

STATE OF MICHIGAN
3rd JUDICIAL CIRCUIT COURT

DEREK YOUNCE, an individual;
SAM DITZHAZY, an individual;
STEPHANIE WATERS, an individual;
MICHIGAN OPEN CARRY, INC.,
MICHIGAN COALITION FOR
RESPONSIBLE GUN OWNERS, INC., and,
MICHIGAN GUN OWNERS, INC.

Case No. 21-_____ -AW

HON. _____

Plaintiffs,

v.

WAYNE COUNTY CLERK'S OFFICE
and CATHY M. GARRETT in her official capacity
as CLERK OF WAYNE COUNTY

COMPLAINT FOR WRIT OF
MANDAMUS, ORDER TO SHOW
CAUSE, AND OTHER CLAIMS
Oral Argument requested

Defendants.

TERRY L. JOHNSON (P70773)
LAW OFFICE OF TERRY L. JOHNSON, PLLC
Attorney for Michigan Open Carry, Inc.
Terryjohnson00@gmail.com
613 Abbott Suite 150D
Detroit, Michigan 48226
(313) 421-6193

DEAN G. GREENBLATT (P54139)
DEAN G. GREENBLATT, PLC
Attorney for Michigan Open Carry, Inc.,
Sam Ditzhazy and Derek Younce
dgg@mnsi.net
4190 Telegraph Road, Suite 3500
Bloomfield Hills, MI 48302
(248) 644-7520

STEVEN W. DULAN (P54914)
LAW OFFICES OF STEVEN W. DULAN PLC
Attorney for Michigan Coalition for Responsible
Gun Owners, Inc.
swdulan@stevenwdulan.com
5311 Park Lake Road
East Lansing, MI 48823
(517) 333-7132

JAMES J. MAKOWSKI (P62115)
MAKOWSKI LEGAL GROUP PLC
Attorney for Michigan Gun Owners, Inc.
jmakowski@makowskilegal.com
6528 Schaefer Road
Dearborn, MI 48126
(313) 434-3900

AARON B. KENDAL (P63021)
Attorney for Attorney for Michigan Open Carry,
Inc., and Stephanie Waters
aaron@kendal-law.com
4190 Telegraph Road, Suite 3000
Bloomfield Hills, MI 48302
(248) 572-1050

There are no other pending or resolved civil actions arising out of the same transaction or occurrence alleged in the Complaint.

COMPLAINT FOR WRIT OF MANDAMUS, ORDER TO SHOW CAUSE, AND OTHER CLAIMS

Oral Argument requested

NECESSITY FOR EXPEDITED CONSIDERATION AND IMMEDIATE ACTION

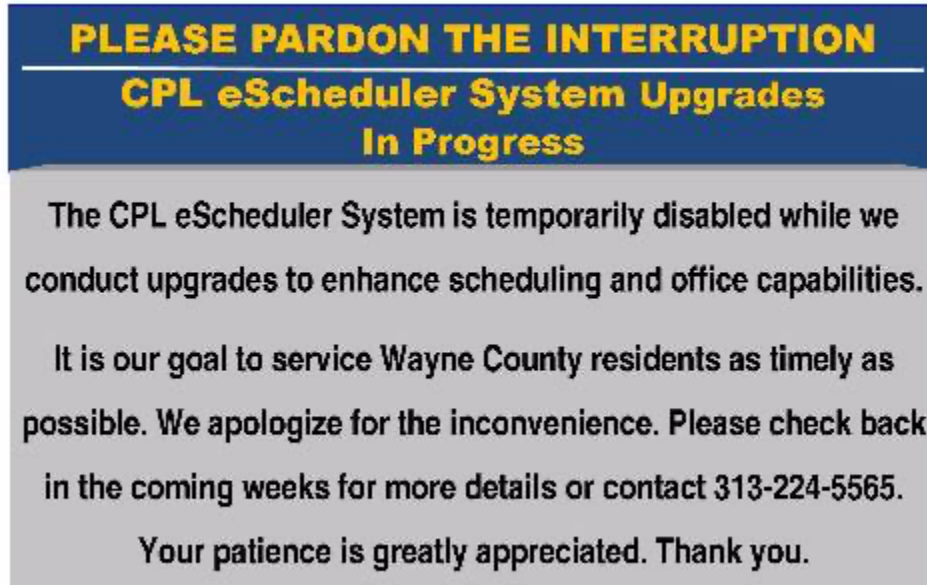
NOW COMES Derek Younce (“**Younce**”); Sam Ditzhazy (“**Ditzhazy**”); Stephanie Waters (“**Waters**”); Michigan Open Carry, Inc. (“**MOC**”); Michigan Coalition for Responsible Gun Owners, Inc. (“**MCRGO**”); and Michigan Gun Owners, Inc. (“**MGO**”) (collectively, “**Plaintiffs**”), by and through their undersigned attorneys, and for their Complaint for Writ of Mandamus, Order to Show Cause, and Other Claims (“**Complaint**”) against The Wayne County Clerk’s office and Cathy M. Garrett in her official capacity as County Clerk for the County of Wayne, Michigan, (“**County Clerk**”), (“**Defendants**”), state as follows:

