

2019 APR 25 AM 9:22 IN THE COMMON PLEAS COURT OF BUTLER COUNTY, OHIO

BUTLER COUNTY  
CLERK OF COURTS

ERIN S. GABBARD, ET AL,

CASE NO. CV2018-09-2028

Plaintiffs,

-vs-

TRANSCRIPT OF PROCEEDINGS  
(MOTION FOR SUMMARY JUDGMENT)

MADISON LOCAL SCHOOL  
DISTRICT BOARD OF  
EDUCATION, ET AL

Defendants.

PRESIDING: Hon. Charles L. Pater

APPEARANCES: ON BEHALF OF THE PLAINTIFFS  
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Gupta Wessler PLLC  
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ON BEHALF OF THE DEFENDANTS  
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DATES: February 25, 2019

ELECTRONICALLY  
RECORDED BY: Electronically Recorded

TRANSCRIBED BY: Lorie Len

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Plaintiff's Witnesses:	<u>DX</u>	<u>CX</u>	<u>RDX</u>	<u>RCX</u>
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None

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Defendant's Witnesses:                 DX                 CX                 RDX                 RCX

None

\* \* \*

Joint's Witnesses: DX CX RDX RCX

None

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(Monday, February 25, 2019, 9:10 a.m.)

THE COURT: We're here today in the matter of Erin Gabbard and others v. Madison Local School District Board of Education and others. We are here today -- technically, we have this set for trial actually today. It was going to be a bench trial, meaning a trial without a jury. We really have transposed that into oral arguments on competing motions for summary judgment. The complaint had two counts to start with. Beginning with the second count, it was a mandamus action in which plaintiffs were asking the Court to order the school board -- School District, to disclose certain information. That half of the case has pretty much all been resolved by motion and ruling on the motions already. There are, potentially, a few little uncertain effects of that ruling which might come into play, but for the most part, that half of the case is over.

The first half of the case is a declaratory judgment and an injunction; the plaintiff's asking the Court to declare that the policy set up by the board system in which it authorizes certain personnel -- in this case, what we have so far apparently are [REDACTED] -- to carry weapons while on duty in school -- to declare that policy illegal, and then also to enjoin the school system or the school board from authorizing any further persons to carry weapons while on duty.

So we're here today basically for oral arguments on the



1 two motions for summary judgment having to do with that part of  
2 the case, the declaratory judgment and injunction sought by the  
3 plaintiffs. We have a lot of evidence, and we're going to go  
4 over this in just a minute -- that's already been agreed to.  
5 We have very few disputes of fact.

6 The purpose of a trial -- and I'm speaking mostly for the  
7 benefit of those in the back -- we have a lot of people here  
8 and I appreciate that -- the attorneys and I, we've been in  
9 chambers for the past 40 minutes or so. We've been talking  
10 about this and what we're going to do and the procedure and  
11 things like that. But just for the benefit of those who are  
12 here to observe and to see, the purpose of a trial typically is  
13 to determine disputed facts and then once those disputed facts  
14 are decided or determined by the fact-finder, meaning the jury,  
15 typically, if there's a jury or the judge alone if there's no  
16 jury -- when those facts have been decided and those disputed  
17 facts have been resolved by the fact-finder, then you apply the  
18 law to the facts and come up with an ultimate decision.

19 In this case, we really don't have many, if any, real  
20 disputed facts. I mean, the situation is what it is. We have  
21 [REDACTED] who are authorized by  
22 the school system through its policy to carry these firearms.  
23 We have the school policy which has been enacted. We have the  
24 program that is set up by that FASTER organization. Nobody --  
25 neither side, disagrees with the facts per se. So anyway, so



1 there really is no purpose for a trial per se.

2       So what we're doing basically is we've got all of those  
3 agreements. We have depositions by the [REDACTED] people who are  
4 authorized to carry weapons. We have depositions of those  
5 [REDACTED] people. Those depositions are going to be considered as  
6 facts, as evidence -- not as facts necessarily but as what  
7 would be the testimony of those persons if those persons were  
8 to testify from the witness stand today. We have, like, the  
9 policy of the board. We have the program set up -- I guess  
10 it's like a slide, but a PowerPoint -- I'm an old guy --  
11 slide -- PowerPoint presentation by the FASTER organization as  
12 to what they typically teach. And we have a bunch of that  
13 stuff. It will be the factual stuff or the disputed factual  
14 stuff that will be in the record. So what we're going to be  
15 doing, basically, is having oral arguments from the two sides  
16 of the case regarding their motions for summary judgment. And  
17 what that means is that will dispose of the case for the most  
18 part.

19       All right. With that little bit of introduction for those  
20 in the back especially, we do have appearing in behalf of the  
21 plaintiffs in this case -- and I should have asked Ms.  
22 Bloomekatz if it's two syllables or three. Is that E a  
23 separate syllable? Just two. We have Rachel Bloomekatz  
24 locally in Ohio here. We have Alla Lefkowitz and Jed Miller  
25 from Everytown Law in New York in behalf of the plaintiffs. We



1 have in behalf of the Defendants, two local attorneys here. We  
2 have Alex Ewing and Brodi Conover. So welcome to you, counsel.  
3 And I'm sure we have board members and maybe a superintendent,  
4 and I don't know who else here, but do we need to introduce  
5 those for the record? Do you want to? Any purpose? And  
6 plaintiffs, I don't know if you have plaintiffs and board  
7 members? Want to introduce them if --

8 MS. BLOOMEKATZ: I don't believe they need individual  
9 introductions, Your Honor, but our plaintiffs here are joining  
10 us today too and appreciate the Court's time and energy in this  
11 case.

12 THE COURT: Okay. You're welcome. You're welcome. Okay.

13 MR. CONOVER: And Your Honor, Brodi Conover on behalf of  
14 the defendants. We have the Madison Local School District  
15 Board of Education President Dave French here, and also the  
16 Madison Local School District Superintendent, Dr. Lisa  
17 Tuttle-Huff here.

18 THE COURT: Okay. Welcome. Welcome to all of you in the  
19 back. I appreciate the interest in the case, of course. Well,  
20 I was joking with -- as a little aside, I suppose, I was kind  
21 of missing this in chambers. One of my pet peeves is -- I  
22 didn't get any of this in chambers, but one of my pet peeves is  
23 nobody -- you know, in the old time movies, you'd see all these  
24 people coming to trial, coming to court; you'd have a huge  
25 audience in the back. And that's just not -- nobody comes to



1 watch cases at all. And I'm always encouraging witnesses --  
2 when they finish testifying, I say, listen, you're done  
3 testifying, if you want to sit in the back and see what's going  
4 on, feel free. Nobody ever stays. So usually it's all empty  
5 in the back, so it does my heart good to see a lot of people  
6 interested in a court case so.

7 All right. With that, before we get into our opening --  
8 our arguments on the motions for summary judgment, I think  
9 we've got a few legal arguments to be made before that.  
10 Something before that even, Mr. Conover?

11 MR. CONOVER: Can we just quickly approach, Your Honor?

12 THE COURT: Surely. And let's go off over to the side  
13 here for a little sidebar.

14 (At sidebar)

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 [REDACTED]





1 [REDACTED] [REDACTED]

2 [REDACTED] [REDACTED]

3 [REDACTED] [REDACTED]

4 (End sidebar)

5 THE COURT: All right. Ms. Bloomekatz, I think you want  
6 to address some of the legal issues first and before we get  
7 into closing argument -- or not closing argument, the argument  
8 on the motion itself.

9 MS. BLOOMEKATZ: Well, I think, Your Honor, this -- just  
10 to clarify, this is sort of argument on the motion itself, just  
11 more of the legal question about statutory interpretation.

12 THE COURT: Okay.

13 MS. BLOOMEKATZ: It's that --

14 THE COURT: So are you presenting the first part and then  
15 Mr. Miller the second part? Is that what we're going to be  
16 doing here?

17 MS. BLOOMEKATZ: Mr. Miller will address, yes, the factual  
18 issues.

19 THE COURT: Okay.

20 MS. BLOOMEKATZ: And the factual dispute.

21 THE COURT: Okay, Ms. Bloomekatz.

22 MS. BLOOMEKATZ: Great. Thank you so much. Because this  
23 is a case about statutory interpretation, of course we start  
24 with the text of the statutes at issue and what their plain  
25 meaning is. And there are two statutes that are discussed in

1 the parties' brief here. So if you'd permit me, Your Honor,  
2 I'd like to go through the plain text of those statutes,  
3 because I really think it does demonstrate that these two  
4 statutes are not in conflict, and that the plain meaning of  
5 109.78(D) controls what type of training is required. And I  
6 know you have the statutes there in front of you, so I'm not  
7 going to --

8 THE COURT: I do.

9 MS. BLOOMEKATZ: -- pass them out to you, Your Honor. But  
10 if I may, I'd like to start with 109.78(D). And that states  
11 that a person employed by a school as a, quote, "special police  
12 officer, security guard, or other position in which such person  
13 goes armed while on duty," end quote, must have completed the  
14 basic peace officer training program or served 20 years as a  
15 peace officer.

16 So the question, then, is whether the staff who go armed  
17 at Madison Local Schools are, quote, "armed while on duty."  
18 They're in a position. They're in a job. The question is do  
19 they go armed while on duty? And the answer is yes. They're  
20 on duty doing their jobs at schools, and they're certainly  
21 armed. They're carrying weapons. And again, we're looking at  
22 the common language, the plain meaning of the term armed while  
23 on duty. And if there's any confusion about what those words  
24 mean, the Board itself, and I've showed you the letter, Your  
25 Honor, in chambers -- I'm happy to pass it to you again -- but

1 the Board itself, when it authorizes these individuals to carry  
2 arms, tells them that they are authorized to "possess a firearm  
3 while on duty at Madison Local Schools." So the sense that  
4 this while on duty language means anything but what these  
5 individual John Does are doing is really belied by just the  
6 common usage, the plain language meaning of those words.

7 Now I understand that the Board has brought up another  
8 statute that Your Honor has also discussed which is  
9 2923.122(D)(1)(a), and I'm going to call it (D)(1)(a) for short  
10 because that's a little bit of a mouthful.

11 THE COURT: That's fine.

12 MS. BLOOMEKATZ: But I want to explain, Your Honor, why  
13 that statute doesn't resolve this case. Now this is a statute,  
14 (D)(1)(a), that explains what types of people are exempt from  
15 the ban on carrying a weapon in a school building, right?  
16 Generally, we have a ban on carrying weapons in a school  
17 building. Who's exempt from that ban? And you have it in  
18 front of you, (D)(1)(a), just in that subsection, lists a whole  
19 lot of different types of people. It lists, you know, agents  
20 of the United States law enforcement, state law enforcement,  
21 school security officers, like SROs, and then at the end, it  
22 has this other clause that says, or any other person who has  
23 written authorization from the Board of Education, giving them  
24 permission to have a firearm in the school zone. I don't think  
25 I need to read word for word the rest of that. You have it in

1 front of you.

2       So because of this statute, we don't dispute that the  
3 Board has the ability to authorize people to carry a gun in the  
4 school zone. But that's not the question here. The question  
5 is what type of training must those people have. We're not  
6 saying they can't authorize people. They certain can. But  
7 what training did those John Does have to have? And there's  
8 nothing in (D)(1)(a) that addresses training. It's silent to  
9 training. But the fact that it's silent to training doesn't  
10 mean it knocks out every other training requirement in a  
11 statute. And I think it's helpful to think about it this way.  
12 This (D)(1)(a) that you have in front of you, mentions like I  
13 said, those law enforcement people; the state law enforcement;  
14 school resource officers; school security guards; nobody thinks  
15 that they don't have to get the training that's in the rest of  
16 the statute, right? Just being a (D)(1)(a) doesn't knock out  
17 the whole rest of the revised code. And indeed, the Board  
18 concedes that school resource officers, school security guards,  
19 have to have this training in 109(D). So there's really  
20 nothing in just the silence in (D)(1)(a) that precludes any  
21 other training requirements or really any other requirements in  
22 state law from applying to the John Does.

23       Another thing, Your Honor, the Board concedes that the  
24 eight-hour training requirement for getting your concealed  
25 carry permit applies to the John Does. Again, that's not



1 mentioned anywhere in here. But there's nothing in here that  
2 is, you know, pushing out all the other parts of the revised  
3 code. It's not like the John Does are somehow coated in Teflon  
4 such that no other parts of the revised code are going to stick  
5 to them. And so that brings us back to the question of  
6 109.78(D) and whether it applies to these John Does. Again,  
7 nothing in (D)(1)(a) precludes any other part of the law. It  
8 doesn't say notwithstanding other sections or that it  
9 supersedes other sections. We agree that the Board can  
10 authorize people. It's just a question of what training those  
11 people have to have that are in (D)(1)(a). Those things are  
12 controlled by other statutes like 109.78(D). Going back to the  
13 plain language where I started of 109.78(D), these individuals  
14 certainly are in a position in which they go armed while on  
15 duty based on the plain words of that statute and, therefore,  
16 they also need to get the peace officer training.

17 THE COURT: Okay.

18 MS. BLOOMEKATZ: And I think I'd be more than happy to  
19 answer any of your concerns about how these two statutes  
20 interact. I don't think it's really relevant which one was  
21 passed first or second, which is more general, more specific,  
22 because the plain language of both of them is completely  
23 compatible. They don't need to knock each other out at all.  
24 One just says, can you authorize people? And, you know, can  
25 you authorize people at all? We're saying yes. We're not

1 disagreeing with that.

