BUTLER COUNTY COURT OF COMMON PLEAS
CIVIL DIVISION

ERIN GABBARD, et al.,
Plaintiffs/Relator,

v.

MADISON LOCAL SCHOOL DISTRICT BOARD OF EDUCATION, et al.,

Defendants/Respondents.

Case No. CV 2018 09 2028

Judge Charles L. Pater

MOTION FOR SUMMARY JUDGMENT AND MEMORANDUM

(REVISED REDACTED VERSION)

Hearing Scheduled February 25, 2019

PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT ON THEIR CLAIM FOR DECLARATORY RELIEF AND MEMORANDUM IN SUPPORT

In accordance with Rules 56 and 57, the plaintiffs, through their counsel, move for summary judgment on their claim for declaratory relief. Because the Madison Local School District Board of Education, under its "Resolution to allow armed staff in school safety zone," allows its employees to go "armed while on duty" without the training or experience required by R.C. 109.78(D), this Court should declare the Resolution and its implementing policies invalid and permanently enjoin the defendants from authorizing school personnel to carry firearms without the requisite training. In support of their motion, the plaintiffs submit the attached memorandum and evidentiary support. Pursuant to the scheduling order entered by this Court, any response to this motion is due by February 11, 2019 and no reply is permitted.

Respectfully submitted,

/s/ Rachel Bloomekatz

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MEMORANDUM IN SUPPORT OF PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT ON THEIR CLAIM FOR DECLARATORY RELIEF

The parties in this case share the urgent desire to make Madison schools as safe as possible. The entire community experienced a tragic school shooting in 2016, and the plaintiff parents and the defendant school administration alike want to keep all schoolchildren safe from harm. Although the parties disagree over the best way to do that, their policy preferences are not at issue here. This case is about whether the defendants are complying with state law when they authorize teachers and staff to carry firearms at school with only 24 hours of training.

At the heart of this case, then, is the meaning of R.C. 109.78(D), which requires any "person" who is "employ[ed]" by a "public . . . educational institution," in a "position in which such person goes armed while on duty," to have "satisfactorily completed an approved basic peace officer training program," unless he or she has already served for twenty years as a peace officer. The defendants do not dispute that the Madison Local School District is a "public education institution" or that the Board's Resolution to arm staff does not require the peace officer training set forth in R.C. 109.78(D). However, contrary to statute's plain language, the defendants argue that R.C. 109.78(D) only applies to "security personnel" and that the armed staff at Madison do not serve in a security capacity. The defendants are wrong on both the law and the facts.

By its terms, R.C. 109.78(D) does not just apply to *some types* of school staff; it applies to all employees who go "armed while on duty." There is no "security personnel" limitation in the text. If the Board believes armed teachers should be exempted from the statute's training requirements, it can ask the Legislature to change the law (indeed, some interest groups already have). But unless and until the Legislature agrees, the Board must comply with the statute. And even if R.C. 109.78(D) *were* limited to security personnel (which it is not), there is at least a material question of fact whether Madison's armed staff count, precluding judgment for the defendants without trial.

STATUTORY BACKGROUND

Ohio law broadly makes it illegal for anyone to carry a firearm on school grounds. *See* R.C. 2923.122(B). One of the few exceptions permits certain law enforcement and security officers to bring firearms into any part of a school safety zone, including a school building. *Id.* 2923.122(D)(1). For instance, school resource officers ("SROs"), who have completed peace officer training are allowed to carry firearms in school. *Id.* 2923.122(D)(1)(a).

Another exception to the prohibition on carrying guns in school buildings is for persons authorized by a school board. Revised Code 2923.122(D)(1)(a) permits "[a] person who has written authorization from the board of education or governing body of a school to convey . . . or to possess a deadly weapon . . . in a school safety zone . . . in accordance with that authorization."