INTRODUCTION

1. Plaintiffs file this Complaint to compel Defendants to comply with their legal duties to ensure the acceptance of Concealed Pistol License (“CPL”) applications, administration of oath, and processing of CPL applications according to MCL 28.425b.
2. In December 2015, the legislative branch of the State of Michigan enacted MCL 28.425b, which defines the duties of a County Clerk to process applications for CPLs. MCL 28.425b requires in relevant part:
 - a. To obtain a license to carry a concealed pistol, an individual shall apply to the county clerk in the county in which the individual resides. The applicant shall file the application with the county clerk in the county in which the applicant resides during the county clerk's normal business hours.

- b. The applicant must sign the application under an oath administered by the county clerk or the county clerk's representative. The county clerk shall administer the oath.
 - c. The county clerk shall issue the applicant a receipt for his or her application at the time the application is submitted containing the name of the applicant, the applicant's state-issued driver license or personal identification card number, the date and time the receipt is issued, the amount paid, the name of the county in which the receipt is issued, an impression of the county seal, and the following statement: "This receipt was issued for the purpose of applying for a concealed pistol license and for obtaining fingerprints related to that application. This receipt does not authorize an individual to carry a concealed pistol in this state."
 - d. The county clerk shall issue and shall send by first-class mail to the applicant a CPL within the period required under this act if the county clerk determines that the person applying meets the qualifications within the act.
 - e. The county clerk shall send by first-class mail a notice of statutory disqualification for a license under this act to an individual if the individual is not qualified to receive a license.
3. Pursuant to MCL 750.224a(2)(b), in order to lawfully purchase or possess a device that uses electro-muscular disruption technology an individual must hold a valid concealed pistol license issued under MCL 28.425b.
4. County Clerk has delayed and denied application processing and oath administration to Wayne County residents contrary to MCL 28.425b.
5. As of February 20, 2021, no resident of Wayne County can apply for a CPL. Prior to February 19, 2021, residents of the County of Wayne had to wait 13 or more months to present CPL application, and to have the required oath administered at Wayne County Clerk's Office.

6. Currently, the County Clerk has published on her website the following notice announcing that no appointments for CPLs may be scheduled:



7. To the best of the Plaintiffs' knowledge and belief, no other county clerk in the State of Michigan is denying or delaying the acceptance of application, the refusal of administration of oath to their county residents who apply for a CPL, nor renewal of their county residents CPL permits.

PARTIES

8. Younce is a resident in the City of Dearborn Heights, County of Wayne, Michigan.
9. Ditzhazy is a resident in the City of Taylor, County of Wayne, Michigan.
10. Waters is a resident in the City of Detroit, County of Wayne, Michigan.
11. MOC is a Michigan not-for-profit advocacy organization created under the Michigan Nonprofit Corporation Act ("Nonprofit Act") that supports the lawful carry of handguns. MOC provides written material for the use of its members, municipalities, and law enforcement that outlines the laws associated with open carrying of handguns, and offers seminars on the topic. MOC has a presence in Wayne County, Michigan, and represents the interests of its member(s), and all others similarly

situated, having an actual case or controversy and interest in this matter and in preventing reoccurrence of the same issue as raised in this complaint.

