

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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TROY BINKLEY, TODD BINKLEY, and  
ESTATE OF ROBERT B. BINKLEY,

UNPUBLISHED  
June 21, 2012

Plaintiffs-Appellants,

v

SHIAWASSEE COUNTY SHERIFF GEORGE  
BRAIDWOOD,

No. 303360  
Shiawassee Circuit Court  
LC No. 09-008654-CZ

Defendant-Appellee.

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Before: FITZGERALD, P.J., and MURRAY and GLEICHER, JJ.

PER CURIAM.

Plaintiffs appeal as of right the March 15, 2011, order that (1) entered judgment in conformity with a jury verdict in favor of plaintiff Troy Binkley with regard to ownership of firearms seized from a gun safe following the execution of a search warrant, (2) granted partial summary disposition in favor of defendant with regard to firearms seized from a locked upstairs bedroom, and (3) granted summary disposition in favor of defendant with regard to plaintiffs' constitutional claims.

**I. FACTS AND PROCEDURAL HISTORY**

On July 27, 2004, Robert Binkley, the father of plaintiffs Troy and Todd Binkley, pleaded guilty of attempting to carry a concealed weapon, MCL 750.227(a), which is a 5-year felony. On October 1, 2004, the trial court sentenced Robert to a term of probation.

On June 1, 2007, a search warrant for a house owned by Robert was issued based on a tip that Robert was attempting to sell automatic weapons. The Shiawassee County Sheriff's Department, assisted by the FBI, the Morrice Police Department, and the Perry Police Department, executed the search warrant at 115 E. Third Street, Morrice, Michigan. The house was occupied at that time by Robert's son, Todd. A large cache of firearms and ammunition was found in two areas of the house. Nearly half the firearms were located in a locked upstairs bedroom of the house. The remaining firearms and ammunition were found in a large locked gun safe in the dining room area of the house. All firearms and ammunition found in these two locations were seized.

Robert was charged in United States District Court with being a felon in possession of firearms pursuant to 18 USC 922(g)(1), which prohibits a felon to be in possession of firearms that have been transported in interstate commerce. In January 2009, Robert pleaded guilty to the charge and was released on bond before sentencing. Robert committed suicide before he could be sentenced. On March 20, 2009, the United States District Court voluntarily dismissed the indictment given Robert's death.

After the dismissal of the federal indictment and Troy's appointment as personal representative of Robert's estate, counsel for Todd and Troy contacted the U.S. Attorney's office regarding the seized firearms. In response, the U.S. Attorney's office sent a letter to defendant stating that neither that office nor the FBI intended to seek civil forfeiture of the seized firearms.

Plaintiffs filed a complaint on June 15, 2009. Plaintiffs sought the return of the seized firearms pursuant to MCL 750.239 (Count I), and alleged Fourteenth Amendment Procedural Due Process and Equal Protection claims pursuant to 42 USC 1983 (Count II), and Violation of Second Amendment right to keep and bear arms pursuant to 42 USC 1983 (Count III).

After defendant answered, plaintiffs moved for summary disposition, asserting that defendants failed to state a valid defense to plaintiffs' claim for return of the firearms. Plaintiffs alleged that because Robert was not prosecuted by the State of Michigan, and because the federal indictment had been dismissed upon Robert's death, no "violation" of the law had been established and, therefore, the firearms should be returned to their rightful owners. Todd averred that the firearms had been purchased by Robert for the benefit of Todd and Troy and that the firearms had been gifted to himself and Troy before Robert's 2004 conviction. Troy also averred that the firearms belonged to himself and Todd.