Although R.C. 2923.122(D)(1) exempts certain persons from the general ban on carrying arms in school buildings if they have school board authorization, by its terms, it does not negate the training requirements in R.C. 109.78(D). That statute provides that:

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

The requirement imposed by this provision is clear: a person in a "position in which such person goes armed while on duty" must have completed the state's basic peace officer training program, unless they have already served for twenty years as a peace officer. *See id.*

Basic peace officer training is governed by the Ohio Peace Officer Training Commission (OPOTC), which sets the rules and approves the programs for certified peace officer training. *See* R.C. 109.73, 109.78. The basic peace officer training program curriculum requires a minimum of

728 hours on subjects including firearm use, use of force, subject control, crisis intervention, critical incident stress awareness, and physical conditioning, among others. *See* Ex. A.[1]

FACTUAL BACKGROUND

On April 24, 2018, the Board adopted the "Resolution to allow armed staff in school safety zone." Ex. B. Specifically, the Resolution authorizes "teachers, school support staff, administrators, and others approved" to carry firearms on the District's campuses if they (i) are permitted under state law to carry a concealed handgun; (ii) have undergone "active shooter training" and received annual re-certification; and (iii) have been designated by the Superintendent. *Id.* To implement the Resolution, the Board adopted a "Firearms Authorization Policy" (the "Policy") in August 2018, which sets out certain rules and requirements for persons authorized to carry firearms while on duty at school. Ex. C; *see also* Ex. D (Tuttle-Huff Tr. 133:19-23).

Neither the Resolution nor the Policy requires that the armed personnel complete an approved basic peace officer training course or have twenty years' experience as a peace officer. Exs. B, C. Instead, the Policy mandates that the armed staff complete just 24 hours of active shooter training. *Id.* That training is provided by FASTER—a program privately developed and operated by the Buckeye Firearms Foundation through vendors like the Tactical Defense Institute and the Chris Cerino Group. *See* Ex. C at 00264R-265R; Ex. E. It is undisputed that the FASTER Program is not a basic peace officer training program or subject to OPOTC oversight. *See* Ex. F (responses to Requests for Admission Nos. 15 & 16). While the OPOTC-approved curriculum is 728 hours, FASTER's curriculum totals only 27 hours. *See* Ex. G (FASTER Level 1 outline).

Over the summer, several Madison staff ("John Does") completed the FASTER training and underwent mental health evaluations [redacted]. *See* Exs. H, I. Then

[1] All exhibits are attached to the Affidavit of Attorney Alla Lefkowitz, filed herewith.

Superintendent Tuttle-Huff, by letter, authorized these individuals to "to possess a firearm *while on duty* at Madison Local School District" in order "to protect [ ] students and staff from harm." Ex. J (emphasis added). The District also obtained "Law Enforcement Liability" insurance coverage for its John Does, covering damages "resulting from the wrongful act(s) which arise out of the law enforcement activities." *See* Ex. K.

PROCEDURAL HISTORY

On September 12, 2018, the plaintiffs brought an action against the defendants that included two claims: (1) a count for declaratory relief stating that the Resolution violates R.C. 109.78(D)'s training requirement; and (2) a petition for mandamus based on the defendants' failure to properly respond to public records requests. Only the count for declaratory relief is at issue here.[2] Given the risk of irreparable harm to their children based on insufficiently trained staff members carrying firearms at school, the plaintiffs filed a motion to preliminarily enjoin the Resolution. The Court subsequently converted the preliminary injunction proceeding into one on the merits and scheduled a hearing or trial for February 25, 2019. The parties have completed discovery, and the plaintiffs now move for summary judgment because there are no disputed facts that preclude deciding as a matter of law that the Resolution violates state law.

ARGUMENT

Under Ohio Rule of Civil Procedure 56(C), a party is entitled to summary judgment "if the evidence, properly submitted, shows that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." *Todd Dev. Co. v. Morgan*, 116 Ohio St.3d 461, 2008-Ohio-87, 880 N.E.2d 88, ¶ 11. That is the case here.

[2] The defendants filed a partial motion to dismiss the petition for mandamus with respect to the public records claim. That motion has been fully briefed and is ripe for decision.

I. The Resolution violates R.C. 109.78(D) because it allows school employees to go "armed while on duty" without the requisite training or experience.