2       The next question is whether, you know, what type of  
3 training they might have. If I may, Your Honor, I'd like to  
4 bring up one other point to just sort of understand what  
5 109.78(D) means. When the legislature was drafting  
6 109.78(D) --  
7 and we have the drafting history; we've included it with our  
8 motion for summary judgment -- the original draft of the bill  
9 said that the training requirement would apply to special  
10 police officers, security guards, or someone in a similar  
11 position. They used the words similar position. But that's  
12 not the law that the legislature passed. They deleted that  
13 word similar and replaced it with other position in which such  
14 person goes armed while on duty. That's really good evidence  
15 that the legislature didn't mean to cabin the training  
16 requirement in the exact same way that the Board is arguing  
17 here. The legislature didn't just want the training  
18 requirement in 109.78(D) to apply to special police officer,  
19 security guards, or people in similar positions, or like  
20 positions, or something like that. They drew a bright line,  
21 and a bright line that avoids, I think, a lot of the factual  
22 dispute that we would have to have about how much of your  
23 duties are security duties or what exactly do you do? Are you  
24 offensive; are you defensive or not? The Legislature, it  
25 really evaded all of those fact-based questions, those



1 confusing semantical issues and then drew a bright line. It  
2 identified the characteristic that would trigger the training,  
3 it's whether you go armed while on duty. And here, again,  
4 these individuals do go armed while on duty.

5 I know, Your Honor, you know, people -- the Board has  
6 argued that, well, these individuals providing security isn't  
7 necessarily part of their duty or it's not their primary duty.  
8 Well, I'd just point out the statute again. It doesn't say  
9 anything about it needing it to be their primary duty. The  
10 word primary isn't in the statute at all. We can't just add it  
11 in. And it doesn't even say anything about security duty,  
12 right? It doesn't say while on security duty. It doesn't say  
13 in security position. It doesn't say in like position or  
14 anything like that. In basic canons of statutory construction,  
15 we can't write these words in.

16 If Your Honor has any more questions about the  
17 constructions of the statutes?

18 THE COURT: Well, let me hold off on questions --

19 MS. BLOOMEKATZ: Yeah.

20 THE COURT: -- and see if there's going to be a response  
21 to just this part of the legal argument as to the construction  
22 of these two statutes. Any responsive arguments just on this  
23 issue here before we get into Mr. Miller's presentation of his  
24 motion for summary judgment?

25 MR. CONOVER: Sure, I think we certainly would like an

1 opportunity to respond, Your Honor.

2 THE COURT: Okay. Go ahead.

3 MR. CONOVER: Thank you, Your Honor. This is a  
4 straightforward statutory interpretation case that presents  
5 purely a legal question that shouldn't be distracted by the  
6 facts of this case. Is a local school board of education  
7 authorized to permit staff to carry a concealed weapon on  
8 school property? The revised code plainly says yes. And  
9 that's what Madison did here. It exercised a local control  
10 given to it by the Ohio General Assembly to authorize certain  
11 staff members to carry a concealed weapon on school property.  
12 And because it has entirely followed the law, it is entitled to  
13 judgment in its favor.

14 A statutory scheme permitting a school board to arm its  
15 staff, much like Madison did here, is straightforward. There  
16 are two statutes at play. First, Revised  
17 Code 2923.122(D)(1)(a), which permits a school board to  
18 authorize certain people to carry a firearm onto school  
19 property. This, of course, is an exception to the general  
20 prohibition that no one can bring a firearm onto school  
21 property. And Madison fully complied with 2923.122(D)(1)(a)  
22 when it passed its resolution arming staff and implemented its  
23 firearm's authorization policy.

24 And because Madison permits its staff to carry a concealed  
25 weapon, those individuals in the District's policy are,



1 therefore, subject to another statute, which is Ohio's  
2 Concealed Carry Law, which set forth in Revised Code 2923.12,  
3 and specifically (C)(2) requires that anyone who is going to  
4 carry a concealed weapon anywhere in Ohio must do so with a  
5 valid concealed handgun license. And as the 650,000 of us CCW  
6 permit holders in Ohio know, to do that, you have to take a  
7 eight-hour course on firearms training and safety, and also  
8 pass a competency exam showing your knowledge of firearms,  
9 training, safety, and the handling of a firearm. And because  
10 Madison has complied with the law and has armed these staff  
11 members to carry a concealed weapon, each of the individuals  
12 authorized to carry on Madison's school property have and are  
13 required to have a valid CCW permit. That satisfies the law.  
14 The District is not saying that no other provision of the Ohio  
15 law doesn't apply or can apply. It's just in this situation in  
16 Madison's decision to arm certain teachers, staff, and  
17 administrators in its district, they're only subject to  
18 2923.122(D)(1)(a) and Ohio's Concealed Carry Law 2923.12.

19 Plaintiffs point to 109.78(D), which is a general statute  
20 that talks about essentially police officer certification.  
21 Specifically (D) of that statute requires that individuals  
22 that are a special -- or employed by a district and are special  
23 police officers, a security guard, or other position in which a  
24 person goes armed while on duty, is required to have passed an  
25 OPOTA Certified Training Academy or otherwise have 20 years of

1 experience as a police officer. But this statute, I mean, just  
2 reading it, doesn't apply to a teacher, or an administrator, or  
3 a custodian, or a janitor. It applies to a special police  
4 officer, a security guard, or another position in which a  
5 person, much like the list before it, would be providing  
6 security in a school district. And so this, by its plain  
7 terms, 109.78(D) would not apply to a teacher, custodian, a  
8 staff member, a gym teacher, a principal, an assistant  
9 principal, or any other type of position like this whose  
10 primary goal and primary duty is to educate a district's  
11 students. And so as the statute says, it would not apply to  
12 109.78(D). And because it's a general law that was passed much  
13 before the law that authorizes a school district's board of  
14 education to arm its staff members, it would not apply in this  
15 situation. And because Madison's policy of arming its staff  
16 has fully complied with the law, it simply asks for a judgment  
17 in its favor. So unless the Court has any questions, I'm happy  
18 to just, again, rely on the brief. I don't want to be too  
19 duplicative.

20 THE COURT: Okay. I appreciate that.

21 MS. BLOOMEKATZ: May I respond, Your Honor?

22 THE COURT: You may.

23 MS. BLOOMEKATZ: Thank you. Thank you, Your Honor. Very  
24 briefly, I just wanted to respond to a few very specific things  
25 that my friend here mentioned. First of all, my friend here

1 mentioned that the Board isn't saying that other laws just  
2 don't apply. If there's another law that is applicable that it  
3 would apply, even though somebody is listed in that in  
4 (D)(1)(a). So I think there's actually quite a bit of  
5 agreement there, that (D)(1)(a) doesn't block out other laws,  
6 just like it doesn't block out the concealed carry permit. It  
7 doesn't block out other things. So then we really are focused  
8 down to this question about whether 109.78(D) applies to armed  
9 staff in the school. And in my friend's argument here, he  
10 says, well, it shouldn't apply here because they're not like  
11 security guards, and they're not like special police officers,  
12 and their primary goal or their primary duty is not providing  
13 security. But I submit, Your Honor, that if we go right back  
14 to those plain text -- that plain words of what 109.78(D) says,  
15 it doesn't include any of those words. It's just asking  
16 whether you are in a position in which such person goes armed  
17 while on duty. In the plain meaning of those words. That's  
18 what the Ohio Supreme Court, our canons of construction are we  
19 have to give those words their plain meaning. The plain  
20 meaning; are you carrying a firearm, are you armed while on  
21 duty. While on duty doesn't mean security duty. It doesn't  
22 mean like a police officer duty. It just means on duty. And  
23 again, we know how the plain meaning of these words are because  
24 the Board has used those exact same words themselves saying that  
25 these individuals are possessing a firearm on duty.

1        So I think there's actually some good agreement here that  
2 (D)(1)(a) doesn't knock out other laws, that other laws are  
3 applicable, then they need to be applied. And if you look to  
4 that plain language, I think we have a disagreement about the  
5 plain language of 109.78(D), but I'd submit that this Court is  
6 not allowed to write extra words into that statute. If by its  
7 plain language, it applies here, then the John Does need to  
8 have that peace officer training.

9        THE COURT: All right. Thank you. All right. Now just  
10 for the lay of the land as to how things are going to be  
11 presented, I guess the question is for Mr. Miller. Would you  
12 like for me at this point to make a decision about the  
13 statutory construction? Will that change how you present your  
14 motion for summary judgment?

15        MR. MILLER: Your Honor, you can take the matter under  
16 advisement. However the Court wishes to proceed.

17        THE COURT: Okay.

18        MR. CONOVER: If I may, Your Honor?

19        THE COURT: Sure.

20        MR. CONOVER: Only for kind of cleanness purposes, my  
21 understanding is if there's no dispute on facts, then your  
22 decision on the legal argument and the legal question presented  
23 before you would settle summary judgment. So I think if you  
24 don't mean, at least if the plaintiffs are fine with it, making  
25 or at least giving us your inclination of how the decision on

1 the legal question will be made, then we can move into the  
2 plaintiff's factual presentation.

3 THE COURT: Okay. I think it's my question --

4 MS. BLOOMEKATZ: Um-hum.

5 THE COURT: -- for Mr. Miller or Ms. Bloomekatz or  
6 whoever --

7 MS. BLOOMEKATZ: Yeah.

8 THE COURT: -- wants to respond from plaintiffs' side. I  
9 know in chambers we talked about if I come down, as far as  
10 statutory construction is concerned by itself, devoid of facts  
11 to a degree -- if I come down on the side of the School Board,  
12 in that regard, you are going to present more argument or  
13 supplemental argument as to some of what's contained in  
14 depositions and things like that. So that's where my question  
15 was coming from. So the way you're seeing it I think, Miller,  
16 is that you want to present your general position on the motion  
17 first, and then you would prefer that I make my ruling as to  
18 statutory construction, and then if I rule against plaintiffs  
19 at that point, you want to introduce more argument referencing  
20 some of the facts. Is that -- no, no, no. Did I  
21 misunderstand --

22 MS. BLOOMEKATZ: I -- if I --

23 THE COURT: -- what we said in chambers?

24 MS. BLOOMEKATZ: If I may respond, Your Honor?

25 THE COURT: Sure.

1 MS. BLOOMEKATZ: Yeah, I think unless Your Honor has any  
2 further questions about, like, the law in statutory  
3 construction which I'm, of course, happy to respond to, the  
4 other presentation that we would have is on the factual  
5 question. The board has been arguing, as you just heard, that  
6 the individuals who are armed at Madison Schools don't fall  
7 within 109.78(D) because they're not responsible for providing  
8 security. Our factual showing would demonstrate that they are  
9 responsible for providing security even though, again, we don't  
10 think that that's a proper reading of the statute. I think  
11 what we're saying is, Your Honor, is we're happy to make our  
12 factual presentation even if Your Honor wants to take more time  
13 and figure out the statutory construction and look at all the  
14 words and how all the pieces come together.

15 THE COURT: Okay.

16 MS. BLOOMEKATZ: If you'd like to take that issue under  
17 advisement, we're still able to do the factual presentation in  
18 case that it wouldn't have been necessary.

19 THE COURT: Okay. Okay. I will defer making any oral  
20 statement as to my construction of the statutes and how that  
21 applies to this case until I hear the rest of arguments then at  
22 this time. So with that, plaintiffs, and I think Mr. Miller is  
23 going to address the Court at this time.

24 MR. MILLER: Thank you, Your Honor. On behalf of  
25 plaintiffs, James Miller. I'm here to present evidence that

1 goes towards the narrow factual questions that are presented by  
2 defendant's proposed construction of 109.78(D); and, namely,  
3 that it is limited somehow to something narrower than the  
4 statutory plain text and rather to individuals who are  
5 responsible for providing security. Here plaintiffs' evidence  
6 will show that Madison's armed staff are, in fact, responsible  
7 for providing security in at least three ways. The first way  
8 is that the stated purpose of the armed staff program is, in  
9 fact, to provide protection to students and staff and others at  
10 Madison's Schools. The second reason is that there are  
11 numerous ways that the Board and the school administration  
12 treats these armed staff that are unique -- that are different  
13 from the way they treat unarmed staff -- and which are ways  
14 that mimic the way that security professionals and law  
15 enforcement professionals are, in fact, treated. And the third  
16 primary piece of evidence for how the armed staff of Madison  
17 provide or responsible for providing security at the school is  
18 how they're trained. They're trained to provide that security.  
19 They are trained to be responsible for providing security. And  
20 if that seems deceptively simple, it's because it is. It's  
21 sort of a situation like if it walks like a duck and quacks  
22 like a duck, it's a duck. Here the purpose is to protect  
23 students, the district treats these armed staff as if their  
24 role is to be responsible for providing security, and they're  
25 trained to provide security. As a result, they are responsible

1 for providing security within the meaning of 109.78(D) even as  
2 artificially narrowed by defendants' proposed construction.

3 Now at this time I'd like to actually offer into evidence  
4 a number of items so that we can then argue from them and I'll  
5 direct the Court and others in the audience as to the pieces of  
6 evidence that we believe show all of these features that I've  
7 just made reference to. I'd like to begin by offering a pair  
8 of stipulations that the parties have agreed to in pretrial  
9 proceedings in which I believe are, in fact, part of the court  
10 docket already. So the first of which is a joint stipulation  
11 entitled pretrial stipulations.

12 ECR: Do you want me to pass them (indiscernible).

13 MR. MILLER: We're going to need to mark it as exhibits.

14 (Counsel confer)

15 MR. MILLER: So with the defendants' consent, we will mark  
16 this a joint exhibit. So it will be Joint Exhibit, I believe  
17 it's Roman numeral XIII.

18 THE COURT: Now in the plaintiffs' pretrial statement  
19 under exhibits, there are 21 exhibits listed. The joint  
20 stipulation, is that -- I'm trying to see. Let's see.

21 MR. MILLER: I don't believe it appears on plaintiff's  
22 pretrial exhibit list.

23 THE COURT: Are all of those jointly agreed to, all of  
24 those 21, or am I --

25 MR. MILLER: So the parties have a set of joint exhibits.





1 THE COURT: Okay.

2 MR. MILLER: And those include some of the foundational  
3 documents in this case. They are the resolution -- so they are  
4 the resolution passed by the Board in April of 2018 authorizing  
5 arming teachers, that's Joint Exhibit Roman I.

6 THE COURT: Okay.

7 MR. MILLER: The firearms authorization policy which  
8 implements the resolution as Joint Exhibit Roman numeral II.  
9 There is a letter from the Ohio Attorney General or  
10 then-Attorney General Mike DeWine to James Irvine of the  
11 Buckeye Firearms Association concerning 109.78(D), and that's  
12 Joint Exhibit III.

