

IN THE SUPREME COURT OF OHIO

ERIN GABBARD, et al.,	:	
	:	
Plaintiffs-Appellees,	:	Case No. 2010-2148
	:	
v.	:	Appeal from the Butler County
	:	Court of Appeals
MADISON LOCAL SCHOOL DISTRICT	:	Twelfth Appellate District
BOARD OF EDUCATION, et al.	:	Case No. CA2019-03-0051
	:	
Defendants-Appellants.	:	

BRIEF OF *AMICUS CURIAE*
OHIO K-12 TEACHERS AND STAFF
IN SUPPORT OF APPELLEES

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STATEMENT OF AMICUS INTERESTS

The *Amici Curiae* are teachers and other staff from schools across the State of Ohio. *Amici* share the concerns of the Plaintiffs/Appellees about the safety of children in Ohio schools, and further wish to participate as *amici* to express their concerns for their own safety if the Court were to hold that Ohio law contains no training requirement for school teachers to possess guns in school buildings. The concern of these *amici* is amplified because, unlike Madison Local School District, many districts do not tell parents or unarmed staff that the school has a policy permitting staff to carry guns in the building, and do not know who is permissibly armed and who is not.

In total, these amici include [INSERT NUMBER] of current or former teachers and other school staff members from throughout the Buckeye State. They are listed in the Appendix to this brief.

ARGUMENT

PROPOSITION OF LAW NO. 1: Ohio law requires that teachers and other school staff that go armed while on duty meet the training requirements of R.C. 109.78(D).

I. Introduction

On March 8, 2019, there was an alarming incident in South Bloomfield Township, near Sparta, Ohio, about 40 miles north of Columbus. Inside a school building, two individuals were alone in a room. One of them pointed a 9 mm handgun at the other, stating, “Put your hands behind your back. You’re arrested.” Other than the fact that this occurred in a school building, this image may not seem particularly exceptional. But the incident was exceptional indeed.

For one thing, the incident did not occur at the high school, it occurred at Highland Elementary School.

For another, the individual with a gun pointed at her (who was instructed to put her hands behind her back because she was under arrest) was unarmed and had neither committed a crime nor threatened anyone. She was a student at the elementary school – *a six year-old student*.

Why would any reasonable police officer point a gun at an unarmed, non-threatening six year-old who had committed no crime? None would. And indeed, none did on that day in Sparta. The person wielding the gun was not a police officer at all. The person wielding the gun was another six year-old.

The gun belonged to Vicky Nelson, the School District’s transportation director. Nelson was allowed to carry the gun as part of the School District’s concealed-carry plan adopted in 2018 to arm administrators and select staff members to *protect students* from potential gun

violence. Nelson had left the gun in her unlocked desk, with two six year-olds alone in the room, while she drove to a nearby high school.¹

Affirming the decision by the Court of Appeals is appropriate, among other reasons, to help ensure that situations such as this do not occur again. *Amici* here advance three arguments in favor of affirmance. *First*, basic principles of statutory construction require adoption of the reading of the statute advanced by Plaintiffs. *Second*, permitting untrained civilian school staff members to carry guns in school buildings causes many educators to fear for their physical safety. And *third*, the extraordinary lack of transparency exhibited by school districts throughout the State – most refuse to tell teachers and parents whether there are armed civilian school employees – exacerbates the problems associated with misinterpreting the statute.

II. The plain text of R.C. 109.78(D) unambiguously requires a school employee who goes armed while on duty to complete basic peace officer training.

R.C. 109.78(D) states that, in schools, all special police officers, security guards, and employees in other positions in which the person goes armed while on duty must have either (a) satisfactorily completed an approved basic peace officer training program, or (b) twenty years' experience as a peace officer. The statute reads:

No public or private educational institution, or superintendent of the state highway patrol shall employ a person as a special police officer, security guard, or other position in which such person goes armed while on duty, who has not received a certificate of having satisfactorily completed an approved basic peace officer training program, unless the person has completed twenty years of active duty as a peace officer.

R.C. 109.78(D).

¹ The details of this story can be found at <https://www.beaconjournal.com/news/20190821/ohio-first-grader-points-loaded-gun-at-student-in-school-office-email-says> (last visited September 18, 2020) and <https://www.dispatch.com/news/20190816/first-graders-had-access-to-gun-meant-to-prevent-school-violence> (same).