12. MCRGO is a Michigan nonprofit organization created under the Nonprofit Act. MCRGO's goals include promoting the responsible, legal ownership and usage of firearms through education, litigation, and legislative action; seeking civil betterments and social improvements by promoting sportsmanship and education; and, protecting and defending the right of Michigan citizens to own, keep, and bear arms as guaranteed by Article I, Section 6 of the Michigan Constitution and the Second Amendment to the U.S. Constitution. MCRGO has a presence in Wayne County, Michigan and represents the interests of its members, and all others similarly situated, having a case or controversy and interests in preventing reoccurrence.

13. MGO is a Michigan nonprofit organization created under the Nonprofit Act. MGO's goals include educating the public on safe responsible gun ownership and preserving and defending the right to keep and bear arms as guaranteed by the Bill of Rights and Article I, Section 6 of the Michigan Constitution. MGO has a presence in Wayne County, Michigan and represents the interests of its members, and all others similarly situated, having a case or controversy and interests in preventing reoccurrence.

14. County Clerk is the duly elected Clerk of the County of Wayne, an office created under Article VI, Section 14 of the Michigan Constitution, and Article II, Chapter 2 of the Home Rule Charter for the County of Wayne. Plaintiffs sue County Clerk in her official capacity only.

15. County of Wayne is an organized county of the State of Michigan and body corporate pursuant to Art VII, Section 1 of the Michigan Constitution.

JURISDICTION

16. This Court has jurisdiction over this action pursuant to MCR 2.605 (declaratory relief); MCR 3.305(A)(2) (mandamus relief); and MCR 3.310 (injunctive relief). See also *Alliance for Mentally Ill*

v Dep't of Community Health, 231 Mich App 647, 660; 588 NW2d 133(1998) (“As a court of general equity jurisdiction, the circuit court had subject-matter jurisdiction to issue an injunction.”).

17. “[M]andamus is the proper remedy for a party seeking to compel election officials to carry out their duties.” *League of Women Voters v Secretary of State* (“LWV”), ___ Mich ___; ___ NW2d ___ (2020) (Docket No. 353654); slip op. at 3, quoting *Citizens Protecting Mich’s Const v Secretary of State*, 324 Mich App 561, 583; 922 NW2d 404 (2018) (alteration in original). Mandamus actions may be brought against local election clerks who have “ignored or otherwise failed to comply with . . . the law.” *LWV*, slip op. at 16.
18. Venue is proper in this Court pursuant to MCL 600.1621, MCL 600.1615, and MCR 3.305(B)(1) (mandamus relief). County Clerk conducts business and exercises its governmental authority in the County of Wayne.

COMMON ALLEGATIONS

19. There is an urgent need for this Court to render an expedited decision in this case, because it impacts the statutory and constitutional rights of Wayne County Residents.
20. Younce, desires to lawfully possess a portable device that employs electro-muscular disruption technology, commonly known as a “TASER™,” in his home for the purpose of defense of himself and his family.
21. Younce is presently unable to lawfully purchase or possess a portable device that employs electro-muscular disruption technology because he is presently unable to submit an application for a CPL.
22. Ditzhazy, desires to lawfully-carry a concealed pistol in compliance 28.425b for the purpose of defense of himself and his family.

23. Ditzhazy is unable to lawfully carry a concealed pistol because he was turned away at the County Clerk's office after making an online appointment for an unrelated service and then sought to submit an application for a CPL.
24. Waters, desires to renew her CPL. However, County Clerk has failed to provide the renewal notification or "PIN" required for that purpose. County Clerk has refused, neglected and/or failed to provide the notification and PIN when requested.
25. Waters is therefore unable to renew her CPL which will imminently expire, leaving her unable to lawfully carry a concealed pistol.
26. County Clerk's office is the access point for residents of the County of Wayne to obtain a Concealed Pistol License.
27. MCL 28.425b states: "To obtain a license to carry a concealed pistol, an individual shall apply to the county clerk in the county in which the individual resides. The applicant shall file the application with the county clerk in the county in which the applicant resides during the county clerk's normal business hours. The application must be on a form provided by the director of the department of state police and allow the applicant to designate whether the applicant seeks an emergency license. The applicant shall sign the application under oath. The county clerk or his or her representative shall administer the oath".
28. County Clerk is in violation MCL 28.425(B) by not accepting CPL applications.
29. Defendants are denying the renewal of existing CPLs by not giving notice of renewal in accordance with MCL 28.425l(1), which states in relevant part, "The county clerk shall notify the licensee that his or her license is about to expire and may be renewed as provided in this section. The notification must be sent by the county clerk to the last known address of the licensee as shown on the records of the

county clerk. The notification must be sent in a sealed envelope by first-class mail not less than 3 months or more than 6 months before the expiration date of the current license.”