13 And then there is a letter to the school community from  
14 the Madison Administration in July of 2018 that is Joint  
15 Exhibit IV.

16 And then the exhibits that follow sequentially, V through  
17 XII in the joint exhibit list, are deposition transcripts of  
18 the individuals who were deposed in discovery in this case.

19 THE COURT: Okay. Okay. All right.

20 MR. MILLER: And I intend to move each of these into  
21 evidence. In fact, I'll prefer to do it sort of  
22 (indiscernible) --

23 THE COURT: Okay. And then thirteen -- there were twelve  
24 stipulated to before, now you're marking something else as  
25 XIII? What's the thir --

1 MR. MILLER: Correct. So I'm proposing to mark -- the  
2 parties have two stipulations agreed to in this matter. And,  
3 in fact, they've both been filed on the docket originally.  
4 They are a pretrial stipulation that is dated -- I'm not sure  
5 it's dated on its face, in fact, but it was signed and filed  
6 with the Court and I can hand it up. It's entitled pretrial  
7 stipulations. And we propose to mark it as Joint Exhibit XIII  
8 with defendant's consent.

9 THE COURT: Okay.

10 MR. MILLER: And then there is also a subsequent  
11 stipulation that the parties agreed to and which is also filed  
12 with the Court and that is titled the first supplemental joint  
13 stipulations, and we propose to mark that Joint Exhibit XIV  
14 with your consent, counsel? Would you like copies?

15 MR. CONOVER: Yeah, three.

16 MS. BLOOMEKATZ: With your permission, Your Honor?

17 THE COURT: Yes. Please.

18 MR. MILLER: Okay, Your Honor, not to belabor the  
19 stipulations, but to give a quick overview, the pretrial -- the  
20 document that's --

21 THE COURT: Hang on just a -- let me just, as a little  
22 clerical matter, let me make, for Exhibit XIV, we have an  
23 Arabic numeral. Let me just change that to a Roman numeral.

24 ECR: My apologies.

25 THE COURT: These are all Roman numerals, correct?

1 MR. MILLER: The joint exhibit, as I understand Your  
2 Honor's rules, the joint exhibits should be marked with a Roman  
3 numeral.

4 THE COURT: Yeah, I'll mark them with a capitol I, capitol  
5 V or, I mean, no, XIV.

6 MS. BLOOMEKATZ: XIV.

7 ECR: I didn't know how to do it. That's why.

8 THE COURT: That was the problem. You forgot your Xs and  
9 your Vs and your Is, too.

10 ECR: Yeah.

11 THE COURT: When we get into the Cs and the Ls, we would  
12 have been in real trouble with Roman numerals. Okay. X --

13 MR. MILLER: Luckily, I think we can stop safely at XIV,  
14 Your Honor.

15 THE COURT: Okay, XIV, fourteen, okay. Go ahead, Mr.  
16 Miller.

17 MR. MILLER: Thank you, Your Honor. So in quick overview,  
18 Joint Exhibit XIII is a stipulation largely of fact, and this  
19 is what narrows many of the factual issues and really focuses  
20 the dispute. You know, there's no dispute, for example, that  
21 the plaintiffs at issue here have standing to bring these  
22 claims as parents in the school district and that the school  
23 does not, in fact, train individual -- or comply presently with  
24 109.78(D), it's obviously their view that the statute does not  
25 apply to the individuals that are authorized to carry firearms

1 in this case. And so the folks in the pretrial stipulation  
2 that's been marked as Exhibit XIII is largely to narrow and  
3 focus the Court on the factual disputes that remain.

4 I would also though just highlight for the Court and for  
5 the record that stipulation paragraph 26 is the parties'  
6 stipulation as to the -- essentially as to the authenticity of  
7 a number of the documents that I'm, in a moment, going to offer  
8 into evidence, as well. And those are a number of the  
9 documents that have been either discussed in discovery,  
10 discussed during depositions, used as exhibits in depositions,  
11 or exchanged by the parties in discovery or in third-party  
12 discovery. We have taken a bit of third-party discovery  
13 pursuant to the subpoena in this matter. And the parties  
14 essentially agree in paragraph 26 that the various documents  
15 that are listed in the stipulation are each a true and correct  
16 copy of the document as described in the description field of  
17 the table that follows. And that's simply sort of to make  
18 things clerically easy, but there's no dispute as to the  
19 authenticity of these materials.

20 Joint Exhibit XIV, which is the parties' supplemental  
21 stipulation that was signed more recently concerns the parties'  
22 agreement recently to proceed in the evidentiary question in  
23 this matter through the use of deposition transcripts as  
24 opposed to live testimony and, as a result, the parties have  
25 agreed, as the stipulation reads, obviously that no live

1 testimony will be required at today's hearing and that the  
2 parties, "have agreed to admit the deposition transcripts of  
3 all deponents," which are marked for identification as Joint  
4 Trial Exhibits V through XII into evidence. And so that's the  
5 function of the first supplemental joint stipulation.

6 At this time, Your Honor, I'd like to offer Joint Exhibits  
7 XIII and XIV into evidence.

8 (Joint Exhibits XIII and XIV marked for identification)

9 THE COURT: Okay. Counsel from defense, any objection?

10 MR. CONOVER: No objection, Your Honor.

11 THE COURT: Along with I through XII? So I through XIV?

12 MR. MILLER: If -- yes, that's where I'm going next  
13 essentially.

14 (Joint Exhibits I through XII marked for identification)

15 THE COURT: Okay. Any objection to I through XIV?

16 MR. CONOVER: No, just to expedite things, Your Honor.

17 MR. MILLER: Okay.

18 THE COURT: All right. Expedite the process here. Fine.  
19 Thank you.

20 (Joint's Exhibit I through XIV admitted into evidence)

21 MR. MILLER: Thank you, Your Honor. Thank you, counsel.

22 And now the plaintiffs also have a binder of exhibits which, to  
23 a large degree, are exhibits that were offered and attached as  
24 evidence in support of their summary judgment papers, although  
25 there are a handful of other exhibits that go beyond the scope

1 the summary judgment briefing which we believe are germane  
2 potentially to the factual disputes that we're litigating in  
3 front of the Court today. And so plaintiffs have prepared a  
4 binder of proposed trial exhibits which have been premarked as  
5 Exhibits number 1 through 24. And those exhibits --

6 THE COURT: This is 1 through 29, was it?

7 MR. MILLER: This should be 1 through 24, Your Honor.

8 THE COURT: 24?

9 UNIDENTIFIED SPEAKER: 24, Judge.

10 THE COURT: 24. Okay.

11 MR. MILLER: And now I just want to highlight for the  
12 Court that there is at least one exhibit in here that is  
13 confidential under the Court's ruling, under the protective  
14 order. And that is Exhibit 9. Just going to quickly make  
15 sure, in light of this morning's order. I believe that's the  
16 only exhibit in light of this morning's order --

17 THE COURT: Okay.

18 MR. MILLER: -- that remains confidential. And so --

19 THE COURT: Does defense counsel agree with that  
20 understanding?

21 MR. CONOVER: Yes, Your Honor.

22 THE COURT: Okay. Thank you.

23 MR. MILLER: Okay. And now so having moved the pretrial  
24 stipulations which serve to authenticate much of the other  
25 exhibits that we'd like to offer into evidence and having moved

1 the joint trial exhibits including the deposition transcripts,  
2 I'd like to offer at this time the documents that have been  
3 premarked as Plaintiff's Exhibits 1 through 24 into evidence.

4 (Plaintiff's Exhibits 1 through 24 marked for  
5 identification)

6 THE COURT: All right. Defense counsel, any objection to  
7 the admission of those exhibits?

8 MR. CONOVER: No, Your Honor.

9 THE COURT: Bear with me just a minute. I'm going to try  
10 to get my bailiff up to speed on this, too. It's his job to  
11 keep track of evidence coming in, and I don't think he's got  
12 any copies of these things, so let me get him on board with  
13 this.

14 (Court and clerk confer)

15 THE COURT: Okay, Mr. Miller. You may proceed.

16 MR. MILLER: Thank you, Your Honor. Just to highlight, I  
17 obviously flagged for the Court that there was a document among  
18 plaintiff's exhibits which is highly confidential -- remains  
19 confidential pursuant to the protective order. I'd just also  
20 like to flag that among the joint trial exhibits, the  
21 deposition transcripts include information which the defendants  
22 have designated as confidential which, for example, reflects  
23 testimony about the underlying documents or about other  
24 features such as the identities or identifying information  
25 concerning the John Does which, as we understand it, remains

1 confidential and subject to protection under the order that the  
2 Court issued today concerning protective order. And so we just  
3 want to flag for the Court that to the extent that that  
4 testimony or the underlying document is discussed in the  
5 proceedings today, we may wish to approach at sidebar and then  
6 obviously to the extent that the documents that are in evidence  
7 today are made available to the public, we want to ensure that  
8 the information that the Court has ordered protected is, in  
9 fact, protected notwithstanding that it is in and that it is  
10 part of the exhibits that are admitted so.

11 THE COURT: Okay. Defense counsel is chomping at the bit  
12 to respond. He is getting his triceps all tired with the  
13 pushing up already.

14 MR. CONOVER: I worked out this morning, Your Honor. But  
15 anyways, I just want to clarify just, I guess, procedurally how  
16 you would like us to do this. We have previously marked up  
17 deposition transcripts for redaction pursuant to information  
18 that we had identified as highly confidential. Of course, in  
19 light of the Court's ruling this morning on the protective  
20 order, we'll have to go through and re -- or unredact some of  
21 that as it pertains to the firearms authorization policy, but  
22 we can provide those redacted versions because --

23 THE COURT: Yeah.

24 MR. CONOVER: -- you only have unredacted versions right  
25 now.



1 THE COURT: As far as presentation of materials, those can  
2 be modified after the hearing today, as you're suggesting. As  
3 far as any oral reference is concerned, just we'll discuss  
4 these things at sidebar.

5 MR. CONOVER: Perfect. Thank you.

6 THE COURT: Yeah.

7 MR. MILLER: All right. So with the evidence now before  
8 the Court, I'd like to turn back to the reasons that we believe  
9 this evidence shows that Madison's armed personnel are, in  
10 fact, responsible for providing security and, therefore, meet  
11 the requirements of 109.78(D) and are subject to extreme  
12 requirement notwithstanding the proposed narrower construction  
13 that defendants have offered the Court.

14 First, the armed staff provides security and are  
15 responsible for providing security at Madison Schools because  
16 that is the stated purpose of the armed staff program. That's  
17 its reason for being. Here, unlike some of the other evidence  
18 we'll go over, there's really no dispute as to what the stated  
19 purpose of this program is. In fact, it's conceded in  
20 paragraph one of the answer, which reads in relevant part that  
21 staff are armed and are authorized, "to carry a concealed  
22 weapon while in a school safety zone in order to protect  
23 Madison students, staff, and others on district property" In  
24 order to protect them. That's also part of the parties' joint  
25 stipulations of fact, which is now in evidence as Joint Exhibit

1 XIII and specifically it's paragraph number seven of that  
2 document. That documents reads that the stated purpose of the  
3 resolution is to provide for the safety and well-being of the  
4 District students, the District staff, and others on District  
5 property.

6 The resolution itself contains a reference to the purpose,  
7 the resolution being the Board resolution that was passed in  
8 April of 2018 to initiate this process. The resolution  
9 describes the purpose, the District's intention in arming staff  
10 as, quote, "to be prepared and equipped to defend and protect  
11 our students." And it states that staff will possess weapons,  
12 "for the welfare and safety of the students." It's also part  
13 of Joint Exhibit number II, which is the implementing policy.  
14 And in fact, the implementing policy contains a very explicit  
15 statement of the, "firearms policy purpose." And that firearms  
16 policy purpose is as follows, quote:

17 "The Board adopts the following policy to address  
18 concerns about effective and timely response to  
19 emergency situations at schools, including invasion  
20 of the schools by an armed outside, an active  
21 shooter, hostage situations, students who are armed  
22 and posing a direct threat of physical harm to  
23 themselves and others, and similar circumstances."

24 This is not a policy that was passed for the individual  
25 safety of the John Does. This was not a policy that was passed

1 to somehow vindicate their Second Amendment rights or otherwise  
2 expand the places where they're authorized to conceal carry for  
3 their own rights. This is a policy that, at least according to  
4 the School District, is there so that those individuals can  
5 protect students.

6 Deponents in this case have described the policy's purpose  
7 in similar terms. And I'd like to highlight two examples of  
8 that to the Court. The first is from David French, who is the  
9 Board president and was also the designated 30(B)(5) deponent  
10 for the Board. So he spoke on the -- he testified on behalf of  
11 the Board, obviously since the Board speaks through  
12 individuals. And Mr. French testified at page 33 of his  
13 transcript as follows, this is a quote:

14 "Q Okay. And do they also provide additional  
15 safety by carrying a firearm?

16 "A If needed.

17 "Q And so carrying a firearm is specifically an  
18 additional safety measure to protect students and  
19 staff; is that right?

20 "A Sure. It's kind of like a court situation with  
21 a bailiff or anything, yes."

22 What Mr. French was being asked about there was actually  
23 language from the authorization letters that the District  
24 furnishes to armed staff. And I'd like, at this time, to  
25 direct the Court's attention to that document which also

1 contains a statement of the purpose of arming staff. And, in  
2 fact, this is the purpose that the District expresses to be  
3 armed staff themselves. It's as close to an instruction about  
4 why they're being armed as we're aware of. Plaintiff's Exhibit  
5 10, the authorization letters, reads in relevant part:

6 "You are granted this authorization as an additional  
7 safety measure to protect our students and staff from  
8 harm."

9 There's no ambiguity about that. The District, the armed  
10 staff, understand that the reason they're being armed is to  
11 protect students.

