

IN THE SUPREME COURT OF OHIO

ERIN G. GABBARD, et al.,	:	
	:	Case No. 2020-0612
<i>Plaintiffs-Appellees,</i>	:	
	:	On appeal from the
v.	:	Twelfth District Court of Appeals
	:	Butler County, Ohio
MADISON LOCAL SCHOOL DISTRICT	:	
BOARD OF EDUCATION, et al.,	:	Court of Appeals
	:	Case No. CA2019-03-0051
<i>Defendants-Appellants.</i>	:	

MEMORANDUM IN SUPPORT OF JURISDICTION BY AMICI CURIAE CLAYMONT CITY SCHOOLS, EAST GUERNSEY LOCAL SCHOOLS, HARDIN COMMUNITY SCHOOL, JACKSON CENTER LOCAL SCHOOLS, MAD RIVER LOCAL SCHOOLS, MANCHESTER LOCAL SCHOOLS, NOBLE LOCAL SCHOOLS, RIVER VIEW LOCAL SCHOOLS, RUSSIA LOCAL SCHOOLS, SIDNEY CITY SCHOOLS, AND UPPER SCIOTO VALLEY SCHOOL DISTRICT IN SUPPORT OF DEFENDANTS-APPELLANTS THE MADISON LOCAL SCHOOL DISTRICT BOARD OF EDUCATION, ET AL.

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PROPOSITION OF LAW

	Ohio law does not require school administrators, teachers, and support staff to attend the police academy or have twenty years' experience as a police officer in order to be authorized by a board of education to carry a firearm in a school safety zone.	5
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I. INTRODUCTION

Claymont City Schools, East Guernsey Local Schools, Hardin Community School, Jackson Center Local Schools, Mad River Local Schools, Manchester Local Schools, Noble Local Schools, River View Local Schools, Russia Local Schools, Sidney City Schools, and Upper Scioto Valley School District (collectively, the “Districts”) have each exercised the authority granted to them by the General Assembly to authorize certain administrators, teachers, and support staff to possess or carry a firearm in a school safety zone in order to protect their students against the threat of an active shooter. The Districts submit this memorandum in support of jurisdiction to provide the Court with the perspective of a large and diverse group of school districts from all corners of the State that are affected by the Twelfth District Court of Appeals decision.

Like the Madison Local School District and numerous other districts throughout Ohio, the Districts’ boards of education believed that arming some of its staff is but one tool in their belt to protect their students and staff. The General Assembly provided Ohio’s 612 boards of education with local control over matters of student safety. Some (including the Districts) chose to utilize the authority provided in R.C. 2923.122 to arm their staff; others did not. But that’s the purpose of local control: what may work in one area of the state may not work in another. The Districts simply want to retain that choice. The Twelfth District’s decision, however, makes that impossible.

II. STATEMENT OF INTEREST OF AMICI CURIAE

Each of the amici curiae in this case are school districts within the State of Ohio that have exercised the authority granted to them by the General Assembly to authorize certain administrators, teachers, and support staff to possess or carry a firearm in a school safety zone in order to protect the district’s students and staff against the threat of an active shooter.

Claymont City Schools is located in Tuscarawas County and serves approximately 1,875 students. Its Board of Education voted to authorize certain staff members to carry a weapon into a school safety zone in November 2019.

East Guernsey Local Schools is located in Guernsey County and serves approximately 1,050 students. Its Board of Education unanimously voted to authorize certain staff members to carry a weapon into a school safety zone in February 2018.

Hardin Community School is located in Hardin County and serves approximately 35 students. Its Governing Board voted to authorize certain staff members to carry a weapon into a school safety zone in February 2016.

Jackson Center Local Schools is located in Shelby County and serves approximately 550 students. Its Board of Education is currently taking steps in the process of considering the authorization of staff members to become part of its school safety team and to carry a weapon into a school safety zone.

Mad River Local Schools is located in Montgomery County and serves approximately 3,950 students. Its Board of Education voted to authorize certain staff members the ability to access and use a weapon in a school safety zone in July 2016.

Manchester Local Schools is located in Adams County and serves approximately 780 students. Its Board of Education voted to authorize certain staff members to carry a weapon into a school safety zone in April 2019.

Noble Local Schools is located in Noble County and serves approximately 1,000 students. Its Board of Education voted to authorize certain staff members to carry a weapon into a school safety zone in August 2017.

River View Local Schools is located in Coshocton County and serves approximately 1,950 students. Its Board of Education voted to authorize certain staff members to carry a weapon into a school safety zone in October 2016.

Russia Local Schools is located in Shelby County and serves approximately 425 students. Its Board of Education voted to authorize certain staff members to carry a weapon into a school safety zone in August 2013.

Sidney City Schools is located in Shelby County and serves approximately 3,500 students. Its Board of Education voted to authorize certain staff members the ability to access and use a weapon in a school safety zone in August 2013.

Upper Scioto Valley School District is located in Hardin County and serves approximately 450 students. Its Board of Education voted to authorize certain staff members to carry a weapon into a school safety zone in May 2017.

III. EXPLANATION OF WHY THIS CASE INVOLVES A QUESTION OF PUBLIC OR GREAT GENERAL INTEREST

In recent years, there has been a rise in school shootings that have devastated school districts across the country. Many have resulted in student deaths. All have been tragic. In the aftermath of those school shootings, there has been intense national debate about how to best prevent and respond to those shootings. Some states—like Ohio—allow (but do not require) school districts to authorize certain administrators, teachers, and support staff to carry or possess a firearm on school property in order to protect students.