In response, defendant noted that Todd was interviewed by Lt. David Kirk of the Shiawassee County Sheriff's Department and FBI Special Agent Joseph Vanderbossche during the execution of the search warrant. During that interview, Todd admitted to Kirk and federal agent Vanderbossche that he did not have any access to the locked upstairs bedroom or the gun safe:

I [Kirk] asked [Todd] whether or not he had any knowledge of the weapons being at his residence. He repeatedly stated that he had no knowledge of the weapons being there. He stated that the only person who has access to the room where the weapons were located was his father. I asked if he knew of his father being in possession of any illegal weapons, specifically automatic weapons. He stated that he had absolutely no knowledge of the guns inside the residence, which [sic] the exception of the ones in a wooden gun cabinet, all of which had registration paperwork still with them. Other than that, he had absolutely no knowledge of weapons inside and could not speak for the owners, due to the fact that they were his father's property and he had not had any contact with him. I asked if he had access to the gun safe on the first floor. He stated he did not have the combination nor the key to the safe and said again that it belonged to his father, Robert Binkley.

Todd admitted these facts during a recorded interview with Detective Sgt. Scott Shenk. Todd stated the locked upstairs room “belongs to [his] dad.” He admitted he had never been in the locked, upstairs room, and his father “just told me it was his personal belongings in there.” Todd also stated that the gun safe was his father’s. Todd again stated that he did not possess the key or the combination to the gun safe or a key to the locked upstairs room. The locked upstairs room and the gun safe were the only areas of the house that he did not have access to. A locksmith was required to break into the gun safe. Defendant also noted that when officers located Robert at a bar at approximately 12:45 a.m. the same night, Robert gave a statement to Kirk indicating that he was holding the weapons for a friend. Robert then stated that he had no knowledge of the weapons, but then stated that the weapons were not automatic because he had personally fired all of them. And, in August 2007, Robert called Kirk and asked how he could get his firearms returned. After being informed that he could not possess weapons due to his status as a felon, Robert indicated that he was calling on behalf of Todd. Additionally, defendant noted that Robert forfeited the guns when he pleaded guilty to being a felon in possession of weapons.

The trial court denied plaintiffs’ motion for partial summary disposition, finding that there was a question of fact regarding the ownership of the firearms found both in the upstairs bedroom and in the large gun safe. Defendant moved for reconsideration, arguing that at a minimum the firearms in the locked upstairs bedroom were automatically forfeited and that plaintiffs had no valid claim of ownership to those firearms. After plaintiffs responded to defendant’s motion for reconsideration, the trial court issued an opinion and order granting defendant’s motion for reconsideration with regard to the guns found in the locked upstairs bedroom. The court opined in relevant part:

This Court ruled at the motion for summary disposition that there was a question of fact as to whether the Plaintiffs owned the firearms. Upon review of deposition testimony and briefs, it becomes clear to this Court that an error was made with regards to the firearms in the upstairs locked bedroom.

\* \* \*

Based on the deposition testimony of the Binkleys it is clear that neither Plaintiff even knew that his father placed the firearms in the room. Therefore, Plaintiffs’ claim of an inter vivos gift fails as neither brother had actual or constructive delivery of the firearms in the upstairs bedroom. Neither Plaintiff qualifies as an owner for purposes of the firearms in the upstairs bedroom. Therefore, summary disposition in favor of the sheriff is appropriate.

The trial court ordered bifurcation of the trial on the firearms in the gun safe to determine ownership of those firearms. The jury returned a verdict for Troy as the owner of the firearms seized from the gun safe.<sup>1</sup>

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<sup>1</sup> The seizure of the firearms from the gun safe is not at issue in this appeal.

On January 24, 2011, defendant filed another motion for summary disposition as to plaintiff's constitutional claims that were based on qualified immunity. Following a hearing, the trial court granted summary disposition in favor of defendant with regard to the constitutional claims "for the reasons stated on the record." The trial court reasoned in pertinent part on the record:

You know, the history of this case is really quite tragic when you look at the sequential occurrences. That's why I wanted to go through it on the record to illustrate, you have the state conviction, you have the federal plea, you have then the death by suicide of Robert Binkley and his estate now is one of the plaintiffs, along with Troy Binkley, his son.

