

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF GENESEE

ARTHUR WOODSON; TREVOR
BERRYHILL; MICHIGAN OPEN CARRY,
INC.; MICHIGAN GUN OWNERS; and
MICHIGAN COALITION FOR
RESPONSIBLE GUN OWNERS,

Case No.: 2023-119889-CZ

Plaintiffs,

v.

Judge Brian S. Pickell

SHELDON NEELEY, in both his official
and personal capacities, and FLINT CITY
COUNCIL,

Defendants.

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ORDER ON PLAINTIFFS' JOINT EMERGENCY MOTION FOR PRELIMINARY AND PERMANENT INJUNCTIVE RELIEF

BACKGROUND/INTRODUCTION

Plaintiffs Arthur Woodson; Trevor Berryhill; Michigan Open Carry, Inc.; Michigan Gun Owners; and Michigan Coalition for Responsible Gun Owners (hereinafter collectively "Plaintiffs") filed with the Court their subject written "Joint Emergency Motion for Preliminary and Permanent Injunctive Relief" and brief in support thereof dated November 3, 2023 (hereinafter collectively "the motion"). In the motion, Plaintiffs, among other things, respectfully request that this Court, on an emergency basis, immediately enter an order for preliminary and permanent injunctions against Defendant Sheldon Neeley (in both his personal and official capacities) and Defendant Flint City Council (hereinafter collectively "Defendants" or "Defendant City of Flint") to enjoin them from their alleged sudden, ongoing, and blatant disregard for their open-government obligations mandated by and violations of Michigan's "Open Meetings Act" (MCL §§ 15.261 – 15.275) (hereinafter "the OMA") (e.g., denying access/attendance by law-abiding citizens/members of the general public at meetings of Defendants subject to the OMA who are otherwise fully entitled to attend such meetings). Plaintiffs further allege that, without emergency intervention by the Court, Plaintiffs will suffer further irreparable harm to which there is no adequate remedy at law . . . and such order is necessary to return the parties to the *status quo* that existed prior to such alleged violations.

More specifically, Plaintiffs respectfully request that this Court issue an injunction preliminarily and permanently enjoining Defendants from their allegedly unlawfully

limiting the general public's access to and participation at Defendants' meetings that are subject to the OMA; that is, holding such meetings where members of the general public, allegedly in direct contravention of mandates of the OMA, are:

- 1) Excluded from the meetings based on their possession of items that are commonly used for personal protection [such as, but not necessarily limited to, self-defense spray (a/k/a "pepper spray"), electro-muscular disruption devices (a/k/a "tasers"), pocket knives, and firearms] and the members of the general public are otherwise lawfully permitted to possess under state law;
- 2) Prohibited from photographing, recording, or broadcasting the meetings;
- 3) Required to satisfy a condition precedent for them to enter the meetings; and
- 4) Excluded from the meetings for a reason other than their breach of the peace actually committed at the meetings.

Plaintiffs request further that this Court award them any fees, costs, damages, and fines as required by MCL § 15.271(4) and grant Plaintiffs all other relief that this Court deems equitable and just. According to Plaintiffs, a preliminary injunction issued by the Court against Defendants while this case is being litigated (and, ultimately, a permanent injunction) will prevent Defendants from their precluding public participation at their meetings in violation of both the OMA and "First Amendment" constitutional right of the people to petition government for redress of grievances.

Defendant filed with the Court—by way of a brief—a written response in opposition to the motion dated November 14, 2023 (hereinafter "the response"). The Court heard oral argument on the motion on November 14, 2023. Although the Court, toward the end of the

hearing, ordered from the bench that Plaintiffs were allowed to file with the Court a written reply to the response by the end of business on November 15, 2023 and Defendants were allowed to file with the Court a written sur-reply to only any such reply by the end of business on November 16, 2023, Plaintiffs ultimately did not so file such reply.

In furtherance of judicial economy and efficiency and knowing that the parties are already well aware of the relevant established facts/circumstances, procedural history, law, and respective oral and written arguments and statements of Plaintiffs and Defendants, this Court dispenses of a detailed recitation of same here and incorporates them by reference herein, including those as stated in the respective written submissions and at the hearing. As explained more fully below, the motion is **GRANTED IN PART/DENIED IN PART**. In particular, the Court grants the motion as it relates to only preliminary injunctive relief such that, during the pendency of this litigation, the parties are returned to the *status quo* that existed prior to the alleged violations by Defendants.

COURT'S ANALYSIS

THE COURT HEREBY FINDS that:

1) The OMA is applicable here.