There is no dispute that the Resolution allows school employees to go "armed while on duty" without basic peace officer training or twenty years' peace officer experience. *See* Ex. F (responses to RFA Nos. 8 & 9). It therefore violates the text of R.C. 109.78(D). And both the legislative history and statutory scheme reinforce that conclusion.

A. The plain text of R.C. 109.78(D) requires school employees who go "armed while on duty" to complete basic peace officer training.

The first step in interpreting a statute is to examine its plain language. "If 'the language of a statute is plain and unambiguous and conveys a clear and definite meaning there is no occasion for resorting to rules of statutory interpretation,' because 'an unambiguous statute is to be applied, not interpreted.'" *Jacobson v. Kaforey*, 149 Ohio St.3d 398, 2016-Ohio-8434, 75 N.E.3d 203, ¶8 (quoting *Sears v. Weimer*, 143 Ohio St. 312, 55 N.E.2d 413 (1944)). When the language is "'plain,'" courts must "give effect only to the words the legislature used, making neither additions to, nor deletions from, the statutory language." *Wilson v. Lawrence*, 150 Ohio St.3d 368, 2017-Ohio-1410, 81 N.E.3d 1242, ¶11 (quoting *Jones v. Action Coupling & Equip., Inc.*, 98 Ohio St.3d 330, 2003-Ohio-1099, 784 N.E.2d 1172, ¶ 12).

The requirements imposed by R.C. 109.78(D) are clear: any "person" "employ[ed]" by a "public . . . educational institution," in a "position in which such person goes armed while on duty," must have "satisfactorily completed an approved basic peace officer training program," unless he or she has already served for twenty years as a peace officer. *Id.* This statute unambiguously covers teachers, administrators, and other District employees who carry guns during the school day while going about their jobs. Madison Local School District hires teachers, coaches, administrators, and others in various "position[s]"—a word which, according to the dictionary (and common usage) means "job." *See Oxford English Dictionary*, available at https://perma.cc/5W2K-LJE3 (accessed Jan.

31, 2019). Under the Resolution, some of those employees may go "armed"—*i.e.*, "equipped with or carrying a firearm." *See id.* at https://perma.cc/3D9N-ZL2A. And they are armed while "on duty"—that is, while "engaged in one's regular work." *See id.* at https://perma.cc/6ASH-SW2C. In fact, the District's written authorization created pursuant to the Resolution explicitly gives specified staff permission "to possess a firearm *while on duty* at Madison Local School District." *See* Ex. J (emphasis added). The result is clear: teachers and other District employees who carry firearms while at work in the school must meet the training requirements of R.C. 109.78(D).

B. The legislative history demonstrates that R.C. 109.78(D)'s training requirement applies to all armed school staff.

Because the plain language of the statute is unambiguous, the Court need not consider other canons of statutory interpretation to discern legislative intent. *Jacobson* at ¶8. Even so, the legislative history reinforces the plain meaning.

1. *Prior drafts of R.C. 109.78(D).* Consider, first, the prior drafts of R.C. 109.78(D). As initially passed by the House in 1969, the provision that became R.C. 109.78(D) only required the basic peace officer training for schools that hired a special policeman, security guard, or person "in any similar position." *See* Ex. L at 1347. But the General Assembly ultimately rejected this language. It did not want to limit the peace officer training requirement to special policemen, security guards, or other "similar" security officers in schools. Instead, the General Assembly chose much broader language to cover "other position[s] in which such person goes armed while on duty." R.C. 109.78(D). The key qualifying feature of the statute *as passed*, then, is not whether an employee has a "similar" position to a security guard (that word did not make it into the final statutory language), but whether he or she goes "armed while on duty." And it would be antithetical to the Legislature's choice of broader language to interpret the text as nevertheless limited to those

positions "similar" to security guards as in the rejected draft bill. The Court should not add words into the statute that the Legislature specifically rejected.