So there are weapons, you know, that are all over the place in the house, as far as the bedroom – I say all over, I mean different locations, bedroom, gun safe, gun case. Basically, bedroom and gun case weaponry is what was involved here. So the jury in phase one has ruled in favor of the Plaintiff, Troy, and so what's left are the constitutional claims and on – on the issue of qualified immunity, the case law has been correctly cited by both parties and in terms of looking at the issue of qualified immunity, then the Court as we've already covered, has to basically look at two prongs and we've gone through what those are.

Basically, was the right that is being asserted by the Plaintiff here clearly established and were the rights violated on the facts which are stated or alleged in this case. And in this case, we have gone over the federal case law quite completely and the *Heller* case as we've already seen maybe laid the ground work for what followed but only applied to the facts that were before it, namely the District of Columbia being the part in that case. That was, I think – well, 2008.

The Supreme Court then spoke to the issue in *McDonald v City of Chicago* which both counsel have interpreted here. That's decided June 28, 2010, over a year after this complaint was filed on June 15, 2009. So this Court finds that the Defendant Sheriff in terms of the action that were taken with the storage or keeping of the weapons, that the rights that are being claimed by the Plaintiff to have been violated were not clearly established because the – it took the Supreme Court, as counsel pointed out, a couple hundred years to come to the conclusion that they've come to in 2010, June.

And even with that, there are limitations. It's not a full license for individuals who are convicted of various felonies to be in possession of firearms and that's been noted and it's been qualified in the law that's been stated.

So it appears to the Court that the – however we measure the motion relative to the Second Amendment, that the – the – and that's, I think, stated in Count III, that the Defendant is entitled to summary disposition on certainly (C)(7) as well as (C)(10) of the Court Rule.

If we then look at Count II which is a claim under the Fourteenth Amendment, the Plaintiff is claiming a deprivation or violation of due process that property was confiscated, was taken, was kept without affording due process of law to the Plaintiffs. Therefore and in the statutory scheme, if we find in Michigan – and I’ve just reviewed it again with counsel to clarify in my own mind, there is the automatic forfeiture procedure in the statute 750.239. This, by the way, I’m just looking at a head note and that’s from *People v Thompson*, 125 Mich App Page 445.

And the head note is that the statute regarding forfeiture of firearms carried, possessed or used contrary to Chapter 37 of the Michigan Penal Code provides for the absolute forfeiture of said such firearms and does not grant a trial court discretion to decide whether a Defendant convicted of such a violation may have his firearm returned. That would be the conviction from whatever year, 2003 or 2004 in this Court.

MCL 750.239(a) then lays out the procedure, procedures for the disposition of the seized weapons at Subsection (4), quote:

“An individual claiming ownership of a firearm may petition in the Circuit Court for return of a firearm under the section if return of the firearm is denied by the police agency.”

That’s been done in this case and that has been covered in phase one of the trial. Or – and then it goes on.

“The police agency shall not dispose of a firearm until the expiration of the 30-day period or if the petition is filed under the subsection so permitted to do so by the courts. The Sheriff’s Department is not to dispose of the firearms.”

Seems to this Court that the due process claims that are within the Fourteenth Amendment cause of action, Count II, that the Defendant is entitled to summary disposition on that, too, because the statutory scheme lays out the remedies for an individual or individuals in the position of Troy Binkley and those – those statutes are not just empty but again, provide access to the courts, provide what is referred to, what is due process contemplated by our constitution, both federal and Michigan.

So it appears to this Court that whether we measure this by (C)(7) or (C)(10), possibly (C)(8) but I would – I would hang the Court’s hat on (C)(8) and (C)(10), that the Defendant is entitled to summary disposition and I will so order.

As far as the request for amendment<sup>2</sup> as requested by [plaintiff's counsel], in thinking about that, I am of the firm belief that that would be futile for the reasons already stated in the question and answer by the court and [plaintiff's counsel].

## II

Plaintiffs first argue that the trial court erred by granting partial summary disposition in favor of defendant with regard to forfeiture of the firearms that were seized from the upstairs bedroom. This Court reviews de novo the trial court's ruling on the summary disposition motion. *Dancey v Travelers Prop Cas Co*, 288 Mich App 1, 7; 792 NW2d 372 (2010). Questions of statutory interpretation are also reviewed de novo. *Hines v Volkswagen of America, Inc*, 265 Mich App 432, 437; 695 NW2d 84 (2005).

