In the Supreme Court of Ohio

ERIN GABBARD, et al.,	:	Case No. 2020-0612
	:	
Plaintiff-Appellee,	:	On Appeal from the
	:	Butler County
v.	:	Court of Appeals,
	:	Twelfth Appellate District
MADISON LOCAL SCHOOL DISTRICT	:	
BOARD OF EDUCATION, et al.,	:	Court of Appeals
	:	Case No. CA2019-03-0051
Defendant-Appellant.	:	

BRIEF OF *AMICUS CURIAE* OHIO ATTORNEY GENERAL DAVE YOST IN SUPPORT OF JURISDICTION

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INTRODUCTION

What is the best way to stop school shootings? This is a big question. And in a big country like ours, it gives rise to a diverse set of answers. So it is a feature of localized education and our federalist system that different local school districts within different States can adopt different solutions. In doing so, States and localities can serve as laboratories of democracy, and tailor policies to best accommodate the views of their citizens and the conditions of their schools.

Tragically, the question of how best to respond to school shootings is not an abstract one for the Madison Local School District Board of Education. In February 2016, a Madison junior-high-school student repeatedly fired a gun into a group of his classmates in their school cafeteria, injuring four of them. The Board responded by increasing security throughout the district in several noncontroversial ways: it improved its communication system; installed new security-camera systems; hired a second school resource officer; and increased the security of doors and windows in its buildings. But the Board did one more thing, which stirred controversy and gave rise to this suit: it unanimously authorized certain school employees to voluntarily carry concealed firearms in school safety zones, as long as they first received active-shooter training, earned a handgun-qualification certificate, and passed mental-health exams, drug-screening exams, and a background check.

The Twelfth District concluded that this latter policy violated Ohio law. Essentially, the court held that school staff in Ohio, before carrying a weapon on school premises, must either: (1) have served as a peace officer for twenty years; or (2) undergo basic peace-officer training to carry a weapon on school premises. The Twelfth District erred. And the inevitable consequence of its erroneous decision is that Ohio's schools, at least in the Twelfth District, may be stripped of an effective means they have to defend themselves from school shooters—a means the legislature has allowed them to adopt. This Court should accept jurisdiction over this appeal and reverse.

STATEMENT OF AMICUS INTEREST

The Attorney General is Ohio's chief law officer and "shall appear for the state in the trial and argument of all civil and criminal causes in the supreme court in which the state is directly or indirectly interested." R.C. 109.02. The Attorney General has an interest in ensuring that, so long as they comply with Ohio law, Ohio's local school districts may make decisions about how best to protect Ohio's school children.

Additionally, the Attorney General has a heightened interest in this case for at least three reasons. *First*, the Attorney General oversees the Ohio Peace Officer Training Academy. The Academy, in turn, "oversees training requirements and curriculum for peace officers" and other security personnel. *See generally* Ohio Peace Officer Training Academy, https://bit.ly/2xQdOrO. Insofar as the Twelfth District's decision requires

school employees to undergo basic peace officer training before they can carry a firearm, its decision directly affects the Academy's operations.

Second, both the current and the former Attorney General have already opined on the legal issue at the heart of this case. In 2013, then-Attorney General Mike DeWine wrote a publicly available letter concluding that "Ohio law does not prevent a local school board from arming an employee, unless that employee's duties rise to the level that he/she would be considered 'security personnel.'" Letter from Mike DeWine, Ohio Attorney General, and Robert Fiatal, Executive Director of the Ohio Peace Officer Training Commission, to James Irvine, Chairman of the Buckeye Firearms Association (Jan. 29, 2013), available at https://bit.ly/2XINY44. Likewise, in 2019, Attorney General Dave Yost issued a formal opinion in which he concluded the same. 2019 Op. Att'y Gen. No. 2019-023, slip op. at 2 n.1, 3–4.

Third, the current Attorney General took the rare step of submitting an amicus brief and presenting oral argument in the court of appeals in this case. Given the issue's importance and the history of the Attorney General's involvement with it, the Attorney General has an acute interest in ensuring that this Court corrects the lower court's error.

STATEMENT OF THE CASE AND FACTS

In 2012, following the horrifying shooting at Sandy Hook Elementary School in Connecticut, Ohioans debated whether allowing some school employees to carry concealed firearms in schools would help protect against school shootings. *See generally*

Catherine Candisky, Armed staffer may be option for schools, DeWine says, Ohio.com (Dec. 20, 2012), available at https://bit.ly/30e69fp. Some Ohioans raised doubts about the legality of this solution. Their concerns turned on the interaction between two statutes. The first, R.C. 2923.122(D)(1)(a), allows local school districts to authorize "any … person" to possess a firearm in a school safety zone, and does not specify any particular training requirement for those persons. The second, R.C. 109.78(D), says that no school "shall employ a person as a special police officer, security guard, or other position in which such person goes armed while on duty," unless that person either completed peace-officer training or had already served for twenty years as an active-duty peace officer. Some argued that this second statute might apply to all armed school employees. In other words, they believed that any employee who carried a gun would qualify as a "special police officer, security guard, or other position" obligated to undergo the training specified in R.C. 109.78(D).