An unambiguous statute such as R.C. 109.78(D) need only be applied, not interpreted. *See, e.g., Provident Bank v. Wood* (1973), 36 Ohio St.2d 101, 105, 304 N.E.2d 378 (a court must first look to the language of the statute itself to determine legislative intent, and if that inquiry reveals that the statute conveys a meaning that is clear, unequivocal, and definite, at that point the interpretive effort ends, and the statute must be applied accordingly); *Katz v. Dept. of Liquor Control* (1957), 166 Ohio St. 229, 231, 141 N.E.2d 294 (“Where the language itself clearly expresses the legislative intent, the courts need look no further.”). Because the Revised Code states that no school “shall employ as person as a special police officer, security guard, or other position in which the person goes armed on duty” without having completed an approved basic peace officer training program or twenty years of active duty officer experience, Madison Local School District’s policy permitting the District to employ people in other positions where they go armed while on duty without meeting one of those criteria is unlawful.

Should the Court, however, choose to interpret rather than apply the statute, *amici* urge the Court to consider the cardinal rule of statutory construction that “a statute should not be interpreted to yield an absurd result.” *State ex rel. Dispatch Printing Co. v. Wells*, 18 Ohio St.3d 382, 384, 481 N.E.2d 632 (1985). The interpretation of R.C. 109.78(D) advocated by Madison Local and its *amici*, including the State, is absurd. Here’s why. All parties, and all *amici*, agree that the statute requires police officers who are employed by school districts and who carry weapons to either have completed an approved basic peace officer training program, or have at least twenty years of experience as an active duty peace officer. Yet Madison Local argues that there is no such requirement for teachers.

Consider two hypothetical school employees. The first is a forty year-old who, immediately after graduating from college at age twenty-two, joined a local police department as

a police officer. Though she never completed a basic peace officer training program, she has spent the last eighteen years as an active duty police officer, carrying weapons (including a handgun), responding in real time to intense and rapidly evolving dangerous situations, protecting the public and maintaining the peace. She applies for a job as a security guard. The second hypothetical employee is a twenty-two year-old who graduated from college last spring with a bachelor's degree in elementary education hired to be a kindergarten teacher. She has never before in her life carried a weapon of any kind, and the most dangerous situation to which she has ever had to respond was fending off her younger brother's Nerf gun attacks when her parents weren't looking. Under the reading of the statute advanced by Madison Local, *for the protection of students*, the General Assembly has decided that the police officer with eighteen years of experience cannot be permitted to carry a handgun in a school building as a security guard, but the twenty-two year-old can carry a gun as a kindergarten teacher. And under Madison's view of state law, if that kindergarten teacher carries her weapon concealed at school, she need only have completed an eight-hour course, six hours of which can be completed online, and she need not even demonstrate that she can hit a target. If she carries it openly, Madison says she needs zero hours of training under state law. (Madison Br. at 9.) "Absurd" does not seem like a strong enough word to capture the inconsistency of that interpretation of the statute.

III. Permitting untrained civilian school staff members to carry guns in school buildings without sufficient training reasonably causes many educators to fear for their physical safety.

Reasonable minds might disagree on the question of whether students are safer in school if teachers are allowed to carry handguns. But reasonable minds cannot disagree on the question of whether – if they are going to be permitted to carry handguns in school – teachers should have substantial training.

Amici are Ohio teachers and school staff members who believe that permitting teachers and staff to possess handguns in school without requiring extensive training unnecessarily puts them and their students at risk. There is already an epidemic of mishandling of handguns in schools. The Giffords Law Center tracks incidents of mishandled guns in schools, and reports an astonishing number of such instances.² In Pinellas County, Florida, a teacher was helping students on the playground do flips and cartwheels when a handgun loaded with 19 rounds of ammunition fell from his waistband, roughly five feet from an eight year-old.³ In Texarkana, Texas, an employee's loaded handgun fell out of its holster on a bus, where it was later found by a student.⁴ In Mustang, Oklahoma, a school was put on lockdown after an employee left a gun in an unattended handbag in the school's media center.⁵ In Port Gibson, Mississippi, a loaded handgun was left in the restroom of an elementary school.⁶ In St. Louis, Missouri, two middle school students stole a gun that was brought to school by a teacher.⁷ At a charter school in Philadelphia, a student bumped into a teacher's bag in class, revealing a firearm.⁸ In Glyndon, Maryland, a teacher at a K-8 school left a handgun in a restroom.⁹ In High Island, Texas, a school district superintendent left a gun in a school van, where it was found by a student.¹⁰ And

² See <https://giffords.org/lawcenter/report/every-incident-of-mishandled-guns-in-schools/> (last accessed September 18, 2020).