2. ***Proposed Amendments to R.C. 109.78(D).*** The General Assembly has also consistently *rejected* attempts to either exempt teachers, staff, and other persons authorized by a local board of education to carry a firearm at school from the peace officer training requirement in R.C. 109.78(D), or to decrease the training requirements for teachers. For example, House Bill 8, introduced in 2013 in the wake of the tragic shooting at Sandy Hook Elementary School in Connecticut, would have created the precise exception that the defendants seek. Specifically, it would have amended R.C. 109.78(D) to add the following language: "This division does not apply to a person authorized to carry a concealed handgun under a school safety plan adopted pursuant to section 3313.536 of the Revised Code." 2013-14 Am.Sub.H.B. No. 8, Section 109.78 (as passed by the House). The bill also would have required the Attorney General to create a new specified training course for armed school staff. Though House Bill 8 passed the Ohio House, it failed in the Senate, and never reached the Governor's desk. Similarly, a bill was introduced last legislative session shortly after the Madison Resolution was passed that would have exempted armed staff approved by a school board from R.C. 109.78(D)'s peace officer training requirement, as long as they completed a training course that would have to be designed by the Attorney General. *See* 2017-18 Am.Sub.H.B. No. 693, Section 109.78 (as introduced). That bill lapsed. It is not the law.

II. The Board's interpretation of R.C. 109.78(D) must be rejected.

Contrary to the statute's plain language, the defendants argue that teachers and other staff authorized to carry a firearm under the Resolution do not need to have the requisite peace officer training because they are not "security personnel." *See* Defendants' Opposition to Preliminary Injunction Motion at 10–11. But the defendants' interpretation of R.C. 109.78(D) must be rejected

both because it violates the text of the statute and would allow staff to go armed at school with almost no training, vetting, or oversight—as the experience at Madison plainly illustrates.

A. The Board's interpretation of R.C. 109.78(D) improperly adds words to the statute that do not exist.

Relying on an unofficial, nonbinding letter written by the former Attorney General in 2013, the Board argues that R.C. 109.78(D)'s training requirement only applies to school employees who are "considered 'security personnel.'" Opp. to PI at 10; *see also* Ex. M. But the term "security personnel,"—which is placed in quotation marks in the Attorney General's letter—does not appear anywhere in R.C. 109.78(D). And the Board's claim that R.C. 109.78(D) requires only "a special police officer, a security guard, and others *employed to provide security*" to have the requisite training suffers from the same flaw. Opp. to PI at 10 (emphasis added). It, too, requires adding words to the statute (since "employed to provide security" does not appear in 109.78(D)). The Board may desire to rewrite the statute, but that is not allowed. Courts must give effect "only to the words the legislature used, making neither additions to, nor deletions from, the statutory language." *Wilson v. Lawrence*, 150 Ohio St.3d 368, 2017-Ohio-1410, 81 N.E.3d 1242, ¶11.

To support adding this non-existent language to the statute, the Board has relied on the rule of construction (often referred to as *ejusdem generis*) that a "catch-all term" used to conclude a list should be construed in accordance with the preceding list. *See* Opp. to PI at 10. In the Board's view, because the statute mentions "special police officer" and "security guard," the following phrase "other position[s]" must be construed to include only similar security roles. But this canon only applies where the statute is ambiguous about the scope of the "catch-all phrase." *Brooks v. Ohio State Univ.*, 111 Ohio App.3d 342, 349–350, 676 N.E.2d 162 (10th Dist. 1996) (holding that "the doctrine of *ejusdem generis* need not be applied . . . as the words of the statute are clear"). Here, "other position," is clearly limited by the phrase "goes armed while on duty." R.C. 109.78(D)

("other position *in which such person goes armed while on duty*" (emphasis added.)). If the Legislature did not place any additional limitation on the type of position that the armed employee must hold to trigger the peace officer training requirement, neither can this Court. *See Stewart v. Vivian*, 151 Ohio St.3d 574, 2017-Ohio-7526, 91 N.E.3d 716, ¶29 (rejecting interpretation because "the General Assembly did not qualify the term . . . or place any limitation on [its] meaning").

