the clarity of the statutes here at issue, the majority's determination that the Legislature meant to preempt the field of firearm regulation turns on *judicial* opinions unmoored

from the actual words selected by the Legislature. Whether “[a]n exclusive, uniform state regulatory scheme for firearm possession is far more efficient for purposes of obedience and enforcement than a patchwork of local regulation,” is not our concern. Nor are the pros and cons of openly carrying weapons into a place devoted to quiet reading and study. Our only task is to apply well-established legal principles to the task of interpreting a statute. In my view, the statute is susceptible to only one interpretation, and that interpretation compels us to affirm the circuit court.⁵

/s/ Elizabeth L. Gleicher

⁵ The majority characterizes as “simplistic” my view that the judicially-created implied field-preemption doctrine may not circumvent plain statutory language. I readily agree that the fundamental rule of statutory construction at the heart of this case is a simple one. The Supreme Court has repeatedly instructed, “a court may read nothing into an unambiguous statute that is not within the manifest intent of the Legislature *as derived from the words of the statute itself.*” *Roberts v Mecosta Co Gen Hosp*, 466 Mich 57, 63; 642 NW2d 663 (2002) (emphasis added). To the extent that the majority’s application of the field-preemption doctrine requires psychoanalyzing the Legislature to find a preemptive intent, the majority has contravened this bedrock principle. See *Devillers v Auto Club Ins Ass’n*, 473 Mich 562, 582; 702 NW2d 539 (2005) (Statutory . . . language must be enforced according to its plain meaning, and cannot be judicially revised or amended to harmonize with the prevailing whims of members of this Court.”); *Halloran v Bhan*, 470 Mich 572, 579; 683 NW2d 129 (2004) (“As we have invariably stated, the argument that enforcing the Legislature’s plain language will lead to unwise policy implications is for the Legislature to review and decide, not this Court.”); *Lansing Mayor v PSC*, 470 Mich 154, 165; 680 NW2d 840 (2004), overruled in part on other grounds *Petersen v Magna Corp*, 484 Mich 300; 773 NW2d 564 (2009) (“An analysis . . . that is in conflict with the actual language of the law and predicated on some supposed ‘true intent’ is necessarily a result-oriented analysis. In other words, it is not a legal analysis at all.”), and countless other cases. Nor have I chosen to “disregard or rebuff” *Llewellyn*. Where a statute explicitly defines the field of its reach, the *implied* field-preemption doctrine described in *Llewellyn* violates the canons of statutory construction and any application of *Llewellyn* is unjustified.