Then-Attorney General Mike DeWine wrote a letter addressing the issue. *See* Letter from Mike DeWine, Ohio Attorney General, and Robert Fiatal, Executive Director of the Ohio Peace Officer Training Commission, to James Irvine, Chairman of the Buckeye Firearms Association (Jan. 29, 2013), available at https://bit.ly/2XINY44 ("DeWine Letter"). In this letter, Attorney General DeWine concluded that "Ohio law does not prevent a local school board from arming an employee, unless that employee's duties rise to the level that he/she would be considered 'security personnel.'" *Id.* at 1.

While R.C. 109.78(D) requires school-security personnel to "either have a basic peace officer certification from the Ohio Peace Officer Training Academy" or "20 years of experience as a law enforcement officer," it does not require the same for non-security personnel, even if the school authorizes them to carry a weapon. *See* DeWine Letter, at 1.

Years later, in February 2016, a student at Madison Junior-Senior High School opened fire on his classmates in the school cafeteria. Luckily, he killed no one. But he did injure four of his classmates, and he could have injured or killed many more. In response, the Madison Local School District Board of Education increased security throughout the District. One of the ways it did that was by unanimously authorizing certain school employees who already held concealed-carry licenses to voluntarily carry concealed firearms in school safety zones, as long as they first received active-shooter training, earned a handgun-qualification certificate, passed mental-health and drug-screening exams, and passed a criminal background check.

That spurred the plaintiffs, all of whom are parents of children in the Madison Local School District, to file this lawsuit. For ease of reference, this brief will refer to the plaintiffs collectively as "Gabbard." Gabbard argued that Madison's decision to authorize certain school employees to voluntarily carry concealed firearms in school safety zones violated R.C. 109.78(D). The trial court granted summary judgment to the District and, as relevant here, the Twelfth District reversed.

In a divided opinion, the Twelfth District concluded that R.C. 109.78(D)'s catchall phrase, "other position in which such person goes armed while on duty," *unambiguously* applied to the teachers and other authorized staff at issue here. *Gabbard v. Madison Local School District Bd. of Edn.*, 12th Dist. Butler No. CA2019-03-051, 2020-Ohio-1180 ("App.Op."), at ¶17. The majority therefore held that the statute prohibited the employees from carrying a firearm in a school safety zone unless they completed basic peace officer training or had already completed twenty years of active duty as a peace officer. App.Op. ¶¶18, 21. Judge Powell dissented. He explained that R.C. 109.78's catchall phrase did not unambiguously apply to the employees. App.Op. ¶¶43, 44. Rather, it presented "a classic example of when the rule of ejusdem generis applies." App.Op. ¶48 (citing *Moulton Gas Serv. v. Zaino*, 97 Ohio St.3d 48, 2002-Ohio-5309, ¶14). Judge Powell would have applied that "well established" canon of construction to ascertain the meaning of the phrase from its statutory context. App.Op. ¶46. Applying the canon, Judge Powell would have held that R.C. 109.78(D) applies only to "'special police officers,' 'security guards,' and 'other positions' of the same, nature, kind, or class." App.Op. ¶46.

THIS CASE RAISES A QUESTION OF PUBLIC AND GREAT GENERAL INTEREST

The Court should grant review because the Twelfth District's decision leads to two anomalous results with deeply troubling consequences. *First*, very few school employees have time to complete basic peace officer training. As a result, the vast

majority of school staff within the Twelfth District will be stripped of an effective means of protecting school children and themselves from a school shooter. *Second*, even for employees who are able to complete a basic peace officer program, those programs consist of hundreds of hours of training that is entirely useless for thwarting the type of threat that Madison's policy is concerned with. Accordingly, if the Twelfth District's ruling stands, then either: (1) the Attorney General will have to substantially revise what basic peace officer training consists of; or (2) police academies will have to train persons who likely have very little interest in and use for the training they are receiving, leading to untold frustration among trainers and trainees within Ohio's Peace Officer Training Academy.

A. The Court should grant review because the lower court's decision hampers local policies designed to thwart school shootings.

The Twelfth District's decision makes it extremely difficult for school employees in its jurisdiction to defend schoolchildren and themselves with the aid of a firearm. Why? Because, before employees can carry a firearm on school premises going forward, they will need to have either completed twenty years of active duty as a peace officer or complete a basic peace officer training course.