Plaintiffs argue that MCL 750.239, by its terms, requires a conviction under Michigan law demonstrating a violation of Chapter 37 of the Penal Code before firearms can be forfeited. They maintain that, because Robert Binkley was prosecuted under federal law for being a felon in possession of firearms, MCL 750.239 is simply inapplicable and does not permit forfeiture of the firearms seized from the upstairs bedroom of the house. Defendant maintains that the plain language of MCL 750.239 does not require a conviction or even a charge, but only possession "contrary to" Chapter 37 of the Penal Code, and that as long as the law enforcement agency claiming forfeiture can show the weapons were "carried, possessed, or used contrary to" the Penal Code a separate conviction is not required. Thus, defendant maintains that the trial court properly denied the return of the firearms pursuant to MCL 750.239 and MCL 750.224f.

The goal of statutory interpretation is to discern the intent of the Legislature by examining the plain language of the statute. *Driver v Naini*, 490 Mich 239, 246-247; 802 NW2d 311 (2011). "When the language is clear and unambiguous, we will apply the statute as written and judicial construction is not permitted." *Id.* at 247.

MCL 750.239 provides:

All pistols, weapons or devices carried, possessed or used contrary to this chapter<sup>3</sup> are hereby declared forfeited to the state, and shall be turned over to the Commissioner of the Michigan State Police or his designated representative, for such disposition as the Commissioner may prescribe.

MCL 750.224f(2) provides that:

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<sup>2</sup> The amendment that the court is referring to is with regard to plaintiff's counsel's comment that "if the Court is inclined to somehow grant the motion relative to the Second and Fourteenth Amendment claims, I would like the opportunity to amend out complaint to assert a statutory basis for a 1983 case based upon the federal forfeiture statute which defendants haven't complied with."

<sup>3</sup> "This chapter" refers to Chapter 37 "Firearms."

A person convicted of a specified felony shall not possess, use, transport, sell, purchase, carry, ship, receive, or distribute a firearm in this state until all of the following circumstances exist: the expiration of 5 years after all of the following exist . . .

In *People v Switras*, 217 Mich App 142, 144; 550 NW2d 842 (1996), this Court ruled that MCL 750.239 “is unambiguous on its face and provides for a forfeiture of firearms if they are carried, possessed, or used contrary to Chapter 37 of the Penal Code.” There is no dispute that Robert was convicted of a felony when he pleaded guilty of attempted carrying of a concealed weapon in 2004. MCL 750.224f makes it illegal for a felon to possess firearms within either three or five years of his conviction, depending on the felony. Under MCL 750.239, firearms “carried, possessed or used contrary to [Chapter 37 of the Penal Code] are hereby declared forfeited to the state.” Contrary to plaintiffs’ suggestion, nothing in the language of MCL 750.239 requires a conviction before firearms are forfeited. “The statute provides for an absolute forfeiture of firearms.” *People v Thompson*, 125 Mich App 45, 47; 335 NW2d 712 (1983). In other words, as applied to the present case, the possession of firearms contrary to MCL 750.224f results in absolute forfeiture of the firearms under MCL 750.239. In this case, the seizure of the firearms occurred on June 1, 2007. By possessing<sup>4</sup> firearms on that date, Robert was in violation of MCL 750.224f. Because the possession in this case occurred within three years of Robert’s felony conviction, Robert was violating Chapter 37 of the Penal Code and, therefore, the firearms seized from the locked upstairs bedroom were subject to forfeiture under MCL 750.239.

Plaintiffs next argue that they are the legal owners of the firearms found in the locked upstairs bedroom and, therefore, they are entitled to return of the firearms. At issue is MCL 750.239a, which provides in pertinent part:

(1) Before a firearm is turned over for disposal under section 239, the police agency that recovered or confiscated the firearm shall determine if there is a known legal owner of the firearm and whether the firearm has been reported stolen. . . .