2) Here, Defendants are attempting to require a lesser degree of openness

relative to their open meetings [i.e., excluding a person from any such meetings based on her/his possession of the subject personal-protection items (e.g., self-defense spray, electro-muscular disruption devices, pocket knives, and firearms)] (hereinafter “said personal-protection items”) than the standards for openness provided for in the OMA.

3) According to Section 1(3) of the OMA, nothing in the OMA shall prohibit Defendants from adopting an ordinance, resolution, rule, or charter provision that would require a greater degree of openness relative to open meetings of Defendants than the standards provided for in the OMA.

4) By implication, then, Defendants are prohibited from their adopting an ordinance, resolution, rule, or charter provision that would require a lesser degree of openness relative to open meetings of Defendants than the standards provided for in the OMA.

5) According to Section 3(1) of the OMA, all open meetings of Defendants must be open to the public and held in a place available to the general public. All persons must be permitted to attend any such meetings, except as otherwise provided in the OMA. The right of a person to attend any such meetings includes her/his right to tape-record, videotape, broadcast live on radio, and telecast live on television proceedings at any such meetings. Exercise of this right does not depend on prior approval of Defendants. However, Defendants may establish reasonable rules and regulations to minimize possibility of disrupting any such meetings.

6) Section 3a(1) of the OMA describes circumstances under which open meetings of Defendants may be held, in whole or in part, electronically by telephonic or video conferencing in compliance with the OMA, and not any of such circumstance is satisfied here.

7) According to Section 3(4) of the OMA, a person must not be required as a condition of her/his attendance at an open meeting of Defendants to register, provide

her/his name or other information, or fulfill a condition precedent to her/his attendance at such meeting.

8) According to Section 3(6) of the OMA, a person must not be excluded from an open meeting of Defendants otherwise open to the public, except for a breach of the peace actually committed by her/him at such meeting.

9) Standards provided for in the OMA do not explicitly exclude a person from open meetings of Defendants based on her/his possession of said personal-protection items.

10) Pursuant to the OMA, Defendants may establish reasonable rules and regulations to minimize possibility of disruption of Defendants' open meetings by a person.

11) For Defendants to exclude a person from their open meetings based on her/his possession of said personal-protection items, Defendants must go outside their adopting an ordinance, resolution, rule, or charter provision to that effect (since, again, such exclusion results in a lesser degree of openness relative to Defendants' open meetings) and/or, pursuant to the OMA, properly and sufficiently establish that such exclusion minimizes possibility of disruption of such open meetings by a person.

12) "Memorandum of Understanding and Agreement Between the 67th District Court and the City of Flint" dated October 20, 2023 was entered into by and between Defendant City of Flint and 67th District Court (Genesee County) (hereinafter "the 'MoU and Agreement'").

13) The "MoU and Agreement" reads in relevant part that:

1) City of Flint agrees to provide the 67th District Court with sufficient rooms and/or office space to allow judges of the 67th District Court to hold hearings at City Hall

2) City of Flint shall make the hearing room available on request, during normal business hours, 8 AM to 5 PM, Monday through Friday. Requests for the hearing room by the 67th District Court shall be given priority over any other requests so long as the requests are received at least 28 days in advance by personnel of Defendant City of Flint to be designated.

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4) The City further agrees that Flint City Hall shall be subject to the orders of the Chief Judge of the 67th District Court regarding security and related matters.

5) . . . This Memorandum of Understanding and Agreement constitutes the sole agreement between the parties regarding this subject matter

14) As it relates to orders of the chief judge of the 67th District Court regarding security and related matters, a subject joint local administrative order dated February 2020 was entered into by the chief judge of at least the 67th District Court (hereinafter "the LAO").

15) The LAO reads in relevant part that:

The purpose of this order is to address the issues of court security and courtroom decorum.

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No weapons or other impermissible items are allowed in the . . . Courthouse or any satellite District Court or office, including the Office of the Friend of the Court, District Court Probation, Juvenile Probation, Court Services and the Specialty Courts Office.

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The level of courtroom security will be . . . commensurate with the nature of the proceedings . . .