12 As laid out in plaintiffs' summary judgment briefing, this  
13 is the literal dictionary definition of being responsible for  
14 providing security. I mean, it's the literal dictionary  
15 definition of to secure. Merriam-Webster's defines the verb,  
16 to secure, as to make something safe by guarding or protecting  
17 it. We've just seen in numerous documents and in the testimony  
18 of the Board president on behalf of the Board that protecting  
19 students is the stated purpose of arming staff. It's not for  
20 any other purpose like protecting themselves or vindicating  
21 Second Amendment rights; it's to protect these individual --  
22 it's to protect the students and others that are at school.

23 Now the Court may be wondering if it matters whether the  
24 armed staff -- whether their primary role is to provide this  
25 protection. It doesn't. As my co-counsel indicated, that's

1 first and foremost not a feature of the statutory language.  
2 There's nothing about the statutory language at issue in this  
3 case that requires that this security role function be the  
4 primary one. And in any event, the evidence indicates that  
5 armed staff act in a security role when they carry a firearm  
6 with this stated purpose, with this protected purpose, on  
7 school property and the authorization that they're granted  
8 authorizes them to do that at all times without limit.

9 The second way that we know that armed staff are  
10 responsible for providing security is because the Board treats  
11 the armed staff in ways that are unique and different from how  
12 they treat armed staff, and those are ways that have clear  
13 parallels to the way that security and law enforcement  
14 personnel are treated. For example, the District insures its  
15 armed staff as law enforcement. And this is at plaintiff's  
16 Exhibit number 11, which is where I'd like to direct the  
17 Court's attention now. The District has purchased, as the  
18 Court can see in Plaintiff's Exhibit 11, a law enforcement  
19 liability coverage policy to ensure the risks that are  
20 associated with having armed staff on campus. There is  
21 testimony in the record concerning the authenticity of this  
22 policy which, if the Court is interested, I can certainly point  
23 to and direct the Court's attention to those transcript pages.  
24 Because of confidentiality concerns, it's not something I would  
25 do in open court.

1 THE COURT: Yeah. No need.

2 MR. MILLER: Okay. So I'd like to direct the Court's  
3 attention to a little bit of the language in this policy  
4 because it's very -- it illuminates the situation in how these  
5 armed staff are, in fact, treated differently. This is on page  
6 1 of the policy, and it's under section 1 coverage, subsection  
7 8, insuring agreement. This is, in essence, like the basic  
8 agreement that's being reached here in this insurance policy.  
9 The insuring agreement, the relevant language reads as follows:

10 "The company," meaning the insurance company, "will  
11 pay on behalf of the insureds, all damages resulting  
12 from a wrongful act which arise out of the law  
13 enforcement activities. The wrongful acts must occur  
14 during the policy period and within the policy  
15 territory."

16 In that sentence, the phrase, the law enforcement  
17 activities, that refers to the activities of staff armed at  
18 Madison. A few pages later, lest this be sort of treated as a  
19 fluke, "this policy defines the term wrongful act," and I  
20 direct the Court's attention to page 4 of Plaintiff's Exhibit  
21 11, which at the bullet numbered 13 contains a definition for  
22 wrongful act, which reads as follows:

23 "wrongful act means an actual or alleged error or  
24 omission, negligent act, negligent or breach of duty  
25 by an insured while conducting law enforcement

1 activities which result in various types of injury."

2 Again, the law enforcement activities that are being  
3 referred to in that definition, those are the actions and  
4 activities of Madison's armed staff. What this means is that  
5 in order to submit a claim under this policy, the District will  
6 have to tell its insurer that its armed personnel are engaged  
7 in law enforcement activities." That's how they get coverage  
8 under this policy. Now regardless of what the School District  
9 may claim before this Court in terms of the statutory  
10 construction, what it tells its insurer here is pretty clear.  
11 The District has insured its armed staff as law enforcement.

12 This isn't the only way that armed staff were treated  
13 differently by the administration. There's a number of other  
14 requires that are imposed on them that are different from the  
15 requirements imposed on unarmed staff, and at the outset of  
16 this armed staff program, they're also treated differently in  
17 terms of how they're evaluated. And I would direct the Court's  
18 attention -- I'm going to direct the Court's attention to  
19 several of those, and I want to highlight that many of these  
20 mimic the types of evaluations that are seen in law enforcement  
21 settings. These are the types of evaluations administered, for  
22 example, to law enforcement candidates.

23 THE COURT: Let me break into your presentation  
24 momentarily, Mr. Miller.

25 MR. MILLER: Yes, Your Honor.

1 THE COURT: And let me ask Mr. Conover, or either defense  
2 counsel for that matter, do you concede that Plaintiff's  
3 Exhibit 11, which is labeled "Law Enforcement Liability  
4 Coverage Occurrence Form", that that applies to these [REDACTED]  
5 John Does who have been authorized by the school system to  
6 carry weapons?

7 MR. CONOVER: Your Honor, as in the testimony in the  
8 depositions says, that the District reached out to its  
9 insurance company when they decided to make the decision to arm  
10 staff members, and this was the form policy that the insurance  
11 company sent to them. It's certain they have insurance for  
12 their armed staff, but it is entirely drafted by the insurance  
13 company, and it has -- I don't think has any implication on --

14 THE COURT: Okay, in these.

15 MR. CONOVER: -- what the Ohio Revised Code says.

16 THE COURT: Okay. Understood. And these are the only  
17 [REDACTED] employees who are applicable --

18 MR. CONOVER: They --

19 THE COURT: -- as far as coverage is concerned. There are  
20 no private security people, as the Board and School System  
21 views it. They have a deputy assigned to the school, is that  
22 the one school resource officer and he's employed by the  
23 sheriff's department presumably?

24 MR. CONOVER: (Indiscernible).

25 THE COURT: That's really -- that's a question more than a



1 statement.

2 MR. CONOVER: There -- there --

3 THE COURT: Is that the lay of the land, as you see it?

4 MR. CONOVER: There are two school resource officers

5 (indiscernible) --

6 THE COURT: Two.

7 MR. CONOVER: And if we can just quickly --

8 THE COURT: Are they both employed by the sheriff's  
9 department?

10 MR. CONOVER: Yes, sir. The Butler County Sheriff's  
11 Department.

12 THE COURT: Okay.

13 MR. CONOVER: And may we just quickly approach on how to  
14 read it?

15 THE COURT: Yes.

16 (At sidebar)

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 [REDACTED]

1 [REDACTED] [REDACTED] [REDACTED]  
2 (End sidebar)

3 THE COURT: Okay. You may proceed, Mr. Miller.

4 MR. MILLER: Thank you. So we've just highlighted the  
5 insurance policy that covers the armed personnel at Madison.  
6 And as counsel indicated, this is not the insurance policy as  
7 we understand it that covers the sheriff's department employees  
8 that serve as SROs; that's in agreement. It's not part of the  
9 record here, but there's an agreement that is -- that governs  
10 the conduct of those sheriff's department employees at the  
11 school and how the sheriff's department insures its employees  
12 is not part of the information we've discovered in this case,  
13 and that's not part of the record here.

14 So there are other ways, beyond this insurance policy,  
15 that indicate that the School District treats these employees  
16 as being responsible for providing security in a way that is  
17 different from who the School District treats other employees,  
18 and that largely concerns how they're evaluated when the school  
19 decides whether or not to allow them to carry a gun with this  
20 protective purpose. It evaluates them in ways that mimic, but  
21 are not the same as -- but mimic how law enforcement agencies  
22 evaluate their candidates. So for example, as the Court can  
23 see in Plaintiff's Exhibit 10, which is the authorization  
24 letter that's issued to armed staff, it runs through in bullet  
25 point there a number of the requirements that they must meet.

1 These individuals submit to a mental health examination.

2 With the Court's permission, I'd actually like to approach  
3 the bench at sidebar and discuss a little bit about that mental  
4 health examination --

5 THE COURT: Sure.

6 MR. MILLER: -- because I think it sheds light on how it  
7 mimics so many issues that we're discussing here, but because  
8 that document's confidential.

9 THE COURT: Fine. Approach.

10 (At sidebar)

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 (End sidebar)

21 THE COURT: Have you been -- when we've had our -- we call  
22 these sidebars -- when we've had these sidebars previously, can  
23 any of you hear what's being said up here?

24 UNIDENTIFIED SPEAKER: No.

25 UNIDENTIFIED SPEAKER: Yes.

1 UNIDENTIFIED SPEAKER: No.

2 UNIDENTIFIED SPEAKER: No.

3 UNIDENTIFIED SPEAKER: No. He has super good hearing.

4 THE COURT: Okay.

5 UNIDENTIFIED SPEAKER: (Indiscernible).

6 THE COURT: What's that?

7 MR. CONOVER: The press may be the only -- I don't want to  
8 say but --

9 THE COURT: You can't be over there. Okay. He's on this  
10 side of the bar. Is he a counsel or something?

11 MR. CONOVER: He is.

12 UNIDENTIFIED SPEAKER: Um-hum.

13 THE COURT: He is of counsel, as well? Okay. It doesn't  
14 matter that he's with -- who's he with?

15 MR. CONOVER: He's with the District -- or Frost official.

16 THE COURT: Okay. He's with your firm?

17 MR. CONOVER: Yup.

18 THE COURT: Okay. Nobody from that barrier, that little  
19 wall there, nobody in back of that wall can hear? Is that  
20 correct?

21 UNIDENTIFIED SPEAKER: No.

22 UNIDENTIFIED SPEAKER: No, sir.

23 THE COURT: Okay. Okay. These two here, the lady with  
24 the gray hair and the black glasses, the gentleman with the  
25 glasses, you two -- have you heard anything?



1 UNIDENTIFIED SPEAKER: No.

2 UNIDENTIFIED SPEAKER: I can hear your talking but --

3 THE COURT: Right now, but when we've been discussing  
4 privately up here, have you heard any of those prior  
5 discussions?

6 UNIDENTIFIED SPEAKER: No, Your Honor.

7 UNIDENTIFIED SPEAKER: No.

8 THE COURT: Okay. Thank you.

9 MR. CONOVER: Let's, for the record, I mean, it'll be  
10 redact -- pursuant to the confidentiality agreement, yeah.

11 (At sidebar)

12 [REDACTED]  
13 [REDACTED]  
14 [REDACTED]  
15 [REDACTED]  
16 [REDACTED]  
17 [REDACTED]  
18 [REDACTED]  
19 [REDACTED]  
20 [REDACTED]  
21 [REDACTED]  
22 [REDACTED]  
23 [REDACTED]  
24 [REDACTED]  
25 [REDACTED]

- 1 [REDACTED]
- 2 [REDACTED] [REDACTED]
- 3 [REDACTED]
- 4 [REDACTED]
- 5 [REDACTED] [REDACTED]
- 6 [REDACTED] [REDACTED]
- 7 [REDACTED] [REDACTED] [REDACTED] [REDACTED]
- 8 [REDACTED] [REDACTED] [REDACTED]
- 9 [REDACTED]
- 10 [REDACTED] [REDACTED]
- 11 [REDACTED] [REDACTED]
- 12 [REDACTED] [REDACTED]
- 13 [REDACTED]
- 14 [REDACTED] [REDACTED]
- 15 [REDACTED]
- 16 [REDACTED] [REDACTED]
- 17 [REDACTED]
- 18 [REDACTED] [REDACTED]
- 19 [REDACTED] [REDACTED]
- 20 [REDACTED] [REDACTED]
- 21 [REDACTED] [REDACTED] [REDACTED] [REDACTED]
- 22 [REDACTED] [REDACTED] [REDACTED]
- 23 [REDACTED] [REDACTED]
- 24 [REDACTED]
- 25 [REDACTED]

1 [REDACTED]  
2 [REDACTED]  
3 [REDACTED]  
4 [REDACTED]  
5 [REDACTED]  
6 [REDACTED]  
7 [REDACTED]  
8 [REDACTED]  
9 [REDACTED]

10 (End sidebar)

11 THE COURT: You may proceed.

12 MR. MILLER: Thank you, Your Honor. In addition to the  
13 mental health examination, candidates to be armed in Madison  
14 Schools are required to pass a handgun qualification  
15 examination which measures their target-shooting ability. And  
16 this is Plaintiff's Exhibit 8 in the record -- are the results  
17 of this examination. And in the middle of this, in the middle  
18 of each page of this examination form is a reference to the  
19 Ohio Peace Officer Training Academy Semi-Auto Qualification  
20 Course 2011 OPOTA Enhance. That's a reference to a  
21 standardized law enforcement examination that's very similar to  
22 this examination. And it just shows how the examination that's  
23 administered to the armed staff at Madison in very obvious ways  
24 mirrors the sort of examination and evaluation that's  
25 administered to law enforcement in the state.

1       In addition, the Board considers applicant's physical  
2 abilities when deciding whether to arm them. That's the  
3 testimony of David French, the Board president again, speaking  
4 on behalf of the Board, and he speaks in relevant part about  
5 this issue at the page 134. Now it's part of a larger  
6 discussion, and I can certainly read the entire discussion if  
7 the Board's interested. He's initially asked at page 124 to  
8 describe some of the factors that the Board considers when  
9 determining whether to arm individuals and among those factors  
10 describes the participant's physical ability. That's at page  
11 124. And then at page 134, he's asked to elaborate on what he  
12 meant by that answer as follows:

13           "Q   Why is physical ability important for the safety  
14 committee to consider?

15           "A   It's as anything else. Stress, trauma, any of  
16 that can affect your heart rate, could affect your,  
17 you know, everything about your physical property.  
18 Some people would not be able to handle" -- maybe  
19 potentially handle -- excuse me -- "some people would  
20 not be able to maybe potentially handle a stressful  
21 situation as that.

22           "Q   Is the safety committee concerned about the  
23 applicant's ability to perform physically during an  
24 incident in which they might be required to use their  
25 firearm?



1 "Objection.

2 "A Naturally so, yes."

3 So the Board considers an applicant's physical ability to  
4 perform a security function during an incident to be  
5 responsible for providing security. That's a -- there's no --  
6 there's nothing in the record that suggests other staff are  
7 subject to that kind of examination as part of the  
8 qualifications for their jobs, but there is here evidence that  
9 the Board considers that when deciding whether to arm staff.