(2) If the owner is not alleged to have been involved in the violation for which forfeiture is required or did not knowingly allow the firearm to be possessed illegally, notification shall be given at the conclusion of the criminal case but not later than 90 days before the firearm is disposed of under section 239.

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<sup>4</sup> Although not directly argued by plaintiffs, physical possession is not necessary as long as the defendant has constructive possession. A person has constructive possession of a firearm if the location of the firearm is known and the firearm is readily accessible by the person. *People v Burgenmeyer*, 461 Mich 431, 438; 606 NW2d 645 (2000). Here, the firearms at issue were found in a locked upstairs bedroom in a home owned by Robert. Todd, who resided in the home, confirmed to police that he did not have access to the locked room and that only Robert had access to the room.

Notification under this section may be given by certified mail sent to the owner's last known address, or by personal contact with the owner.

(3) The police agency shall return the firearm to its owner if the owner claims the firearm within the notification period and that police agency determines that the owner was not involved in the violation for which the firearm was seized. Except as otherwise provided in subsection (2), a firearm shall be returned under this subsection within 30 days after the firearm is claimed by the owner unless the owner is prohibited from possessing a firearm under state or federal law.

(4) An individual claiming ownership of a firearm may petition the circuit court for return of a firearm under this section if return of the firearm is denied by the policy agency or if the firearm is not returned within 30 days as required under subsection (3). . . .

(5) A police agency shall turn confiscated weapons over to the department of state police under section 239 not more than 1 year after final conclusion of the criminal case and expiration of the appeal period. The police agency shall first make a reasonable effort to contact the owner of the firearm to determine whether a demand for the firearm is forthcoming.

Plaintiffs maintain that they are the owners of the firearms because (1) the firearms were gifted to Todd and Troy in August 2003, or (2) as their father's heirs they were vested with equitable title to his personal property upon his death, or (3) that the estate became the innocent owners of the firearms upon Robert's death.

Whether plaintiffs are legal owners of the firearms presents a question of statutory construction. The term "legal owner" is not defined in the statute. Accordingly, under the rules of statutory construction, every word and phrase must be ascribed its plain and ordinary meaning. Dictionary definitions may be consulted to this end. *Koontz v Ameritech Services, Inc*, 466 Mich 304, 312; 645 NW2d 34 (2002). According to *Black's Law Dictionary* (6<sup>th</sup> ed), to "own" means "[t]o have a good legal title; to hold as property; to have a legal or rightful title to. . ."

With regard to the first assertion, Todd and Troy assert that they are the owners of the firearms based upon the alleged gifting of the firearms to them by Robert in 2003. Plaintiffs offer no authority in support of their argument that a valid gifting occurred. "[T]his Court will not search for authority to support a party's position, and the failure to cite authority in support of an issue results in its being deemed abandoned on appeal." *Flint City Council v Mich*, 253 Mich App 378, 393 n 2; 655 NW2d 604 (2002). Nonetheless, one of the elements of a valid gift is that unconditional actual or constructive delivery be made. *Osius v Dingell*, 375 Mich 605; 134 NW2d 657 (1965). Delivery must place the property within the dominion and control of the donee; a gift inter vivos must be fully consummated during the lifetime of the donor and must invest ownership in the donee beyond the power of recall by the donor. *Osius*, 375 Mich App 611. Here, in addition to the comments made by Todd to the police as noted previously in this opinion, Troy testified as follows in his deposition:



Q. Did you know that your father was keeping guns in the upstairs bedroom of the house that Todd was renting:

A. Yes.

Q. And how did you know that?

A. He told me they were in there.

Q. Did he tell you how many?

A. His whole collection.

Q. Did he give you a key to that door?

A. No.

Q. Were you ever in that room?

A. No.

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Q. Have you been in the room when the guns were there?