It is common sense that the vast majority of school teachers, administrators, and other staff have not already served for twenty years as a peace officer. So, under the Twelfth District's ruling, their only option for attaining the prerequisite to lawfully carrying a firearm involves completing a basic peace officer training course. But think

about what that entails. A basic peace officer training course consists of a *minimum* of 728 hours of training. Prelim. Inj. Mot. Ex. A. Consider, for example, the Butler Tech Peace Officer Training Academy (a nearby location where Madison's staff could enroll). Butler Tech's program is a *full-time* program that consists of 770 hours and costs $7,265. *See* https://www.butlertech.org/public-safety/basic-police-academy/. Even if a school could afford to pay that tuition for each participating staff member, what teacher or school administrator has time to complete a program like that *in addition* to his or her day job? If the staff member were to enroll in the program for eight hours a day, five days a week, it would still take him a little over eighteen weeks to complete.

The reality is that few if any teachers or school administrators can train to become police officers while maintaining their day jobs. Thus, as a practical matter, the Twelfth District's erroneous decision strips schools of an effective means they have to defend schoolchildren from a school shooting. If that is going to be the law anywhere in Ohio, *this* Court—not the Twelfth District—should have the final word.

B. The Court should grant review because the lower court's decision interferes with essential training that all Ohio peace officers are required to undergo.

Even for the very few school employees who could possibly enroll in and complete a basic peace officer training program, much of the program would be a waste of time. The reality is that basic peace officer training involves a lot more than just preparing a person to deal with an active shooter. Basic peace officer training is the

initial training that an Ohio police cadet receives before he or she enters the ranks of Ohio law enforcement. As such, enrollees receive hundreds of hours of training in skills that are useless for the type of threat that school district's like Madison have in mind when authorizing staff to carry concealed weapons. For example, enrollees receive a *minimum* of: 125 hours of traffic training, including 40 hours on field-sobriety testing and 32 on traffic crashes; 24 hours of training on driving a patrol car; and 77 hours of training on human relations, including 12 hours on domestic violence, 3 hours on interacting with the media, and 12 hours on human trafficking. Prelim. Inj. Mot. Ex. A.

To be sure, all of this training is valuable for Ohio police officers, who regularly rely on it in carrying out their various law-enforcement duties. But it is quite irrelevant to school teachers and administrators who wish only to carry a firearm so they are prepared to deal with the one-off, nightmare of an active school shooter. Under the Twelfth District's decision, one of two things will happen: either (1) the Attorney General will have to dilute what basic peace officer training consists of; or (2) peace-officer academies will subject school staff to hundreds of hours of training on topics they have no use for and are likely uninterested in. While the latter option could retain existing curriculums, it would lead to untold frustration within the Academy. Either way, Ohio basic peace officer training would suffer. Ohio law does not require these anomalous results, but the Twelfth District's decision does. This Court should accept jurisdiction and correct the lower court's error.

ARGUMENT

***Amicus Curiae* Ohio Attorney General's Proposition of Law No. I:**

> *R.C. 109.78(D)'s training requirements apply only to school employees hired to serve in a role comparable to that of a security guard or police officer—the statute does not apply to other employees authorized to carry a gun under R.C. 2923.122.*

R.C. 2923.122 gives local school districts significant flexibility to decide both who may carry concealed firearms in school safety zones and what training they must undergo before doing so. R.C. 109.78(D), by contrast, sets minimum training requirements only for employees that schools hire to serve in roles comparable to that of a police officer or security guard. Those employees (but only those employees) must first undergo peace-officer training, or else serve as peace officers for twenty years, before carrying firearms in school safety zones. But other employees—even employees that the school authorizes to carry a gun—need not undergo the same training requirements.

A. R.C. 2923.122 gives local school districts significant flexibility to authorize persons to carry concealed firearms in school safety zones without heightened training requirements

Ohio law generally bans carrying a firearm into, or possessing a firearm within, a "school safety zone." A school safety zone includes schools, school buildings, school premises, and school buses. R.C. 2923.122, 2901.01(C). With limited exceptions not relevant here, *see* R.C. 2923.122(D)(4), this prohibition extends to concealed-carry license holders, R.C. 2923.126(B)(2).

The General Assembly has, however, exempted any "person who has written authorization from the board of education or governing body of a school" to possess a firearm in a school safety zone, and who does so "in accordance with that authorization." R.C. 2923.122(D)(1)(a). This brief refers to this exception as the "Authorized Person Exception."

The Authorized Person Exception gives local school boards great latitude to decide whom to authorize and how much training boards must require as a condition of authorization. *Accord* DeWine Letter at 1–2. Local school districts of course may, if they wish, require authorized persons to first undergo peace-officer training, or to undergo some other level of training above and beyond what is required for concealed-carry-license holders in general. But the Authorized Person Exception leaves those decisions to each school district.