10 Now I don't want the Court to come away with the wrong  
11 impression that plaintiffs somehow believe that the testing  
12 that was done in this instance is adequate, or that the Board  
13 faithfully discharges its obligations to ensure that only  
14 adequately-vetted individuals are armed. To the contrary --  
15 for the reasons that are set out in our summary judgment  
16 briefing, and that's our summary judgment motion pages 10  
17 through 12, about which we're not able to discuss in open  
18 court, we have reservations about this aspect of the armed  
19 staff program. And so while I have discussed --

20 THE COURT: I don't think there's any danger that I would  
21 construe your current comments to indicate --

22 MR. MILLER: Thank you, Your Honor.

23 THE COURT: -- that you're in favor of the adequacy of the  
24 training program.

25 MR. MILLER: Thank you, Your Honor. And so the final way

1 that the Board treats its armed staff differently than other  
2 staff, in ways that show that they're responsible for providing  
3 security, is that it puts additional requirements on them on an  
4 ongoing basis. It requires them to follow different rules than  
5 other staff. Some of those rules are laid out in the  
6 confidentiality agreement that armed staff are required to  
7 sign. That confidentiality agreement is in the record at  
8 Plaintiff's Exhibit 19, and it requires the armed staff not  
9 disclose their identity, the identity of other armed staff and  
10 then, crucially, it asks them to self-report on a number of  
11 things, like arrests, like the use of medication or other  
12 substances, like having medical or psychological conditions or  
13 developing any of those conditions, like having "any other life  
14 event that in the employee's view may impact their fitness to  
15 carry a firearm around children at school." Why would the  
16 Board require that type of self-reporting if not for the  
17 security role that these individuals provide?

18 There are other responsibilities, as well, and they're  
19 laid out in the "Firearm's Authorization Policy", which is  
20 Joint Exhibit 2. And I won't belabor them, but there are  
21 requirements that armed individuals submit to drug screening on  
22 an annual and on a random basis. There are ongoing training  
23 requirements imposed by the "Firearms Authorization Policy".  
24 What exactly those ongoing training requirements are is not  
25 entirely clear, at least on the face of the policy, but there

1 are annual recertification and annual training requirements  
2 that are required on the face of the "Firearms Authorization  
3 Policy", and again, those are annual training requirements that  
4 are not imposed on unarmed staff. They're something that armed  
5 staff have to do themselves.

6 Finally we get to what the training actually is. And  
7 that's really the final sort of nail in the coffin here. It's  
8 the issue on which the parties, I believe, have sort of the  
9 largest factual disagreement here. Before I move to training,  
10 my colleague is reminding me if armed staff fail in their  
11 obligations that we've just run through, the obligations that  
12 are imposed by things like the authorization letter -- by the  
13 firearms policy itself -- if they fail to meet those  
14 obligations, they can be terminated. That's one of the --  
15 their employment at the school can be terminated -- not just  
16 their authorization can be revoked, but this actually can  
17 impact their employment at the school, if they were to fail in  
18 any of these ongoing obligations. That's one of the sort of  
19 consequences that's spelled out in the record for failing to  
20 adhere to the various sort of special requirements that we've  
21 just laid out.

22 Okay. So training. Armed staff are responsible for  
23 providing security at Madison because they're trained to do  
24 that. The single weekend of training that they get at FASTER,  
25 that 27 hours of training they cram in at a weekend, that is

1 specifically and, in fact, exclusively geared, toward actions  
2 that even the defendants concede are security. These are  
3 things like hunting and ambushing a suspected shooter. I'd  
4 like to direct the Court's attention to Plaintiff's Exhibit 7,  
5 which are certificates issued by the FASTER program or through  
6 the vendor that provides the training. And the Court can see  
7 right in the middle, this is for completion of 27 hours of  
8 training -- there's your weekend of training -- and it's for  
9 FASTER 1 training. That's what the program is called here.  
10 And I'd also just highlight that the vendor's name here, the  
11 Tactical Defense Institute -- I just want to sort of flag that  
12 since we may circle back to that, as well. The training is  
13 spelled out in a couple of places and among them, there's  
14 lengthy deposition testimony about this. I'd like first,  
15 though, to go to the Plaintiff's Exhibit 21, which is an  
16 outline of coursework. This is a document that's titled FASTER  
17 level one. It's part of the parties' pre-trial stipulation,  
18 which at paragraph 26 stipulates that this is a true and  
19 correct copy of an outline of FASTER Level 1 coursework. This  
20 document was produced in this case pursuant to a third-party  
21 subpoena issued to Buckeye Firearms Foundation, which is  
22 responsible for the -- for running the FASTER program. And  
23 they've produced this document in response to a request for  
24 materials for each course or training program offered by FASTER  
25 in Ohio between January 2017 and the present -- all course

1 materials used by the instructors or participants and including  
2 specifically FASTER 1 Level courses. And so that is, in  
3 essence, what this document is. This is an outline of the  
4 FASTER Level 1 coursework. And that's why we know that's what  
5 it is.

6 So this document, I'd like to direct the Court's attention  
7 to the second page of the document. It's Bates numbered  
8 BFF-38, and it describes, beginning in the middle of the page,  
9 a number of the tactics that are taught at this weekend sort of  
10 crash course. And these are tactics to "stop the killing" or  
11 change the focus of the killer while maintaining safety. They  
12 include tactics like, quote, "setting an ambush." They include  
13 tactics like corner bounding, which is when an individual sort  
14 of is moving through space and he's going to peer around a  
15 corner when they're in search of an armed individual. It  
16 includes tactics like visually clearing the area of greatest  
17 unknown before occupying a space, or what is described in more  
18 colorful terms as a combat clear. Now there's a wealth of  
19 testimony from Madison's John Does about what this training  
20 entails and what these terms actually look like in practice.

21 Before I get to these examples, I just want to reiterate  
22 that this training is, we believe, very rudimentary and in the  
23 words of one of the John Does, "very fast paced." That's at  
24 John Doe number 1, his transcript, page 39. And in essence, it  
25 has to be, because these individuals get 27 hours of training,

1 and it's crammed into a single weekend. That John Doe number 1  
2 has a helpful overview of that weekend and what sort of the  
3 breakdown of this training course entails. If the Court's  
4 interested, it's at -- it's more lengthy sort of transcript  
5 cite, and it's -- we would direct the Court's attention to page  
6 39 of John Doe 1's transcript, pages -- excuse me, line 15  
7 through page 42, line 4, where John Doe number 2 describes  
8 classroom instruction on the basis of weapon handling,  
9 describes time in a shoot house where individuals learn skills  
10 and tactics and then time spent on scenario role-playing using  
11 simulated firearms and then finally an evening of first aid.

12 The reason that this testimony about the skills they're  
13 taught at the FASTER, the weekend of FASTER training, is so  
14 problematic for the defendants, is that even their witnesses  
15 were forced to admit that the skills that these folks are  
16 taught are security, even under their sort of narrow, cramped  
17 view of what security is. I'll read to you just two passages  
18 of how the defendants' witnesses described what security is,  
19 how they understand that term, and then I'll allow for the  
20 testimony of John Doe 1 to show how the training fits that  
21 definition to a T. So the first witness I'd like to direct the  
22 Court to is Lisa Tuttle-Huff, who is the District  
23 superintendent. And at her transcript, page 119, she's asked  
24 the question, "What's the difference between protection and  
25 security?" And as the Court is obviously aware, as I imagine

1 the parties will get into it in a minute, part of the factual  
2 dispute investigated during discovery is the defendant's sort  
3 of effort to draw a line between safety and security or  
4 protection and security because, obviously, the implications  
5 being whether 109.78(D) applies. And so here the  
6 superintendent was asked to explain that supposed difference:

7 "What's the difference between protection and  
8 Security?"

9 "A A security, I would assume that you are saying  
10 that they need to go after a perpetrator. Protection  
11 means that they're only taking care of their area  
12 based on legal force being used in the area."

13 So here the superintendent is describing security as going  
14 after a perpetrator.

15 The Board president used similar language, and I'd like to  
16 highlight that. That's at his transcript, page 47. Here, Mr.  
17 French was asked to describe that language in the authorization  
18 letter that describes armed staff as an additional safety  
19 measure:

20 "Is there a difference between an additional safety  
21 measure and an additional security measure in your  
22 view?"

23 "A Yes.

24 "Q What is it?"

25 "A Safety. We are all to keep a safe environment

1 for our kids at all costs.

2 "To me in my terms of security, you are referring to  
3 someone that we expect to go out and pursue someone  
4 or be offensive or aggressive?

5 "No, we don't expect that at all. We expect them to  
6 be strictly defensive."

7 And so David French, as well, describes what he  
8 understands the security role in very similar terms, we --  
9 someone who goes out and pursues someone or is offensive or  
10 aggressive. Now we dispute that that's a legitimate  
11 distinction, but even on defendants' terms, listen to how Doe 1  
12 describes what they're taught at FASTER. I'll direct the Court  
13 to John Doe 1's testimony at page 39.

14 THE COURT: And this is how he describes the FASTER  
15 program? That's what you're going to be quoting?

16 MR. MILLER: Yes, Your Honor. This is part of the -- when  
17 I referenced a minute ago that he gives an overview of the  
18 FASTER program in the various sort of chunks of time that they  
19 spend in various locations at this FASTER facility -- that's  
20 the context for this question. Excuse me, this appears, in  
21 fact, at page 40 of his transcript, excuse me. And so he's  
22 been asked about the various aspects of FASTER training, that's  
23 the context in which this question is asked:

24 "Q Okay. What are the other aspects, just, you  
25 know, an overview so that we can frame out discussion?



1 "A In FASTER training you're taught to find an  
2 active shooter, so you go into a shoot house where  
3 there is a shooting taking place and you have to be  
4 able to find the shooter and engage the shooter and  
5 stop the threat while clearing rooms along the way."

6 A couple pages later, he's asked to explain in more detail  
7 what it means to clear rooms. And that's at page 47 of John  
8 Doe 1:

9 "Q Do they teach you how to clear rooms?"  
10 You'll remember from the FASTER outline we covered?  
11 That's the phrase combat clear is how it appears on the  
12 outline.

13 "Q Do they teach you how to clear rooms?"

14 "A Yes.

15 "Q What does that mean?

16 "A How to approach a room so that a minimal amount  
17 of your body will be visible, taking a tactical angle  
18 so that you can see a maximum amount of the room and  
19 a minimal amount of your body is visible.

20 "Q What's the purpose of clearing rooms?

21 "A Finding the killer."

22 Even on John Doe 1 -- even on the Board's terms, the way  
23 John Doe 1 describes what training they get at FASTER is  
24 unequivocally security. It's skills that one would need if one  
25 was responsible for providing security. The question to ask

1 is, if these armed teachers were not, in fact, responsible for  
2 providing security, why would they need these skills?

3       There's a lot of other testimony from the Does, and I  
4 won't go into it, but it appears that John Doe transcript  
5 number 2 -- excuse me -- John Doe 2, pages 29 to 30; John Doe  
6 2, pages 36 to 39; John Doe 2, page 41; John Doe 3, pages 42 to  
7 44; John Doe 3, pages 49 to 52; John Doe 3, pages 61 to 62. In  
8 each of those instances there's further elaboration about this  
9 concept of pursuing an active killer, of finding them and  
10 engaging them. Those are skills that even defendants  
11 acknowledge are security.

12       To close things out, and again, we've sort of spent a lot  
13 of time in the FASTER program, and I don't want the Court to  
14 come away with the intention that these folks sort of end up as  
15 SWAT team members by the end of this weekend. They don't. And  
16 it underscores why the training issue motivates the parents who  
17 are sitting on the back wall here. Here's what John Doe 1  
18 testified about the length of time he spent practicing in that  
19 shoot house, that's the room -- that's the facility in which  
20 they use live weapons and simulated weapons, but also live  
21 weapons, to practice some of these movement skills. This  
22 appears at page 48 of John Doe number 1's transcript:

23               "Q   How long would you say you trained in the shoot  
24               house -- you personally?

25               "A   Ten minutes.

1 "Q How many different drills did you conduct in the  
2 shoot house?

3 "A Live fire, one, but multiple drills in  
4 positioning and clearing.

5 "Q And did those other drills in positioning and  
6 clearing involve nonfunctional weapons?

7 "A Yes."

8 So John Doe 1 spent ten minutes practicing this clearing  
9 movement and one of those instances involved him using his live  
10 weapon, just one.

11 As a final point on training, it's important for the Court  
12 to bear in mind what FASTER does not teach the armed staff.  
13 FASTER does not contain any training whatsoever on the  
14 defensive tactics that that Board indicates are, in fact, the  
15 operative policy here. It does not contain any training  
16 whatsoever on tactics like hiding, on tactics like sheltering  
17 in place, or on locking the door to your classroom or your  
18 office or your whatever. Again, John Doe 1 was asked this  
19 point blank at page 44 and testified as follows:

20 "Q Does FASTER teach you at any point during the  
21 training to hide in the classroom?

22 "A I'd say no.

23 "Q Does FASTER teach you to lock the door of your  
24 classrooms and stay put?

25 "A FASTER does not teach that."

1       That's not an anomaly. The other John Does were asked the  
2 exact same question, and they answered it the exact same way.  
3 John Doe 2 did so at pages 77 and 78 of his transcript, and  
4 John Doe 3 did so at pages 47 and 48 of his transcript and at  
5 pages 66 and 67.

6       Now defendants may discount this training before this  
7 Court and essentially tell the Court that they instruct armed  
8 staff on some operative policy that essentially amounts to  
9 ignoring this training and, instead, permits armed staff to act  
10 only defensively, which the Board apparently understands to  
11 mean protecting only the students that are with them in a  
12 specific area, be it a classroom, or a lunchroom, or some sort  
13 of enclosed space.