³ See <https://www.wfla.com/news/pinellas-county/report-loaded-gun-fell-out-of-substitute-teachers-waistband-on-pinellas-county-playground/1546792808/> (last accessed September 18, 2020).

⁴ See <https://www.easttexasmatters.com/news/top-stories/gun-discovered-on-middle-school-bus-at-pleasant-grove-isd/> (last accessed September 18, 2020).

⁵ See <http://www.news9.com/story/5e347ff2527dcf49dad759f8/mustang-high-school-put-under-short-lockdown-after-gun-was-found-on-campus> (last accessed September 18, 2020).

⁶ See <https://www.wjtv.com/news/local-news/gun-found-on-elementary-school-campus-in-claiborne-county/1706579865/> (last accessed September 18, 2020).

⁷ See <https://patch.com/missouri/stlouis/central-middle-teacher-brought-gun-class-students-stole-it> (last accessed September 18, 2020).

⁸ See <https://6abc.com/education/police-presence-at-school-after-teacher-found-with-gun/3516853/> (last accessed September 18, 2020).

⁹ See <https://foxbaltimore.com/news/local/staff-member-found-with-gun-at-sacred-heart-school-in-glyndon> (last accessed September 18, 2020).

¹⁰ See <https://www.12newsnow.com/article/news/local/high-island-isd-super-who-left-gun-in-van-still-on-leave-district-wont-comment-on-possible-action/442522240> (last accessed September 18, 2020).

in Seaside, California, a teacher accidentally discharged his gun while teaching a class, injuring three students, one of whom had bullet fragments lodged in his neck.¹¹ The list goes on and on.¹²

It is not the role of this Court to determine what Ohio's policy should be regarding teachers possessing handguns in schools. All parties agree that that policy decision is properly made by the General Assembly. But there is good reason why the General Assembly wrote the law the way that it did – teachers and staff possessing handguns can pose an extraordinary risk to students and employees, and therefore it makes sense that the General Assembly decided that no corners should be cut when it comes to the minimum training requirements for civilian employees to possess handguns in school. Moreover, if a local school district elects to arm teachers in case of an active attack, those teachers will be better equipped to protect their students, their colleagues, and themselves if they have received sufficient training. Local school districts have the authority in Ohio to make their own determinations regarding whether it is wise to arm teachers with handguns. But the General Assembly has required that, should they elect to arm teachers, school districts must ensure that they have adequate training, which the legislature determined was satisfactory completion of an approved basic peace officer training program. *Amici* fear the potentially fatal consequences should this Court fail to enforce that policy decision made by the General Assembly.

IV. The lack of transparency by school districts that refuse to disclose their policies on arming teachers exacerbates the problems associated with misinterpreting the statute.

Regardless of their individual views about the propriety of arming teachers, parents across Ohio want to know whether their children's teachers are armed. For some, this may be

¹¹ See <https://www.ksbw.com/article/seaside-high-teacher-accidentally-fires-gun-in-class/19426017> (last accessed September 18, 2020).

¹² See <https://giffords.org/lawcenter/report/every-incident-of-mishandled-guns-in-schools/> (last accessed September 18, 2020).

because they fear that the accidental mishandling of a weapon possessed by a teacher may have fatal consequences for their children. Those parents, if they know of the school district's policy, may elect to move to a new school district, send their children to private school, or home school their children. For other parents, they may want to know that their children's teachers are armed because they fear a school shooting, and believe that arming teachers will help protect their children. Those parents may want to move districts or home school their children if their home district does *not* permit teachers to be armed. But regardless of those preferences, every parent wants to know whether their children's teachers are armed.

Likewise, teachers and school staff want to know whether their colleagues are armed. If a teacher should happen to notice a firearm on a colleague, that teacher ought to be able to know right away whether that armed colleague is friend or foe – whether the presence of the handgun is authorized and protective, or the colleague presents a danger to other staff and students such that prompt action is required.