30. County Clerk is in violation of MCL 28.425l(1) for its failure to notify the licensee about the expiration of CPLs.
31. To Plaintiffs’ knowledge and belief, no other mandated function of the duties of County Clerk have been so denied, substantially delayed, or otherwise disturbed during the pandemic.
32. In response to the foregoing statutory violations, MOC, MCRGO, and MGO have joined in initiating this Complaint along with Younce, Ditzhazy, Waters and on behalf of all others similarly situated (collectively, “**County Residents**”).

COUNT I

DECLARATORY RELIEF REGARDING DEFENDANTS’

VIOLATIONS OF MCL 28.425(B) AND MCL 28.425(l)

33. Plaintiffs hereby incorporate all of the foregoing paragraphs as if they were fully set forth herein.
34. There exists an actual case and controversy between the parties in that Plaintiffs allege that Defendants have denied—and continue to deny— Younce his legal rights to apply for a CPL and a have an oath administered to obtain a license to carry a pistol or portable device that uses electro-muscular disruption technology. See MCL 28.425b(1) and MCL 750.224a(2)(b).
35. Waters has attempted to renew her CPL but has not been sent the notice required to be sent by County Clerk and cannot renew her license without the PIN number issued by the County Clerk, and the County Clerk’s office after repeated contacts by Waters, has refused and failed to provide same.
36. County Clerk has not given any affirmation that she will comply with her statutory and constitutional obligations to accept applications and administer oaths as pursuant to MCL 28.425b(1).

37. County Clerk has not given any affirmation that she will comply with her statutory and constitutional obligations to notify licensees that their licenses are about to expire and may be renewed pursuant to MCL 28.425(l).

38. As such, Plaintiffs and County Residents are entitled to declaratory relief as to the required duties of Defendants.

COUNT II

WRIT OF MANDAMUS

39. Plaintiffs hereby incorporate all of the foregoing paragraphs as if they were fully set forth herein.

40. County Clerk has a clear legal duty, as mandated by the MCL 28.425b to take CPL applications during normal business hours, administer oaths, and perform other duties as required by MCL 28.425b.

41. County Clerk has a clear legal duty, as mandated by MCL 28.425l(1), to notify each licensee that his or her license is about to expire and may be renewed. The notification must be sent by the County Clerk to the last known address of the licensee as shown on the records of the County Clerk.

42. County Clerk's legal duties, as set out in the Michigan Constitution and by statute, are ministerial in nature.

43. County Residents have a clear legal right, pursuant to MCL 28.425b, to apply for, and pursuant to MCL 28.425l, to renew a CPL, which is necessary to legally carry a pistol concealed in Michigan or possess a portable device that uses electro-muscular disruption technology.

44. There is no other lawful manner in which a person may purchase or possess a portable device that uses electro-muscular disruption technology other than possessing a CPL. MCL 750.224a(2)(b).

45. There is no other legal manner in which residents of Wayne County, or anyone in Michigan, may carry concealed pistols on or about their persons or in their vehicles other than pursuant to a valid CPL and must be able to renew same prior to expiration.

46. No other adequate legal or equitable remedy exists that might achieve the same result and Plaintiffs are suffering immediate and irreparable harm by the failure of Defendants to perform their required ministerial duties.

47. Pursuant to MCR 3.305(C), this Court may issue an Order to Show Cause due to the need for immediate action to prevent this continuing irreparable harm.

COUNT III

DEFENDANTS' INFRINGEMENT OF YOUNCE'S RIGHTS UNDER THE SECOND AMENDMENT TO THE US CONSTITUTION

48. Plaintiffs hereby incorporate all of the foregoing paragraphs as if they were fully set forth herein.

49. Younce wishes to purchase and possess a portable device that uses electro-muscular disruption technology for the purposes of self-defense and defense of his family.

50. A CPL is required under Michigan Law in order for Younce to either purchase or possess a portable device that uses electro-muscular disruption technology.

51. A portable device that uses electro-muscular disruption technology is an "arm" of the type for which possession is a right guaranteed under the Second Amendment.