Ignoring the text of the statute, the defendants further argue that R.C. 109.78(D) must apply only to security personnel because, buried on page 3,050 of last year's budget bill, the General Assembly appropriated funds to the FASTER program (including funds for emergency medical supplies). *See* Ex. G to Opp. to PI. But where, as here, an appropriations bill "did not amend the statute, it should have little bearing on our analysis of the statutory text." *Sinclair Wyoming Ref. Co. v. U.S. Envtl. Prot. Agency*, 887 F.3d 986, 1002 (10th Cir. 2017). Moreover, nothing about the General Assembly's appropriation to FASTER is inconsistent with R.C. 109.78(D). As the defendants' own expert admits, FASTER also trains "*non-armed* school staff to teach them various *non-firearm* responses and also valuable [tactical casualty care]"—so the appropriation cannot be read as an endorsement of the Board's Resolution here, relating to training *armed* school staff. Benner Aff., Ex. E to Opp. to PI, ¶27 (emphasis added). Indeed, the allocation does not (1) direct training for armed teachers, (2) state that such training alone is sufficient for concealed carry in school, or (3) even mention armed teachers at all. *See also Tennessee Valley Auth. v. Hill*, 437 U.S. 153, 189-90, 98 S.Ct. 2279, 57 L.Ed.2d 117 (1978) ("When voting on appropriations measures, legislators are entitled to operate under the assumption that the funds will be devoted to purposes which are lawful."). The Board's focus on such a nonspecific appropriation only underscores the weakness of its argument.

B. The Board's interpretation would mean that Ohio teachers could carry weapons in classrooms with *de minimis* training and no oversight.

The defendants' interpretation must be rejected for another reason: If R.C. 109.78(D) does not apply, school boards could allow teachers to carry firearms with almost no training at all and without any state oversight. Outside of R.C. 109.78(D), Ohio law places no meaningful training or other requirements on a district's employees who carry guns at school. The only training requirement appears to be the *de minimis* eight-hour training mandated for a concealed carry license. *See* R.C. 2923.125(G)(1). Of those eight hours, most can be completed online; only two hours must be "in-person training that consists of range time and live-fire training." *Id.* 2923.125(G)(1)(c). Adopting the Board's interpretation would hand school districts carte blanche to impose whatever training requirements they want—or *none* whatsoever. This stands in direct contrast to the statutory scheme developed by the Legislature, which broadly prohibits firearms in schools unless they are carried by thoroughly-trained individuals, such as law enforcement and security officers. *See* R.C. 2923.122(B)(D)(1).

The implications of the Board's interpretation are deeply troubling: without requiring rigorous, state-approved training, local school districts can authorize persons to carry firearms around schoolchildren all day, every day, even if they lack basic training, a proper understanding of when lethal force is appropriate, or the mental fortitude to complete a state-approved training. [redacted]. [redacted] the Board represented to parents that it would employ a robust screening program for authorizing armed staff members, including multiple interviews, intensive training, and a mental health evaluation, *see* Ex. N, [redacted].

[redacted]

[redacted]. Contrary to the protocol provided to parents—which expressly stated that a mental health evaluation would be completed *prior* to training any armed teacher or staff member—the John Does were evaluated by a mental health professional only *after* they had been trained and the District had sunk $3,000 into that training, suggesting that the mental health evaluation was no more than checking a box. *See id;* Exs. I, O. [redacted]

The members of the so-called safety committee (which recommended approval of these John Does) testified that [redacted]

[3] [redacted] there is no written record of any interviews taking place—no notes, no emails, no documentation whatsoever that they ever occurred. *See e.g.*, Ex. D (Tuttle-Huff Tr. 98:17-23); Ex. P (Jennewine Tr. 72:4-72:15); Ex. Q (Robinson Tr. 43:12-44:15). Indeed, none of the witnesses could recall even basic details about these alleged interviews, such when day they occurred, *see e.g.,* Ex. D (Tuttle-Huff Tr. 52:20-53:23), or exactly who is on the alleged safety committee that supposedly conducted the interviews. *Compare* Ex. R (French Tr. 123:23-124:15) (stating that SRO Kent Hall is part of safety committee) *with* Ex. S (Hall Tr. 77:11-19) (denying membership on committee).