- 16) The LAO explicitly identifies such weapons and other impermissible items and exceptions as to whom the impermissibility specifically does not apply (which are not relevant here).
- 17) Although the "MoU and Agreement" states that Flint City Hall shall be subject to orders of the chief judge of the 67th District Court regarding security and related matters, the "MoU and Agreement" does not appear to explicitly adopt and incorporate by reference the security-related provisions of the LAO.
- 18) There are issues of contract and statutory interpretation (involving genuine issues of material fact) as to the OMA, "MoU and Agreement," and LAO, namely:
 - A) Whether the rules and regulations that Defendants established that exclude members of the general public from Defendants' open meetings based on possession of said personal-protection items by the members, under the OMA, are reasonable and lawful to minimize the possibility of disruption of the meetings by a person;
 - B) Whether Flint City Hall, in general, and the hearing room thereof, in particular, is a satellite district court or office under the LAO such that Defendants can lawfully exclude the members from the meetings at Flint City Hall or parts thereof based on possession of said personal-protection items by the members;

- C) Assuming for our purposes here that Flint City Hall or any part thereof is a satellite district court or office under the LAO, whether the “MoU and Agreement” even adopts and incorporates by reference provisions of the LAO related to security at a satellite district court or office (especially considering that the “MoU and Agreement” constitutes the sole agreement between the parties regarding such security);
- D) Assuming for our purposes here that Flint City Hall or any part thereof is a satellite district court or office under the LAO, whether the security-related provisions of the LAO can apply to any room and/or office space of Flint City Hall provided to the district court by Defendant City of Flint . . . or only the hearing room of Flint City Hall;
- E) Assuming for our purposes here that Flint City Hall or any part thereof is a satellite district court or office under the LAO, whether the security-related provisions of the LAO can apply any given time of day . . . or only during normal business hours (i.e., Monday through Friday from 8 a.m. to 5 p.m.); and
- F) Assuming for our purposes here that Flint City Hall or any part thereof is a satellite district court or office under the LAO, whether the security-related provisions of the LAO even apply to holding of open meetings of Defendants . . . or only to holding of hearings of the district court.

19) In these ways, the Court finds that reasonable minds could differ with each other as to interpretation of relevant respective provisions of the OMA, "MoU and Agreement," and LAO.

20) Since members of the general public are otherwise lawfully permitted to possess said personal-protection-items under state law at Defendants' open meetings, Plaintiffs have demonstrated that they have a likelihood of success on the merits and would suffer irreparable harm if the motion were denied.

21) Since members of the general public lose their opportunity to attend proceedings of any open meeting of Defendants, tape-record and/or videotape them, broadcast them live on radio, and/or telecast them live on television once the meeting has come and gone, Plaintiffs have demonstrated that they would suffer irreparable harm if the motion were denied.

22) Otherwise, harm to Plaintiffs if the motion were denied compared to that to Defendants if the motion were granted and harm to the public interest if the motion were denied both weigh in favor of neither party.

CONCLUSION

In view of these findings, THE COURT HEREBY ORDERS that the motion is **GRANTED IN PART/DENIED IN PART**. In particular, the Court grants the motion as it relates to only preliminary injunctive relief such that, during the pendency of this litigation, the parties are returned to the *status quo* that existed prior to the alleged violations by Defendants and they are enjoined from:

- 1) Excluding members of the general public from open meetings of Defendants based on possession of said personal-protection items by the members that they are otherwise lawfully permitted to possess under state law;
- 2) Prohibiting the members from photographing, recording, or broadcasting the meetings;
- 3) Requiring the members to satisfy a condition precedent for them to enter the meetings; and
- 4) Excluding the members from the meetings for a reason other than breach of the peace actually committed by the members at the meetings.

However, the Court denies the motion as it relates to permanent injunctive relief. Instead, results of the pendency of this litigation will determine and resolve issues of law and/or fact as to whether:

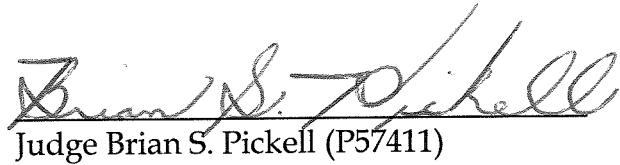
- 1) The rules and regulations that Defendants established that exclude members of the general public from Defendants' open meetings based on possession of said personal-protection items by the members, under the OMA, are reasonable and lawful to minimize possibility of disruption of the meetings by a person; and/or
- 2) Flint City Hall, in general, or any designated room thereof, in particular, is a satellite district court or office under the LAO such that Defendants can lawfully exclude the members from the meetings at Flint City Hall or parts thereof based on possession of said personal-protection items by the members.

The Court does not award costs or fees to any of the parties.

This is not a final order, and the case remains open.

IT IS HEREBY RESPECTFULLY SO ORDERED.

November 20, 2023



Judge Brian S. Pickell (P57411)

cc: Attorneys of Record
Court File