Madison Local, to its credit, is an exception to the rule in the State of Ohio. Madison Local has informed the community of its decision to permit teachers to be armed. Most school districts across the State, however, do not provide their communities with the same notice. Most districts claim that Ohio law does not require the disclosure of this information. Indeed, the Ohio Department of Public Safety has taken the position that an exemption to Ohio's public records law means that the Department is not required to release information about which school districts allow armed staff.¹³ But if there is no duty to make public which schools permit teachers to be armed, there is no way for the public to know which, or how many, of Ohio's 610 school

¹³ See <https://www.daytondailynews.com/news/least-schools-ohio-arm-teachers-and-staff-report-also/UnuzjrjvCTYGPiYonsDwfO/> (last visited September 18, 2020).

districts have armed teachers.¹⁴ Indeed, parents and teachers are not the only ones left in the dark about which school districts have armed teachers – even the Ohio Department of Education has no idea. What school districts permit teachers to be armed is not under the Department of Education’s jurisdiction, and districts are not required to report to the Department of Education whether they allow teachers to carry guns.¹⁵

Can parents and teachers just file a public records request to find out? The districts say no. Most school districts add an armed teachers’ policy as part of the School’s Safety Plan during Executive Session of a school board meeting, which is closed to the public. And the safety plan itself is not subject to a public record request under the Ohio Public Records Act. See R.C. 149.433(A)(3) (defining “emergency management plan adopted pursuant to section 3313.536 of the Revised Code” as security record exempt from public disclosure); see also R.C. 3313.536(I) (same).

Indeed, even the Madison Local School District, where the District disclosed to the community that it was arming teachers, nonetheless refused to release details about the plan until sued; arguing that it did not have to do so based on Ohio Public Records laws. See Mot. for Partial Dismissal, Ex. A. Even when parents asked what information and research the Board relied upon in deciding to adopt its armed staff policy, the District said that information was subject to confidentiality. (Id.) *See also*, Madison Local School District Firearms Authorization Policy (MSJ Ex. C, at 1) (paragraph on confidentiality, stating that “All records, letters, written authorizations, revocations of authorizations, and other documents related to the Firearms

¹⁴ See https://www.washingtonpost.com/local/education/armed-and-safe-at-ohio-schools-the-security-plan-includes-teachers-and-guns/2018/03/12/9f49ff68-1b22-11e8-ae5a-16e60e4605f3_story.html (last visited September 18, 2020).

¹⁵ See <https://www.cincinnati.com/story/news/education/2018/03/07/does-my-kids-teacher-have-gun/404341002/> (last visited September 18, 2020).

Authorization Policy shall be maintained in a secured location determined by the Superintendent or designee. No such documents will be issued to the public or circulated among unauthorized school employees.”). In fact, it was only through this litigation that the teachers in Madison Local learned that one of their peers who is carrying a gun at school with them failed the firearms training test multiple times. See Deposition of John Doe 3, 24:19-25:22 (describing repeated attempts at qualification); Deposition of John Doe 2, 66:13-68:9 (describing that one armed staff person failed qualification test twice). With this degree of secrecy employed, there is no way for parents or non-carrying teachers to hold their districts accountable for following (or failing to follow) appropriate procedures for vetting individual teachers who are to be armed. This secrecy, lack of transparency, and lack of accountability only serve to heighten the concerns *amici* have regarding their safety and the safety of their students.

CONCLUSION

R.C. 109.78(D) should be applied and enforced as written – employees that go armed at school must meet one of the two explicit criteria for eligibility to do so. The statutory requirement is unambiguous. Beyond that basic reading of the statute, teachers across the State of Ohio are scared that their colleagues can carry weapons without meaningful training. While the relative merits of permitting teachers to be armed can be debated from a policy perspective, the desire to have any teachers who are armed be adequately trained is beyond debate. Finally, the concerns of *amici* about their safety and the safety of their students when insufficiently trained teachers are permitted to carry guns at school are heightened by the secrecy with which schools are permitted to operate with regard to the arming of teachers. For all of these reasons, these *amici* urge the Court to affirm the judgment of the Court of Appeals.

Respectfully submitted,

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