[redacted]; *see also* [redacted] Ex. D (Tuttle-Huff Tr. 98:3-16) (testifying that she considered "other factors" such as her observations of the John Does, but admitting that she had only started working at the school earlier that month and had not had a lot of time to observe them); Ex. P (Jennewine Tr. 11:16-18, [redacted] admitting that he only had "minimal" experience in mental health). The Board likewise approved John Doe 3 to carry a weapon at school even though he twice failed the handgun qualification test (measuring shooting accuracy) before passing it on his third try. *See* Ex. T (Doe 3 Tr. 24:14-25:22).

The Board also allowed the John Does to go armed without setting forth any written rules of engagement. The defendants concede that the Policy contains no such parameters; but instead confusingly claim that the rules of engagement were either conveyed orally to the John Does or provided by the FASTER training that armed staff received. *See e.g.*, Ex. D (Tuttle-Huff Tr. 34:2-36:10) (testifying that rules of engagement were discussed orally); Ex. P (Jennewine Tr. 94:12-21) ("I think the rules of engagement were covered in their training. The rules of engagement are not set by us."); Ex. R (French Tr. 158:1-12) (rules of engagement conveyed "when they go through the training"). Even with respect to the few rules set out in the Policy, such as the type of firearm and ammunition that could be brought onto school grounds, the Board did not institute any mechanism to ensure the rules were followed. *See* Ex. D (Tuttle-Huff Tr. 40:7-44:9). In fact, it *did not even give a copy of the policy to armed staff*. *See* Ex. U (Doe 1 Tr. 30:8-21); Ex. T (Doe 3 Tr. 17:5-24).

The comparison is staggering: The OPOTC-approved training covers all relevant material and is rigorous enough to weed out those without the mental fortitude to carry arms in high-stress situations. Madison's Policy is perhaps the exemplar for why the Legislature did not leave school

boards' discretion to arm teachers unbounded, mandating instead that all persons carrying firearms in school complete the peace officer training in R.C. 109.78(D). Adopting the Board's view of the law would mean that those school personnel who are closest to Ohio's children can carry firearms with no real training or oversight. That would turn the statutory scheme on its head.

III. Alternatively, armed teachers and staff are "security personnel" subject to R.C. 109.78(D)'s training requirement.

Given the plain language of the statute, the Court need not consider whether staff members armed under the Resolution should be considered "security personnel." However, if the Court were to adopt the Board's erroneous view that R.C. 109.78(D) applies only to "security personnel," there is (at a minimum) a genuine question of fact as to whether Madison's armed staff would fall in that category—precluding judgment for the Board without a trial.

As an initial matter, it is undisputed that the Board authorizes staff to carry firearms as a school security measure (as opposed to for their individual protection or convenience). As Board President David French testified, and as the Resolution and Policy confirm, the "primary purpose" of arming staff "is to try to come up with better plans to instill security or safety for our children." Ex. R (French Tr. 18:3-8); *see also* Ex. B (purpose of armed staff is "to be prepared and equipped to defend and protect our students"); Ex. C (staff are armed "for the welfare and safety of the Students"). The written authorization provided to the armed staff states that they can possess firearms as an "additional safety measure" for the students and staff. *See* Ex. J. And that the firearm can only be used "to protect students, staff, and other civilians from deadly harm." *Id.* Even the insurance that the District obtained for the John Does is "Law Enforcement Liability" coverage for damages "resulting from the wrongful act(s) which arise out of [ ] law enforcement activities," reinforcing that covered staff assume the role of "security personnel." *See* Ex. K.

The defendants maintain that their armed staff are not "security personnel," because in

their view "security personnel" are staff that take "offensive" steps to confront or seek out an active shooter. *See, e.g.*, Ex. P (Jennewine Tr. 112:14-113:7); Ex. R (French Tr. 47:4-15); Ex. D (Tuttle-Huff Tr. 119:12-18). To the Board, teachers and other staff armed under the Resolution do not count because—like unarmed staff—they are solely "defensive," sheltering-in-place during an active shooter situation and using force only if confronted by an intruder. *Id.*