A. No.

Q. Do you know why your father put the guns in there?

A. No.

Additionally, Todd testified in his deposition as follows:

Q. Its my understanding there was a room upstairs that was kept locked?

A. Yes.

Q. Do you know what – to your knowledge, before the search warrant was executed, did you know what was in that room?

A. No.

Q. Did you have a key to it?

A. No.

Q. Did you ever go in that room before the search warrant was executed?

A. No.

Q. Did your dad ever tell you to stay out of that room?

A. No, he just said it was his room.

Q. Were you ever curious as to what was inside the room?

A. No.

Q. You never went in it?

A. No.

Q. And you weren't curious as to what was in it?

A. Didn't care.

\* \* \*

Q. So you never went in it?

A. No.

Q. And as far as you know, nobody else did either?

A. No.

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Q. Were you surprised at the amount of guns that they took out?

A. No.

Q. Why weren't you surprised?

A. Because I knew he had them.

Q. But you didn't know what was in the room?

A. I didn't know that's where they were.

In this case, the evidence did not establish a basis for concluding that the firearms in the locked upstairs bedroom were delivered to Todd or Troy at any time before Robert's death. In short, while Robert may have expressed his intent that his sons receive his firearms upon his death, he did not take the requisite steps to complete a legal transfer of those assets before his death.

With regard to the second and third assertions, as previously discussed, Robert could not be the legal owner of the firearms as he was prohibited by law from possessing firearms. Thus, those firearms that he did possess contrary to law were forfeited to the state. Consequently, the firearms were not part of Robert's estate, and this argument is without merit.

### III

Plaintiffs argue that the trial court erred by granting summary disposition of plaintiffs' claims that were brought pursuant to 42 USC 1983 on the ground that defendant had qualified immunity. We disagree.

Any person who, under color of state law, deprives another of rights protected by the constitution or laws of the United States is liable under 42 USC 1983. *Monell v Dep't of Social Services of the City of New York*, 436 US 658, 690-691; 98 S Ct 2018; 56 L Ed 2d 611 (1978). “[T]o survive summary [disposition] in a 1983 action, [plaintiff] must demonstrate a genuine issue of material fact as to the following ‘two elements: 1) the deprivation of a right secured by the Constitution or laws of the United States and 2) the deprivation was caused by a person acting under color of state law.’” *Johnson v Karnes*, 398 F3d 868, 873 (CA6, 2005).

In *Ahlers v Schebil*, 188 F3d 365, 372-373 (CA 6, 1999), the court held that qualified immunity attaches to a § 1983 claim if the governmental employee “acted under the objectively reasonable belief that his or her actions were lawful.” Thus, the defendant must have “acted knowingly or intentionally to violate [the plaintiff’s] constitutional rights; mere negligence or recklessness is insufficient.” *Id.* at 373. Plaintiffs bear the burden of showing that defendant is not entitled to qualified immunity. *Silberstein v City of Dayton*, 440 F3d 306, 311 (CA 6, 2006).

Plaintiffs argue that defendant should have been aware that retaining firearms belonging to a citizen would violate a citizen’s Second Amendment right to keep and bear arms. In support of this argument, plaintiffs rely on *District of Columbia v Heller*, 554 US 570; 128 S Ct 2783; \_\_\_ L Ed 2d \_\_\_ (2008). In *Heller*, the Court held that the second amendment confers an individual right of citizens to keep and bear arms. However, the *Heller* Court did not address whether the Second Amendment was made applicable to the states pursuant to the Fourteenth Amendment. *Heller*, 128 S Ct 2813 n 23. Indeed, plaintiffs recognize that the Second Amendment right of a citizen to keep and bear arms was not clearly established as applicable to the states until the Supreme Court’s decision in *McDonald v City of Chicago*, \_\_\_ US \_\_\_; 130 S Ct 3020; \_\_\_ L Ed 2d \_\_\_ (2010), yet they maintain that “the outcome of the case was clearly foretold by the declarations in the *Heller* case.” However, at the time this lawsuit was filed on June 15, 2009, no clearly established precedent held that the Second Amendment right to keep and bear arms applied to the state by virtue of the Fourteenth Amendment. Thus, the trial court properly concluded that defendant did not act knowingly or intentionally to violate plaintiffs’ constitutional rights and that defendant is entitled to qualified immunity.