14       There's three reasons why the Court should not indulge  
15 this particular argument. First, the Court should see this  
16 argument for what it is. It's semantic sideshow. It's a  
17 distinction that really has no legal difference to this case.  
18 It doesn't matter whether armed staff are protecting a  
19 classroom or the lunchroom or the entire school property. It's  
20 the act of protection that makes them responsible for providing  
21 security. It's not the square footage of that protection.

22       Second, there's no documentary evidence that this supposed  
23 operative defense-only policy even exists. It's not in the  
24 resolution. It's not in the "Firearms Authorization Policy".  
25 It's not in the authorization letters. It's nowhere in the

1 documents. And the District has no clear answer about when it  
2 was allegedly conveyed to the arms staff themselves.

3 And third, as you've just heard, the evidence  
4 overwhelmingly shows that this crash course of FASTER training  
5 that the Board deliberately chose for its armed staff, it  
6 teaches them only the offensive tactics that we just went over  
7 and does not teach them any of the defensive tactics that the  
8 Board now claims as the operative policy.

9 So for these reasons, plaintiffs ask the Court to follow  
10 this evidence to the most reasonable conclusion. Here the  
11 armed staff's stated reason for being is to protect students.  
12 The District treats its armed staff like they are responsible  
13 for providing security by evaluating them similarly to law  
14 enforcement, by imposing special and ongoing responsibilities  
15 that are akin to law enforcement, by insuring them as law  
16 enforcement. And finally, the limited training that these  
17 armed staff receive is specifically and exclusively geared  
18 towards these individuals acting in a security role to being  
19 responsible for providing security. For these reasons, we ask  
20 the Court to find, even under the Board's more narrow proposed  
21 reading of 109.78(D) that that law does, in fact, apply to  
22 these individuals and that they are, therefore, required to  
23 successfully complete a peace officer basic training course  
24 before going armed around the plaintiffs' children and around  
25 the other children that form the Madison School community.

1 Now I'd like to reserve a little bit of time for rebuttal  
2 potentially to the arguments that defense counsel may raise.  
3 But that concludes my presentation.

4 THE COURT: All right. Thank you, Mr. Miller. Let's take  
5 a little bit of a break before we get into defense's  
6 presentation. Let's take -- is five minutes enough or ten?

7 UNIDENTIFIED SPEAKER: Sure.

8 THE COURT: We'll take ten.

9 THE BAILIFF: All rise.

10 (Recess taken)

11 THE BAILIFF: Judge, we are on the record.

12 THE COURT: Just a second. We need to get our computer up  
13 here.

14 THE BAILIFF: We're good, Your Honor.

15 THE COURT: Okay. Mr. Conover?

16 MR. CONOVER: Thank you, Your Honor. And I just have a  
17 brief response to Mr. Miller. Fundamentally, I think, as we  
18 said this earlier this morning, (indiscernible) purely a legal  
19 question of statutory interpretation. And I just want to make  
20 sure that we don't lose the forest for the trees here by diving  
21 into the weeds of these facts that really don't matter or  
22 implicate the Judge's, Your Honor's, interpretation of the  
23 statutory scheme. That said, I do want to highlight a few  
24 things from the record.

25 And, fundamentally, these individuals are tasked with

1 protecting their area and those around them. They are to be  
2 entirely secure in place or shelter in place, as we discussed a  
3 little bit this morning, and by that I mean each of the John  
4 Does, each of the Board members, every -- and even the school  
5 resource officer who was deposed, are all aware of the  
6 District's policy for each of these individuals that are armed,  
7 to remain where they're at. And that's consistent with ALICE  
8 training, which is what every districtwide staff member goes  
9 through. And in an ALICE, the instruction --

10 THE COURT: What training did you say?

11 MR. CONOVER: ALICE training.

12 THE COURT: ALICE?

13 MR. CONOVER: Yes, and I will --

14 THE COURT: Just tell me what that is.

15 MR. CONOVER: I will admit that I don't know what the  
16 acronym stands for, but essentially it's a flight, lock in  
17 pla -- basically, avoid the threat at all costs.

18 THE COURT: Okay.

19 MR. CONOVER: It's just a, again, it's not uncomm -- most,  
20 I think --

21 THE COURT: And all staff members are trained in that way?

22 MR. CONOVER: Exactly, Your Honor. And again, there was  
23 testimony from each of the authorized personnel that says that  
24 they go through ALICE training and there again, all staff  
25 members go through ALICE training. And the School Resource

1 Officer discussed various drill, like ALICE drills that are  
2 performed at Madison throughout the year. And again, all of  
3 the staff members and all the students go through an ALICE  
4 training, in response to an active shooter situation. And the  
5 armed staff members, again there was testimony from the school  
6 resource officer that said, the armed staff members aren't  
7 treated any differently because of their status as armed staff  
8 members in those ALICE trainings, in those active shooter  
9 responses. So again, the first step -- and there was testimony  
10 from all of the deponents that those individuals are supposed  
11 to lock in place, lock their doors, stay away from the threat,  
12 hide as best they can. They are not, again, to go out after  
13 the attacker or the would-be murderer in this case.

14 And as you're well aware, this school district had an  
15 active shooter situation in 2016, so they're very aware of the  
16 threat and the chaos that ensues when an active shooter is  
17 present and loading.

18 So again, each of the deponents said that these  
19 individuals are supposed to stay where they're at, they are not  
20 to go out after the attacker. And each of the deponents again  
21 said that the individuals tasked with going out after the  
22 shooter --to secure or apprehend the shooter is the school  
23 resource officer or local law enforcement. And that, again, is  
24 consistent with their job duties as law enforcement and peace  
25 officers by the State of Ohio and with the Butler County



1 Sheriff's Office. Again, so those individuals are the ones  
2 that are supposed to go out after to, again, secure or  
3 apprehend or eliminate the threat. The authorized --

4 THE COURT: Let me stop you for a minute --

5 MR. CONOVER: Yes, sir.

6 THE COURT: -- and ask a question just to clarify  
7 something for myself. I know when we talked in chambers, there  
8 were refer -- and not just in chambers, but in the pre-trial  
9 statement, I think, by plaintiffs, there was this expression  
10 that supposedly the [REDACTED] -- or the -- whatever the number is  
11 of people authorized to carry these firearms, the oral  
12 instruction that they were given was that they were to stay in  
13 place, but that's not part of the policy. Now we talked about  
14 that, but now this ALICE training is something I probably  
15 should know this if I had read all of the background materials,  
16 but I haven't. But is your position this: That that ALICE  
17 training specifically tells these people if they are in a  
18 classroom situation, that would apply just to teachers, but it  
19 could apply to other people who have some kind of a supervisory  
20 capacity over students at a particular time, that they are  
21 to --  
22 basically, I use the expression hunker down -- they are to  
23 hunker down where they are. They're to secure their area so  
24 people can't break into their area, attackers, shooters, break  
25 into their area and just stay out of the fray as much as

1 possible; is that the instruction that all employees are given?

2 MR. CONOVER: So two kind of parts to that question.

3 First, Your Honor, yes, ALICE training instructs individuals  
4 and I'll admit, it's been awhile since I've gone through ALICE  
5 training at the prosecutor's office, and although my wife goes  
6 through it as a teacher, she has told me this -- I admit that I  
7 may not have been listening super closely to her when she  
8 explained the tenets of it -- but essentially it's either you  
9 get away, flight and you move out as quickly as you can, or you  
10 lock down in place to avoid the threat. And so again, every  
11 staff member in Madison has received that training and  
12 regardless of their responsibilities that is their task.  
13 Again, it's the school resource officer and law enforcements  
14 who are supposed to go out after these individuals. But so  
15 yes, that is the instruction. I will say that I think that's  
16 separate from the instruction that the armed staff members  
17 separately received orally from either the Board or the  
18 superintendent, that they are to stay where they are at and not  
19 to go out after the intruder. So I think there's the ALICE  
20 training on one hand that all staff members receive instructing  
21 them to stay in place, and then again there's the separate  
22 instruction from the Board and from the superintendent to  
23 again, for the armed staff members, to stay where they're at  
24 so --

25 THE COURT: Okay. So to put it into other words, tell me

1 if I'm getting it right, your position is that not only has the  
2 ALICE -- the general ALICE training not been superseded, it has  
3 been reinforced by oral communication from administration to  
4 employees that they are to stay in place?

5 MR. CONOVER: Yes, Your Honor. I think --

6 THE COURT: Okay.

7 MR. CONOVER: -- each of the John Does said that in their  
8 deposition transcripts.

9 THE COURT: Okay. Okay.

10 MR. CONOVER: And again, I just want to reiterate, again,  
11 I think we're getting very much into the weeds of this. And I  
12 don't know that it's necessary, but I just wanted to flag that  
13 for the -- that the basic tenets of the instruction were: stay  
14 where you're at and protect your area; law enforcement is going  
15 to be the one to go get the bad guy essentially. And again,  
16 there was testimony from every deponent that said exactly that.  
17 And there was --

18 THE COURT: Well, to play devil's advocate a little with  
19 you -- I know you don't want to get in those weeds.

20 MR. CONOVER: No.

21 THE COURT: I want to take you -- drag you back into the  
22 weeds a little bit. To play devil's advocate with you, though,  
23 and I don't know about this FASTER training program per se.  
24 All I know is just real sketchy stuff. You got 27 hours of  
25 training. If -- but they got to have another eight, I think.

1 I think I saw that, too, if they don't have more than just the  
2 carry conceal permit, they've got to have another preliminary  
3 foundational 8 hours, and then the 27 hours. But in the scope  
4 of all of that, it seems to be the training that the School  
5 Board wants them to have is at variance with what they're  
6 telling the authorized personnel to do. I mean, isn't a lot of  
7 the FASTER training how to go get the -- they use these  
8 dramatic expressions -- we're the tactical force and we're  
9 getting the killers and, you know, all that kind of aura of  
10 things, you know. So aren't they training these people to go  
11 get the killers -- be, you know -- use their serpentine method,  
12 weaving your way through the hallway and know how to poke your  
13 one eye around the corner to see without exposing your body,  
14 and how to cut the angles and, you know -- isn't that at the  
15 heart of it? What are all these 27 hours for, or 27 plus 8?  
16 You know, I'm -- so respond to that. Just --

17 MR. CONOVER: Well, I'm trying to pull you out of the  
18 weeds.

19 THE COURT: I know you are. I know you are but --

20 MR. CONOVER: I'll surely respond to your question, Your  
21 Honor. So there are components. So essentially FASTER's  
22 broken into -- I'm not an expert on FASTER but having been down  
23 to the Tactical Defense Institute and talked with the founder  
24 of FASTER, John Benner, who is an expert and believe he was  
25 previously in this case. FASTER is intended for an active -- a

1 school's response to an active shooter situation. So there are  
2 a lot of components. There is a classroom instruction  
3 component about how -- the prior school shootings in the United  
4 States, and what kind of goes into the mindset of a murderer  
5 that would go into a school and do this. There is a  
6 significant portion on, you know, medical, like, trauma  
7 training; so, like, basically field trauma in responding  
8 because, again, one of the primary -- the biggest concerns in a  
9 school shooting situation is that most of it's bleed out,  
10 right? So if we can -- part of it is eliminating the threat or  
11 securing the area. Part of it's responding and, you know,  
12 treating a victim of a gunshot wound. So that's a significant  
13 portion of it. And actually the -- each participant in FASTER  
14 goes home with a trauma kit that they can take back to their  
15 school provided to them. There are again -- it's primarily  
16 scenario-based training. There are kind of -- there's  
17 scenarios in a, I think it's called live fire house, that  
18 there's another, like, two-story building. They use airsoft  
19 guns in training. And then they go through about a thousand  
20 rounds of ammunition shooting on the range. So there's a  
21 significant amount of training involved at FASTER. And while,  
22 yes, some of that is this kind of going after the -- I think I  
23 don't know if you said hunting the bad guy or whatever it was  
24 but going after, that is not exclusively what they are done  
25 (sic) and importantly, again, ever staff member that attended

1 FASTER said, yeah, we know that that's what we were taught, but  
2 we knew going in, and we know now and know after that our Board  
3 instructed us not to do that. So again, it's part of the  
4 training; it's part of the 27 hours but, again, they were all  
5 instructed that they are to remain in place and not to pursue  
6 the killer.

7 THE COURT: Okay.

8 MR. CONOVER: So again, I don't want to get --

9 THE COURT: Okay. Jump out of the weeds again and go in.

10 MR. CONOVER: I'm getting back out of the weeds, Your  
11 Honor. And again, I just want to reinforce that this doesn't  
12 impact your ability on statutory interpretation. And there  
13 really isn't -- I just want to make sure -- oh, another  
14 important component of the policy is that these individuals,  
15 they are permitted to carry a concealed weapon on the school  
16 property. They're not required to. So the authorization from  
17 the Board is only giving them the ability to. And I think the  
18 Board members say -- I think one board member specifically said  
19 that's the beauty of the policies. You never know if that  
20 staff member is carrying or not, and that provides a deterrent  
21 to a would-be killer that comes into a school, because they  
22 don't know which ones might be doing -- they don't know if  
23 they're actually doing it. So it's a completely voluntary  
24 program. It's not part of their job duties. I don't think  
25 plaintiffs can point to any job description or job duty that

1 requires them to carry. They're not paid supplementally for  
2 carrying a firearm. So again, I think we would rest what we  
3 said this morning that this is a straightforward statutory  
4 interpretation case. And that's all we have, Your Honor.

5 THE COURT: Okay. Thank you, Mr. Conover. Okay. Some  
6 brief rebuttal comments, I think Mr. Miller wanted to reserve.

7 MR. CONOVER: I'm just -- make sure, Your Honor, that we  
8 can limit it to what I spoke about.

9 THE COURT: Yes, yes.

10 MR. CONOVER: Like any other recross essentially.

11 THE COURT: Yeah. Yeah, just rebuttal is rebuttal.

12 MR. CONOVER: Redirect.

13 THE COURT: It's not just this is my second go around to  
14 start from scratch.

15 MR. MILLER: Thank you, Your Honor. Just a couple of  
16 quick points about this supposed operative policy of limiting  
17 armed staff persons to, as counsel termed it, ALICE lockdown,  
18 hide in a classroom, shelter in place. As the Court's aware,  
19 there is no documentary evidence that this policy exists in any  
20 written form. It's not part of any of the documents that  
21 predate litigation. It's not part of the resolution passed in  
22 April.