There are numerous problems with this interpretation. *First*, this offensive/defensive distinction does not appear anywhere in writing: not in the Resolution, not in the Policy, and not in the authorization letters provided to the John Does. *See* Exs. B, C, J. None restricts armed staff to passively sheltering in place. *Id.*; *see also* Ex. P (Jennewine Tr. 94:23-95:4, 116:4-11); Ex. D (Tuttle-Huff Tr. 48:23-50:2). Instead, the defendants claim to have instructed armed staff about the scope of their roles by "word of mouth. Nothing documented." *See* Ex. R (French Tr. 158:1-12); *see also* Ex. D (Tuttle-Huff Tr. 35:19-36:10) (claiming to cover "clarifications" to armed staff policy during interview). None of the witnesses can recall when these alleged oral instructions were provided. *See e.g.*, Ex. U (Doe 1 Tr. 24:3-26:1); Ex. T (Doe 3 Tr. 19:5-21:4).

Second, contradicting the Board's purported instruction that armed staff should only act defensively, the training program that the Board selected to train its armed staff centers on *offensive* steps for "hunting" down an assailant. *See* Ex. V (FASTER training presentation explaining "Your primary job is to STOP THE KILLING."); *see also* Ex. U (Doe 1 Tr. 40:12-41:3) ("[i]n FASTER training you're taught to find an active shooter"); Ex. T (Doe 3 Tr. 43:17-44:6) (FASTER teaches staff to "hunt the bad guy"); Ex. W (Doe 2 Tr. 29:14-30:3) (training is to "approach gunfire"). This is taught through skills like moving through doors and hallways and clearing rooms while "[f]inding the killer." *See* Ex. U (Doe 1 Tr. 47:8-48:1); Ex. T (Doe 3 Tr. 49:15-52:5). FASTER does not train armed staff to shelter-in-place, hide, or flee confrontation. *See, e.g.*, Ex. U (Doe 1 Tr. 44:14-17); Ex. W (Doe 2 Tr. 78:4-7). And following this Board-mandated training, one of the John Does testified

that he would indeed leave [redacted] and take *offensive* steps by pursuing attackers from room to room or down a hallway—just like an SRO. Ex. U (Doe 1 Tr. 35:6-37:7). John Doe 1 testified that no consequences for violating the Board's alleged oral instruction not to pursue an attacker had been communicated to him. *See id.* at 34:25-36:4. And there is no evidence that—despite his testimony under oath that he would violate this purported instruction—the Board has rescinded John Doe 1's authorization or otherwise reprimanded him. The Board and public may feel grateful that armed staff would take such steps to protect students, but—even by the Board's definition—it makes them security personnel that must have the training R.C. 109.78(D) requires.

The distinction that the defendants draw between who qualifies as "security personnel" and who does not highlights a *third* problem—it appears nowhere in the text of R.C. 109.78(D). Surely the Legislature did not intend for school districts and courts to engage in these kinds of semantic and fact-intensive debates (e.g., if a teacher aims his gun at a shooter inside a classroom then he is not required to be trained pursuant to R.C. 109.78(D), but if he steps even a single foot outside his classroom, then he *does* need the training.). *See* Ex. R (Robinson Tr. 91:18-92:7) (testifying over objection that armed staff that stepped outside the classroom would be acting in a security capacity). Instead, the General Assembly drew a bright line in R.C. 109.78(D)—anyone employed at a public education institution who goes armed while on duty must satisfactorily complete basic peace officer training. At a minimum, the Board's implementation of its policy raises genuine issues of fact as to the security role played by armed staff members that preclude summary judgment for defendants even under their erroneous reading of the statute.

CONCLUSION

For these reasons, the plaintiffs respectfully request that the Court grant their motion for summary judgment, declare the Resolution invalid, and enjoin the District from authorizing staff to carry firearms at school without the training required by R.C. 109.78(D). *See* R.C. 2721.09.

Respectfully submitted,

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February 1, 2019

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CERTIFICATE OF SERVICE

I hereby certify that on February 1, 2019, a copy of the foregoing was served via email on the following:

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Court: Butler County Court of Common Pleas

Case Caption: Gabbard, et al. v. Madison Local School District Board of Education, et al.

Case Number: CV 2018 09 2028

Judge: Charles L. Pater

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