B. R.C. 109.78(D)'s "Residual Clause" does not disturb the discretion granted school boards under the Authorized Person Exception because it applies only to employees hired to serve as police officers, security guards, or in other comparable roles.

In a different section of the Ohio Revised Code dealing with the Attorney General's powers, the General Assembly required the Ohio Peace Officer Training Commission to certify graduates of "training programs designed to qualify persons for positions as special police, security guards, or persons otherwise privately employed in a police capacity." R.C. 109.78(A). This section goes on to detail these certificates and

training programs and to specify certification fees, among other things. Tucked at the end of this thousand-word provision is a requirement that:

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

This statute sets forth minimum training requirements for people "employ[ed]" by public or private schools "as a special police officer, security guard, or other position in which such person goes armed while on duty." Specifically, it requires all such employees to have either: (1) "received a certificate of having satisfactorily completed an approved basic peace officer training program"; or (2) served at least twenty years as an active duty peace officer. All that is clear enough. But what constitutes an "other position in which such person goes armed while on duty"? More specifically, does this language—which this brief will call the "Residual Clause"—apply to individuals who are authorized to carry weapons on school grounds under the Authorized Person Exception, but who are not employed to fill a role comparable to that of a security guard or police officer?

No, it does not. The Residual Clause applies only to employees whose jobs entail carrying a weapon and whose principal duties include keeping the peace and maintaining security on school grounds. This follows for three reasons.

The first is the *ejusdem generis* canon: "Where general words follow an enumeration of two or more things, they apply only to persons or things of the same general kind or class specifically mentioned." Antonin Scalia & Bryan Garner, Reading Law: The Interpretation of Legal Texts, at 199 (2012); *accord*, *e.g.*, *Ohio Grocers Ass'n v. Levin*, 123 Ohio St. 3d 303, 2009-Ohio-4872 ¶29; *State v. Aspell*, 10 Ohio St. 2d 1 (1967), syl. ¶2. Applied to the Residual Clause, this canon means that the "other position[s]" requiring peace-officer training include only positions "of a similar character as" special police officers and security guards. *Aspell*, 10 Ohio St. 2d at 4 (citations omitted); *accord* DeWine Letter, at 1. Reading the Residual Clause's "other position[s]" language to encompass all school employees who are armed at school would violate this "well-known legal maxim." *Aspell*, 10 Ohio St. 2d at 4.

The second reason that the Residual Clause does not apply to every employee authorized to carry a weapon under the Authorized Person Exception is this: the Clause is explicitly position-based. In other words, whether R.C. 109.78(D) applies depends on the person's position, since it covers anyone employed "as a special police officer, security guard, or other position in which such person goes armed while on duty." And with respect to the Residual Clause, the defining characteristic of the "position" is the fact that the employee "goes armed while on duty." Nobody would describe the position of teacher, principal, or other similar school employee as one requiring the employee to go armed while on duty. By its own terms, then, R.C.

109.78(D)'s Residual Clause does not cover school employees serving in a role unlike that of a police officer or a security guard.

The final clue as to the Residual Clause's meaning comes from statutory context. Courts "cannot pick out one sentence and disassociate it from the context," but must instead "consider the statutory language in context." *Elec. Classroom of Tomorrow v. Ohio Dep't of Educ.*, 154 Ohio St. 3d 584, 2018-Ohio-3126 ¶11 (internal quotation marks and citations omitted); *accord Great Lakes Bar Control, Inv. v. Testa*, 156 Ohio St. 3d. 199, 2018-Ohio-5207 ¶¶8–10 (citations omitted). R.C. 109.78's overall context supports the District's (and the State's) interpretation of the Residual Clause. Much of the statute is targeted towards training special police officers to be employed by either the state highway patrol or by a political subdivision of the State. *See, e.g.*, R.C. 109.78(D) ("No … superintendent of the state highway patrol shall employ a person as a special police officer, security guard, or other position in which such person goes armed while on duty …"). And elsewhere in the statute, when describing persons who would be employed by private entities, the General Assembly over and over described them as persons seeking to be employed in "positions as special police, security guards, and *other private employment in a police capacity*." *See, e.g.*, R.C. 109.78(C) (emphasis added). Although the General Assembly used slightly different language in the part of R.C. 109.78(D) that applies to public or private schools, the statutory context indicates that

the statute captures those whose jobs entail carrying a gun and maintaining peace and security—not every school employee authorized by his workplace to carry a gun.

R.C. 109.78(D)'s language and context point toward one conclusion: all and only school employees in positions comparable to that of a peace officer must meet the statute's qualifications. But employees serving in other roles are not subject to R.C. 109.78(D)'s requirements simply because school districts authorize them to carry a weapon on school grounds under the Authorized Person Exception.

CONCLUSION

The Court should accept jurisdiction and reverse the judgment of the Twelfth District.

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CERTIFICATE OF SERVICE

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