23 THE COURT: You're not saying, though, that there is no  
24 ALICE policy, are you, in general for staff?

25 MR. MILLER: Your Honor, we did take testimony that the

1 school district provides ALICE training to its staff.

2 THE COURT: Okay.

3 MR. MILLER: So there's no --

4 THE COURT: And you're not taking issue, I assume, that  
5 this ALICE training does do, does instruct what Mr. Conover  
6 said; it instructs that is basically to either flee, first  
7 option. If you can't flee, I'll say hunker down in my term.

8 MR. MILLER: Correct.

9 THE COURT: Lock down, shelter in place, that kind of  
10 thing.

11 MR. MILLER: That's correct.

12 THE COURT: Okay.

13 MR. MILLER: We do not take issue with the  
14 characterization of --

15 THE COURT: Okay.

16 MR. MILLER: -- what ALICE training entails. In essence  
17 we understand it in our sort of limited capacity, as well, that  
18 it instructs locking down -- fleeing or locking down a  
19 classroom or other space.

20 THE COURT: Okay.

21 MR. MILLER: But it's important to ask that if ALICE  
22 training was actually the operative policy here, why send the  
23 staff to FASTER? And counsel sort of grasped for an answer at  
24 suggesting that it was for the medical training that they  
25 receive. Well, if that was true, why not send them to a first



1 aid course, right? There are a lot of options that don't  
2 involve hunting the killer, training to combat clear rooms,  
3 that the Board could have chosen, and it didn't. Why not?  
4 That's the question that I don't believe we've heard an answer  
5 to.

6 I would also suggest that what the Board is claiming  
7 through counsel it actually instructs armed staff, and when it  
8 critically -- it instructs armed staff may not be the full  
9 picture. And so I'd like with the Court's indulgence just to  
10 give a little bit of the full picture about what the evidence  
11 that the Board presented in discovery in testimony actually  
12 shows about that communication, that supposed communication of  
13 this operative policy of this, you know, shelter in place  
14 policy.

15 MR. CONOVER: I'd just object, Your Honor, that it's  
16 outside the scope.

17 THE COURT: I'll give some leeway. You may go ahead, Mr.  
18 Miller.

19 MR. MILLER: Thank you. I think the first question I'd  
20 like to go to is the testimony of John Doe number 3 and this --  
21 and I don't mean to accuse counsel of misspeaking deliberately,  
22 but I believe that the statement that armed staff knew going  
23 in, and I believe that was in reference to FASTER training --  
24 that armed staff somehow knew going into FASTER, to disregard  
25 large portions of it -- in fact, disregard all of the portions

1 about hunting the killer, clear rooms, et cetera. That's not,  
2 I believe, a correct statement of the record. Here's what John  
3 Doe 3 said about that, and in fact, before I give you John  
4 Doe's testimony, I'll remind the Court of Exhibit 7. That's  
5 the date of the FASTER certificates. Those are dated June  
6 24th, 2018. And so these individuals were trained, they got  
7 their FASTER training over a weekend in June of 2018. And  
8 here's what John Doe 3 was asked about the supposed  
9 presentation of verbal guidance, this operative policy  
10 instruction that were -- is at issue here. Question -- this  
11 appears on page 79:

12 "Q And at that meeting with Dr. Tuttle-Huff where  
13 you signed the paperwork and she gave you some verbal  
14 guidance, that occurred in August of 2018, correct?  
15 There's an objection.

16 "A Yes.

17 "Q And the training that you received from FASTER  
18 was in June; is that correct?

19 "A Yes.

20 "Q So at the time you took the FASTER training, had  
21 you received instruction from anyone at Madison that  
22 you were not permitted to pursue an attacker?

23 "A To the best of my knowledge, they were still  
24 working on putting the policy together. The training  
25 was happening, so they sent us, and we understood

1           that we were not going to be able to carry. After  
2           the training, we were going to have to do some  
3           additional steps, such as the paperwork and learning  
4           the policy."

5           It's not correct, we don't believe based on the record,  
6           that when folks took this FASTER training they had any idea  
7           that the Board would later try to limit their authority or at  
8           least claim to have done so.

9           THE COURT: But you would concede, I assume, based upon  
10          that answer, that John Doe 3 was saying, in essence, if the  
11          policy that comes later, which seemingly came in August, says  
12          otherwise, then I'm going to be listening to see what the  
13          policy is.

14          MR. MILLER: Your Honor, what I believe John Doe 3 is  
15          testifying to there is that he understood the policy was still  
16          in development and subject to change. I don't know that he  
17          understood then that there might be limitations or that there  
18          would, in fact, be limitations.

19          THE COURT: Okay.

20          MR. MILLER: All right. And so the limitations  
21          themselves. They're obviously not in any of the policy  
22          documents here. I want to offer a quick slice of testimony  
23          about how the Board's witnesses just explained that absence in  
24          their testimony.

25          THE COURT: The absence of written --

1 MR. MILLER: The absence of any written instruction on  
2 this.

3 THE COURT: Okay.

4 MR. MILLER: And as the Court will recall, the documents  
5 that are at issue here, the resolution, the firearms  
6 authorization policy, and the authorization letter itself  
7 provided to staff, as I understand it, there's no dispute that  
8 none of those documents actually include this operative  
9 instruction --

10 THE COURT: Okay.

11 MR. MILLER: -- despite covering a number of other  
12 details.

13 THE COURT: Okay. Then how are you -- now I know the  
14 objection a minute ago was that it was beyond what the comments  
15 you were getting and the testimony -- or the deposition  
16 statements you were referencing were beyond the scope of what  
17 he indicated, I gave you some leeway at that point. This seems  
18 to be another step out there beyond the comments made by Mr.  
19 Conover. Are you still rebutting just what Mr. Conover had to  
20 say and, if so, how?

21 MR. MILLER: Well, I believe so. The Board essentially  
22 was explain -- as I understood their attorneys, was explaining  
23 why in their view it doesn't matter that the policy as written  
24 does not, in fact, reflect this supposed instruction and --

25 THE COURT: Okay. We've got the ALICE --

1 MR. MILLER: -- they gave the different testimony about  
2 that in their testimony.

3 THE COURT: From the Board's perspective, you've got the  
4 ALICE training, and then on top of the ALICE training, as I  
5 characterized it and it was agreed to by Mr. Conover, you not  
6 only have no -- it was like a double negative -- you not only  
7 have not a disavowing of the ALICE standard, but you have a  
8 reaffirmation of the ALICE standard made orally by  
9 administration to the licensed carriers not to go after the  
10 shooter. So --

11 MR. MILLER: If -- if --

12 THE COURT: And what you're giving me now is in rebuttal  
13 to that?

14 MR. MILLER: If I can put it this way, Your Honor, as I  
15 understand that argument, what the Board is, you know, implying  
16 or arguing outright, is that part of the communication of this  
17 operative policy was this supposed ALICE training. The  
18 Board --  
19 the armed staff and -- supposedly understood their role based  
20 on this ALICE training. And what I intend, if the Court will  
21 permit me, is to offer testimony where Board members state when  
22 asked to explain where this operative policy instruction  
23 exists, they didn't point to ALICE training. Do you know where  
24 they pointed?

25 THE COURT: The oral communication, I'm assuming.

1 MR. MILLER: FASTER training.

2 THE COURT: Oh, the FASTER. When they supported a  
3 proposition that they were supposed to stay in place, they said  
4 they learned that from FASTER?

5 MR. MILLER: Correct.

6 THE COURT: Is that what you're saying to me?

7 MR. MILLER: Correct, and that's the testimony I'd like to  
8 offer the Court right now.

9 THE COURT: Mr. Conover?

10 MR. CONOVER: I just would say that this is outside the  
11 scope of what I discussed in my argument. And the Court has  
12 all of this documentation.

13 THE COURT: Yeah, I think it is. And I have all of this  
14 already. This is just oral argument, so I'm going to cut you  
15 off going down this road right now, Mr. Miller.

16 MR. MILLER: Okay.

17 THE COURT: Anything further in rebuttal?

18 MR. MILLER: May I find you the Bates cites without  
19 reading it? Can I direct the Court to those pages?

20 THE COURT: Yeah, you can just kind of proffer that we'll  
21 say in very brief fashion.

22 MR. MILLER: Thank you, Your Honor. The evidence that I  
23 would offer, it appears that Mr. Robinson's -- that's Pete  
24 Robinson's transcript, at pages 16 to 17; that's his testimony  
25 on where this supposed instruction is conveyed in training.

1 And it's also the testimony of Dr. Paul Jennewine, at pages 93  
2 and 94. Those two individuals are the two board members who  
3 sit on the security committee that is tasked with interviewing  
4 armed staff and supposedly conveying instruction.

5 THE COURT: Okay. Any other brief comments in rebuttal?

6 MR. MILLER: No, Your Honor.

7 THE COURT: Okay. I'll give you the last word there. Any  
8 rebuttal comments to the rebuttal you just heard there?

9 MR. CONOVER: I would only say Your Honor, and you may  
10 strike this, which is fine, but that FASTER has been used by  
11 school districts from 77 of Ohio's 88 counties, so Madison is  
12 not alone in choosing to send individuals to FASTER, but that's  
13 all I would say, Your Honor. Thank you.

14 THE COURT: Okay. Well, thank you. All right. Let me  
15 make a few comments. And I am going to take both of these  
16 motions under advisement. I'm not going to issue an oral  
17 ruling right now. Let me make just some preliminary comments  
18 though, and mostly I'm speaking to the people in the back. I  
19 think the attorneys are -- I don't know if you're aware, maybe  
20 to all of you, but first and foremost what my task is --  
21 wearing this black robe, I am not to put myself into the place  
22 of the State Legislature, which is tasked with making policy  
23 for the State of Ohio. And I am not to put myself into the  
24 place of the Board of Education of Madison Township, who is  
25 tasked as the representatives of the people of Madison Township

1 with enacting the policy for Madison Township in regard to the  
2 operation of its public school system there. I am not to  
3 superimpose any idea that I have as to what's a better approach  
4 or a worse approach to helping to protect students and staff in  
5 a local school setting. That's not my job, and I will try as  
6 best I can not to superimpose myself into either of those  
7 things.

8 And we have -- as I said, we've got two entities,  
9 representatives of the people of Ohio in Madison Township who  
10 have this job of enacting these policies and, in this case,  
11 what we have a position by some parents that the policy enacted  
12 by Madison Township contravenes the more foundational policy  
13 enacted by the people of the whole state. We have on the other  
14 side, we have the School Board saying that the policies are  
15 mutually consistent. And that's my task, to figure out the  
16 answer to that quandary.

17 So to hone that a little bit, let me just ask the  
18 attorneys if I'm getting it straight. I think I heard it  
19 pretty clearly from plaintiff's counsel. Let me state for you  
20 what I think your position is. And I'm going to ask defense  
21 counsel maybe to state their position because I don't think  
22 defense counsel thought it necessary or advisable to state that  
23 position in as much detail, and probably that's because of what  
24 I indicated in chambers so. But plaintiffs' counsel, I  
25 think --



1 and I'm looking at the two statutes, I mean, there is a third  
2 statute about just the carry conceal statute, but that's -- I  
3 don't think there's really any terribly significant importance  
4 of that. So the two statutes that really are at issue here are  
5 Revised Code 109.78 and Revised Code 2923.122. And that's what  
6 my job is, to figure out how these two statutes are to be read  
7 and construed in a proper fashion without me just taking the  
8 opportunity, as I say, to put into a decision what I want to be  
9 the policy for Madison Township. It's not my job. So I  
10 believe that plaintiff's position is this. And I -- we didn't  
11 get this in chambers, and I appreciate getting it fleshed out  
12 more fully by Ms. [Bloom-katz] --

13 MS. BLOOMEKATZ: You got it.

14 THE COURT: -- in the initial comments made in behalf of  
15 plaintiffs. And that is that we don't have to look at these  
16 two statutes as contrary statutes or statutes which are in any  
17 way contradictory to each other. We don't have to choose one  
18 over the other. We don't have to designate one as a special  
19 statute and another as a general statute. We don't have to  
20 take any cognizance of one of those statutes being enacted  
21 later, one of those statutes being enacted earlier. Don't need  
22 to do any of that. And that's the best approach if that's the  
23 case. We can read both of these statutes. We can give full  
24 meaning to both of these statutes and that full meaning simply  
25 is this: that under 2923.122, under (D)(1)(a), where it talks

1 about any other, this is an exemption. This statute basically  
2 is an exemption to the general rule -- the general being that  
3 people are not allowed to carry firearms or dangerous ordnance  
4 into school safety zones. But there's an exception to that,  
5 and one of those exceptions is:

6 "Or any other person who has written authorization  
7 from the board of education or governing body of a  
8 school to convey deadly weapons or dangerous ordnance  
9 into a school safety zone or to possess a deadly  
10 weapon or dangerous ordnance in a school safety zone  
11 and who conveys or possesses the deadly weapon or  
12 dangerous ordnance in accordance with that  
13 authorization."

14 The position is that this is a, like, a third or fourth  
15 category. Other categories are officers, agents, or employees  
16 to the United States, or other, I guess it doesn't say state  
17 after that but -- or employees or law enforcement officer who  
18 is authorized to carry deadly weapons or dangerous ordinance,  
19 so it could be an officer of the United States government. It  
20 doesn't say officer of the state government or local  
21 governments, but any law enforcement officer, those people are  
22 allowed also, as is what I just read. But their position is  
23 that just saying that somebody is authorized to do it doesn't  
24 abrogate any duty imposed elsewhere in the statute. And the  
25 duty imposed elsewhere is in 109.78, which says that people

1 have to have certain training if they are going to do certain  
2 kinds of things, and that is under Section or division D:

3 "No public or private education institution, or  
4 superintendent of the state highway patrol shall  
5 employ a person as a special police officer, security  
6 guard, or other position in which such person goes  
7 armed while on duty."