Plaintiffs also maintain that the trial court erred by granting summary disposition of their claim that defendant violated their Fourteenth Amendment right to due process. They contend that the existence in MCL 750.239 of a procedure to challenge forfeiture does not “provide for damages for the unequal treatment suffered” by plaintiffs as the result of deprivation caused by an established procedure.

As relevant to this case, a plaintiff may prevail on a procedural due process claim under § 1983 by demonstrating that he is deprived of property as a result of established state procedure that itself violates due process. When a plaintiff challenges established state procedures, the court must evaluate the challenged procedures directly to ensure that they comport with due

process. *Macene v MJW, Inc*, 951 F2d 700, 706 (CA 6, 1991). Here, the established procedure in MCL 750.239a provides access to the courts to challenge defendant's action. Specifically, MCL 750.239a(4) permits an individual claiming ownership of a firearm to "petition the circuit court for return of the firearm under this section." Indeed, plaintiffs availed themselves of this procedure by filing the present lawsuit and requesting return of the seized firearms. Plaintiffs have failed to show that this procedure does not comport with due process or that it violates plaintiffs' Fourteenth Amendment rights.<sup>5</sup>

#### IV

Plaintiffs maintain that the trial court failed to address their equal protection argument "that they are being treated differently than others who have had firearms seized by the Shiawassee County Sheriff's Department in association with other law enforcement." They assert that they "are a part of a class of one and their rights for equal treatment under the 14<sup>th</sup> Amendment are being infringed upon by the Defendant's retention of their property." The sum of their argument is that "Defendant is improperly applying a statute in attempting to deprive property from the Plaintiffs differently than the statute contemplates and equal protection and fairness would allow."

The Michigan and federal constitutions guarantee that no person shall be denied equal protection of the laws. US Const, Am XIV; Const 1963, art 1, § 2. Michigan's equal protection provision is coextensive with the equal protection provision of the United States Constitution. *Shepherd Montessori Ctr Milan v Ann Arbor Charter Twp*, 486 Mich 311, 318; 783 NW2d 695 (2010). "The Equal Protection Clause requires that all persons similarly situated be treated alike under the law." *Id.* When reviewing government action "challenged as denying equal protection, the threshold inquiry is whether plaintiff was treated differently from a similarly situated entity." *Id.*

Plaintiffs' argument is less than clear. They have not identified any similarly situated individuals who have been treated differently. They have also failed to actually articulate any legal rationale regarding how enforcement of the statute denied them equal protection of the law. Therefore, we decline to address this issue. *Wilson v Taylor*, 457 Mich 232, 243; 577 NW2d 100 (1998).

#### V

Lastly, plaintiffs assert that the trial court abused its discretion by denying plaintiff's oral motion for leave to amend the complaint that was made during the hearing on defendant's motion for summary disposition. Plaintiffs moved to amend the complaint to assert a § 1983 claim for defendant's violation of the federal forfeiture statute by failing to initiate a federal forfeiture action in federal court within the required 120 day limitation. The extent of plaintiffs' argument is that "this proposed amendment is well founded in law and the facts." Plaintiffs'

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<sup>5</sup> Further, given that plaintiffs do not have any ownership interest in the firearms, the trial court could have dismissed the due process claim on this basis.

argument is lacking in both argument and authority and we refuse to consider it. *Wilson*, 457 Mich at 243. Further, plaintiffs admitted at the hearing that defendant was “not entitled to initiate forfeiture proceedings with respect to firearms associated with the [federal] prosecution in this case because there was no prosecution” and that defendants “can’t comply with [the federal forfeiture statute.]”

Affirmed.

/s/ E. Thomas Fitzgerald  
/s/ Christopher M. Murray  
/s/ Elizabeth L. Gleicher