52. Defendants' denial and refusal to accept or process Younce's CPL application imparts an unconstitutional infringement of his Second Amendment right.

COUNT IV

DEFENDANTS' REFUSAL TO ACCEPT OR PROCESS CPL APPLICATIONS CONSTITUTES AN ARBITRARY AND CAPRICIOUS FAILURE TO ISSUE A LICENSE UNDER MCL 28.425d(3)

53. Plaintiffs hereby incorporate all of the foregoing paragraphs as if they were fully set forth herein.

54. County Clerk does not currently accept CPL applications from residents of the County of Wayne.

55. Defendants' denial to accept or process County Residents' including Plaintiffs' CPL applications and renewals within a reasonable time, or any time whatsoever, constitutes an arbitrary and capricious denial of same.

56. MCL 28.425d(3) provides that if this court determines that County Clerk's failure to provide a receipt that complies with MCL 28.425b(1) or (9) or 28.425l(3), or failure to issue a CPL to an applicant, is arbitrary and capricious, then this court shall order the County Clerk to pay the actual costs and actual attorney fees of the applicants.

COUNT V

DEFENDANTS' VIOLATION OF MICHIGANS FIREARMS PREEMPTION STATUTE

53. Plaintiffs hereby incorporate all of the foregoing paragraphs as if they were fully set forth herein.

54. MCL 123.1102 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, 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."

55. By failing to allow residents to submit CPL applications and renewals, the County Clerk has unilaterally, arbitrarily "enacted or enforce(d)" a "regulation pertaining to...possession of pistols..." in violation of Michigan statute.

CONCLUSION AND RELIEF SOUGHT

WHEREFORE, Plaintiffs respectfully request that this Court enter an order granting the following:

- A. Ordering the expedition of mandamus proceedings.
- B. Ordering County Clerk to show cause why a Writ of Mandamus should not issue.

- D. Declare Declaring that County Clerk is required by the Michigan Law to timely accept, and process CPL applications, issue renewal notices, and administer oaths as prescribed by law.
- C. Issue a Writ of Mandamus to require County Clerk to carry out her ministerial duties to timely accept, and process CPL applications, issue renewal notices, and administer oaths as prescribed by law.
- E. Ordering County Clerk to substantially lower backlog of applications from 14 months waiting to less than 2 months which is in accordance with other counties in the Michigan.
- F. Determining that the denial to accept or process CPL applications and issue CPL renewal notices constitutes an arbitrary and capricious failure to issue licenses for purposes of MCL 28.425d(3).
- G. Ordering Defendants to pay Plaintiffs' actual costs and actual attorney fees.
- H. Granting Plaintiffs and County Residents any such further relief as the Court deems equitable and just under the circumstances.

[The remainder of this page is intentionally left blank].

**LAW OFFICE OF TERRY L. JOHNSON
PLLC**

/s/ Terry L. Johnson (P70773)
Co-counsel for Michigan Open Carry, Inc.
terryjohnson00@gmail.com
613 Abbott Street, Suite 100
Detroit, MI 48226-1348
(313) 421-6193

**LAW OFFICES OF
STEVEN W. DULAN PLLC**

/s/ Steven W. Dulan (P54914)
5311 Park Lake Road
East Lansing, MI 48823-4958
(517) 333-7132
swdulan@stevenwdulan.com
Attorney for Michigan Coalition for
Responsible Gun Owners, Inc.

DEAN G. GREENBLATT, PLC

/s/ Dean G. Greenblatt (P54139)
4190 Telegraph Road, Suite 3500
Bloomfield Hills, MI 48302
(248) 644-7520
dgg@mnsi.net
Attorney for Plaintiffs Younce; Ditzhazy;
and, Michigan Open Carry, Inc.

MAKOWSKI LEGAL GROUP PLC

/s/ James J. Makowski (P62115)
6528 Schaefer Road
Dearborn, MI 48126
(313) 434-3900
jmakowski@makowskilegal.com
Attorney for Plaintiff Michigan Gun Owners,
Inc.

KENDAL LAW GROUP PC

/s/ Aaron B. Kendal (P63021)
4190 Telegraph Road, Suite 3000
Bloomfield Hills, MI 48302
(248) 572-1050
aaron@kendal-law.com
Attorney for Michigan Open Carry, Inc., and
Stephanie Waters