8 And that's the key phraseology, that last phrase there.

9 "Other position in which such person goes armed while on duty"  
10 who has not received the OPOTA training, to shorten that last  
11 part of it.

12 So the construction that you're looking at, with how you  
13 can read these two statutes together, is that in 109.78(D), the  
14 phrase, "other position in which such person goes armed while  
15 on duty" clearly encompasses teachers, custodians,  
16 administrative staff, paraprofessionals -- if there's such a  
17 designation of that, back in the old days when I taught school  
18 there was -- and administrative assistants, any person like  
19 that, it encompasses those people who are authorized by the  
20 School Board to carry those weapons. And, in defense of that,  
21 you pointed out statutory background or the legislative  
22 background to the statute and that they purposely deleted what  
23 originally was the expression similar position. We got special  
24 police officer, security guard or similar -- I forget the exact  
25 term, but similar something, similar position I think is what

1 it was. They seemingly purposely did not use that expression  
2 and instead they substituted the expression, "other position in  
3 which such person goes armed while on duty."

4 Have I summarized your position adequately?

5 MS. BLOOMEKATZ: Yes, Your Honor.

6 THE COURT: Okay. I can't summarize yours because I don't  
7 think we got into it in chambers, and you didn't feel it  
8 necessary to address it now because of what I indicated in  
9 chambers. So defense's position, how do you read those two  
10 statutes? Do you give full force to both? If you give full  
11 force to both, how do you give full force to both? Do you view  
12 one as general, one as special? Late? Early? What? You  
13 know, whatever. Tell me how you view those?

14 MR. CONOVER: Yes, Your Honor. I think you summarized it  
15 best right there in a sense and in chambers previously. I  
16 think the District has made clear that it's -- I think we have  
17 argued our statutory construction, but I think on the one  
18 hand --

19 THE COURT: I mean, I'm not saying you didn't in your  
20 written -- I don't mean to -- if I'm communicating to  
21 anybody --

22

23 MR. CONOVER: I was a little slighted.

24 THE COURT: -- that defense counsel has not articulated in  
25 its writing this position, I did not mean to indicate that.

1 And I don't indicate that. I just meant -- and I haven't read  
2 everything. I'll just say this to those people in the back,  
3 too. I have relied on a lot of work having been done by my  
4 staff attorney already and my magistrate, same person, and I am  
5 not as conversant with a lot of the written material as is he.  
6 And so I just meant, in our short discussions in chambers, in  
7 which I pretty much indicated I was -- I had a statutory  
8 construction bent in favor of defense, to be -- just put it out  
9 there, and I think and because of that, I think defense counsel  
10 saw no need in chambers to go over its position because maybe I  
11 had articulated it already, but maybe I didn't. I'm not sure.  
12 So I'm not indicated that there was a lack of preparation or a  
13 lack of presentation on behalf of defense.

14 So go ahead, Mr. Conover.

15 MR. CONOVER: Thank you, Your Honor. That's exactly  
16 correct. So again, as we previously discussed, I think we have  
17 on one hand a statute that specifically authorizes a board of  
18 education to allow individuals to carry a weapon onto school  
19 property. 2123.122(D)(1)(a). That's a very specific statute  
20 passed by the General Assembly giving local control to a local  
21 board of education to, in this case, allow -- to arm staff  
22 members. And then again we have, on the other hand, that  
23 plaintiffs point to, 109.78(D), which deals with peace officer  
24 certification. It has this line in Section D that says, no  
25 public educational institution can employ someone, a special

1 police officer, a security guard, or another person -- or  
2 another position in which a person goes armed while on duty.  
3 And again, I think our contention is that that does not apply  
4 on its plain terms to a teacher, a custodian, a secretary, or  
5 any other sort of administrator or administrators. And I do  
6 think there are still paraprofessionals out there, Your Honor.  
7 So again, by its plain terms it doesn't apply here. And I  
8 think there's numerous reasons for that. You can look at what  
9 it says on its face. I think you can, anyone with sense or  
10 common sense would read it that way. And also, you know,  
11 there's the statutory canon of when there's a list, and then  
12 there's kind of a catchall at the end. That catchall goes with  
13 the list prior to it. So for example, if I say I'm going to  
14 sell my farm to my brother, and it includes all the cows,  
15 chickens, pigs, and any other animals on the farm, I sure as  
16 heck hope that doesn't mean my pet goldfish is going to be  
17 included in there, because even though it's in the vicinity of  
18 school property -- or the farm, it's not, you know, a farm  
19 animal. So again, I think that's the District's fundamental  
20 position is that 109.78(D) by its plain terms doesn't apply in  
21 that this case is governed almost exclusively by  
22 2923.122(D)(1)(A). That doesn't mean 109.78 couldn't apply in  
23 the future, but it could -- that again applies with a school  
24 resource officer or a security guard or some other position  
25 that again is providing for the security of the individuals.

1 That would be the District's position, Your Honor.

2 THE COURT: Okay.

3 MS. BLOOMEKATZ: Your Honor, may I respond just to new  
4 points that were raised?

5 THE COURT: You may.

6 MR. CONOVER: I'm just going to object in the sense that  
7 you asked for my position summarized there so.

8 THE COURT: Okay. Okay.

9 MS. BLOOMEKATZ: And we'll limit it to two points that  
10 were raised that weren't addressed before.

11 THE COURT: Ms. Bloomekatz?

12 MS. BLOOMEKATZ: The first issue that my friend here  
13 raises that was not addressed before, that just the idea that  
14 nobody with any sense would read the law that way, I just point  
15 out, and it's in our first exhibit to our complaint that in  
16 2013 when school districts were thinking about doing this in  
17 the wake of that tragedy at Sandy Hook, the chief legal counsel  
18 for the Ohio School Board Association actually said, and it's  
19 printed in the article again at Exhibit 1 to our complaint,  
20 said that a school board shouldn't be arming their teachers and  
21 other staff without having them have the peace officer  
22 training, given 109.78(D). So I don't think that any sense  
23 comment is appropriate here.

24 The second argument that was new from my friend here was  
25 this question of when you have a statute with a list. I don't

1 think we've talked about that yet. There is a canon of  
2 construction when you have a list you should construe something  
3 at the catchall phrase at the end to do that, but as our papers  
4 reflect, Your Honor, you only do that when that catchall phrase  
5 at the end is open ended or ambiguous. You don't apply that  
6 canon when it's clear. And here the legislature made very  
7 clear what was encapsulated in that last phrase. It's an,  
8 "other position in which such person goes armed on duty."  
9 There's not ambiguity here. It's not just a sentence that  
10 says, or similar position, period. And we don't know, well,  
11 what is a similar position? We need to construe it the same.  
12 The legislature identified the key characteristic that would  
13 trigger the training requirement. Other position in which such  
14 person goes on duty. And I won't extend beyond the new things  
15 that he raised.

16 THE COURT: Okay. Mr. Conover, I'm going to give you the  
17 last word. I know you think I've allowed the other side to go  
18 on beyond what I should have allowed them to go. Any further  
19 comment? Any comment in response to what Ms. Bloomekatz has  
20 just said?

21 MR. CONOVER: No, Your Honor.

22 THE COURT: All right. Let me end with this: I am taking  
23 this under advisement. And the struggle that I've got, just to  
24 put my cards on the table for whatever that's worth -- I'm  
25 thinking about obviously -- I'm thinking about statutory



1 construction, rules of construction. And I would say this: I  
2 clarified your position and I think I stated it correctly. The  
3 substitution of the expression other person -- or excuse me,  
4 other position which said person goes armed while on duty.  
5 Substituting that for a similar position, I don't think  
6 disavows the idea that this would have to be a similar  
7 position, but I've got to -- as best we can, we need to read  
8 both statutes together. The other way to get a -- to read them  
9 together would be what I suggested in chambers. And I'm not  
10 saying I've leaving -- abandoning, that position. But that  
11 would be to read that in such a way where it talks about  
12 another position in which such person goes armed while on duty,  
13 it might be presupposed there or assumed that you're talking  
14 about a position in which any person in that position would be  
15 authorized. Now I'm adding language, so I understand. I'm  
16 adding language to this, but to make it consistent with what  
17 came -- not consistent. To read it in context, it could be  
18 easily rational to say what this is talking about is a  
19 position, and it's not designated as a security position, it's  
20 not designated as a law enforcement position, but some position  
21 which encompasses carrying a firearm. The position of  
22 custodian, the position of secretary, the position of teacher,  
23 the position of school administrator, principal, assistant  
24 principal, whatever -- those positions as positions don't  
25 encompass -- don't require carrying firearms. I'm predisposed

1 still in that direction, but I've been given some food for  
2 thought that I had not thought about as far as how to read  
3 these two statutes together, and I've got to mull that over a  
4 little bit.

5 So that's where I am, and this is not going to take me a  
6 month to deliver some decision. Mr. James (phonetic) and I --  
7 we're going to discuss this immediately probably or after lunch  
8 here or something and something will be drafted very, very  
9 soon, and you all will know.

10 Now, with that being the case, we talked about this in  
11 chambers, so I'm still not quite sure where we are. Count II  
12 is pretty much -- I say this, you know, with a little bit of  
13 question in my own voice -- it's pretty much done. My decision  
14 on these two motions for summary judgment will dispose  
15 completely of Count I. Are we going to need some kind of  
16 follow up as far as loose ends regarding the mandamus part of  
17 this is concerned? Are you satisfied that that's been dealt  
18 with enough that Count II is finished?

19 MS. BLOOMEKATZ: Go ahead.

20 MR. CONOVER: I would only say, Your Honor, my  
21 understanding from your decision on the motion to dismiss is  
22 that part of their claim was dismissed, but there still remains  
23 a couple outstanding portions of that. And if --

24 THE COURT: Okay. And have you all worked out -- I guess  
25 my question is, has that been worked out or are there still

1 things that are being demanded by plaintiffs which have not  
2 been given, things that the defendants is refusing to -- or  
3 declining to give?

4 MS. BLOOMEKATZ: I think, Your Honor, a little bit of the  
5 hesitancy is some of it depended on the scope of the protective  
6 order.

7 THE COURT: Okay.

8 MS. BLOOMEKATZ: Because obviously if things are open in a  
9 litigation and depending on whether either party is going to  
10 appeal the protective order -- if they're open in litigation,  
11 there's no need for the Court to also address them in the  
12 context of public records. I might suggest that this is  
13 something that counsel discuss afterwards.

14 THE COURT: Yeah.

15 MS. BLOOMEKATZ: And we can give a --

16 THE COURT: Let us know. We will --

17 MS. BLOOMEKATZ: -- status update to the --

18 THE COURT: I don't know of anything for me to do per se  
19 after I've ruled on these motions for summary judgment. I  
20 think I'm speaking for Magistrate James, as well. I mean, we  
21 think we've done everything that's been addressed to us, but if  
22 there are some loose ends out there that we do need to address,  
23 obviously, you know, work together and let us know.

24 MS. BLOOMEKATZ: I think -- my sense is that --

25 THE COURT: If we need a hearing or something.

1 MS. BLOOMEKATZ: -- what is likely to emerge is that there  
2 will be -- that the main contested issue is the request for the  
3 psychological evaluations, sort of all the standards of how  
4 these people are evaluated and things like that. And again, I  
5 mentioned in chambers earlier this is something that we believe  
6 is -- in redacted form so nobody's identity is exposed -- but  
7 is something that is sort of a classic public record under  
8 Ohio's law, and I would point your Court to the Snowden case.  
9 I've got my wrong notes here as we're here, but you know, in  
10 the context of law enforcement officers when they have a  
11 psychological evaluation in that recruitment hiring time, the  
12 Ohio Supreme Court in the Snowden case has said that's a public  
13 record. That's not a medical record, so it doesn't fall in the  
14 HIPAA medicine doctor-type world -- that that falls in public  
15 records like the hiring and firing. And I'll -- I have the  
16 citation now in case it's helpful, Your Honor.

17 THE COURT: I don't need that right now. Let's do it this  
18 way. After the decision comes out on the motions for summary  
19 judgment, if you want the Court to address specifically any  
20 items which plaintiffs are wanting the Court to order to be  
21 revealed, which the school system is still declining to reveal,  
22 let us know. If we need a hearing scheduled, if you need to  
23 brief that as a narrow specific issue, let us know how you want  
24 to proceed. Fair enough?

25 MS. BLOOMEKATZ: That sounds appropriate.

1 MR. CONOVER: Sounds great, Your Honor.

2 THE COURT: Okay. Anything else for the record today?

3 MR. CONOVER: Nothing from the defense.

4 MS. BLOOMEKATZ: Or from the plaintiffs.

5 THE COURT: Okay. Counsel, I appreciate your preparation  
6 and your presentations this morning. You've all done, I think,  
7 a very good job and presented your case well. And it's a  
8 difficult case. Ain't no bad guy; ain't no good guy here. We  
9 just have people with differing opinions and we've got -- you  
10 know, we've got statutes. It's always a tough -- not always  
11 but many times -- we have a tough job of figuring out how to  
12 apply various statutes to one particular situation. And that's  
13 what we've got here and I'll do the best I can. All right.  
14 With that, we are adjourned. Have a good day everybody.

15 (Proceedings concluded at 11:40 a.m.)

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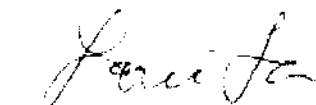
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C E R T I F I C A T E

I, LORIE LEN, Transcriptionist, do hereby certify that the foregoing pages, 1 - 93, constitute a full, true and accurate transcript, from electronic recording, transcribed by me, of the proceedings had in the foregoing matter, ERIN G. GABBARD, ET AL VS. MADISON LOCAL SCHOOL DISTRICT BOARD OF EDUCATION, ET AL, Case No. CV2018-09-2028, on the docket of the Butler County Common Pleas Court, a court of record, and all prepared to the best of my skill and ability.

SIGNED and dated this 18th day of March, 2019.



LORIE LEN  
Transcriber

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