Each of the Districts' boards of education have made the decision to arm some of their staff. In doing so, the Districts relied upon R.C. 2923.122(D)(1)(a)—which authorizes local boards of education to allow certain individuals to carry a firearm into a school safety zone. The Districts require each of their armed staff members to possess a valid concealed handgun license

consistent with R.C. 2923.12 and R.C. 2923.125. Additionally, the Districts each require *more* training than required by law—training specific to active shooter situations in a school setting. The specifics of each of the Districts’ plans is tailored to their individual district though, in order to best provide for their own communities’ safety.

School districts have an obligation and interest in protecting their students. *See, e.g., Bd. of Edn. of Indep. School Dist. No. 92 of Pottawtomie Cty. v. Earls*, 536 U.S. 822, 824, 122 S.Ct. 2559, 153 L.Ed.2d. 735 (2002). Ohio has 612 different school districts. How the State’s largest school district (Columbus City Schools and its 51,000 students) protects its students is likely different than how the State’s smallest school district (Kelleys Island Local Schools and its six students) protects its students. But a one-size-fits-all approach to student safety is not what the General Assembly intended or prescribed. Instead, each local board of education is responsible for determining how best to protect their students.

One of the State’s twelve appellate courts, however, has taken local control of student safety away from Ohio’s school districts. Instead of allowing a board of education to make decisions for their own district, the Twelfth District Court of Appeals decided that a school district that chooses to allow some of its staff to carry or possess a firearm in a school safety zone must now send its principals, English teachers, or secretaries to an Ohio Peace Officer Training Academy-approved peace officer basic training course. Not only does that go well-beyond what the law requires, it makes arming staff members impossible in Ohio.

But that’s what the New York City-based group (Everytown for Gun Safety) suing Madison wanted. They disagree with the General Assembly giving boards of education local control over whether to arm their staff members. So they targeted a small, rural school district in Butler County that tragically experienced a school shooting in 2016 to prevent the arming of school

staff across Ohio. That group believes that if a school district wants to arm administrators, teachers, and support staff, the district must send those individuals to a police academy. Ohio police academies require at least 728 hours of instruction—which is generally offered in either 24-week (full-time) or 36-week (part-time) courses. It would be impossible to require an assistant principal, a special education aide, or a guidance counselor to complete a police academy while continuing to do their actual job of educating and servicing students. But that’s what they want.

The Districts ask the Court to accept this case and apply Ohio law as it is written. That statutory scheme provides boards of education the choice of how to protect their students. Ultimately, that’s all that the Districts want.

IV. STATEMENT OF THE CASE AND FACTS

Amici adopt the Statement of the Case and Facts set forth in the memorandum in support of jurisdiction of the Madison Local School District Board of Education and its Superintendent Dr. Lisa Tuttle-Huff.

V. ARGUMENT IN SUPPORT OF PROPOSITION OF LAW

Proposition of Law: Ohio law does not require school administrators, teachers, and support staff to attend the police academy or have twenty years’ experience as a police officer in order to be authorized by a board of education to carry a firearm in a school safety zone.

The Ohio Constitution and the General Assembly place governance of local school districts with locally-elected boards of education. This makes sense. The needs of school districts vary across the State. An urban district has very different needs than a rural district. What may work for districts in Franklin County likely doesn’t work for those districts in Vinton County. Each of Ohio’s 612 boards of education has the authority to govern their own districts in light of their own needs within their own communities.

This system, of course, isn't profound. It is simply federalism. Here, the centralized government is the State and the "laboratories of democracy" are the local boards of education. *See, e.g., Evenwel v. Abbott*, 136 S.Ct. 1120, 1141, 194 L.Ed.2d 291 (2016) (Thomas, J., concurring), quoting *Arizona State Legislature v. Arizona Indep. Redistricting Comm.*, 135 S.Ct. 2652, 2673, 192 L.Ed.2d 704 (2015). The people of Ohio and the General Assembly have entrusted those boards of education to "serve as a laboratory; and try novel social and economic experiments without risk to the rest of the [Ohio]." *New State Ice Co. v. Liebmann*, 285 U.S. 262, 311, 52 S.Ct. 371, 76 L.Ed. 747 (1932) (Brandeis, J., dissenting). The General Assembly gave local control over matters of student safety to boards of education.

That local control, however, has been taken from the boards of education by the Twelfth District Court of Appeals. The court of appeals decision applied the relevant statutes for arming school administrators, teachers, and support staff entirely wrong. In its decision, the lower court relied upon R.C. 109.78(D) to require boards of education to send their staff members to a police academy or have 20 years' experience as a police officer in order to allow them to carry or possess a firearm on school property. The Twelfth District, however, failed to apply basic principles of statutory construction. "To discern legislative intent, we first consider the statutory language, reading all words and phrases in context and in accordance with rules of grammar and common usage." *Ohio Neighborhood Fin., Inc. v. Scott*, 139 Ohio St.3d 536, 2014-Ohio-2440, 13 N.E.3d 115, ¶ 22. When that statutory language is unambiguous, the language is applied as it is written. *Id.* at ¶ 23. In its decision, the Twelfth District failed to do that. In fact, there are a number of issues with its holding.

First, the plain language of R.C. 2923.122 grants boards of education the ability to authorize certain individuals to carry or possess a firearm on school property. R.C.

2923.122(D)(1)(a). This authorization is an exception to the general prohibition that *no one* may carry any sort of firearm into a school safety zone. R.C. 23923.122. The specifics of that armed-staff authorization are made pursuant to a school district’s emergency management plan. R.C. 3313.536; O.A.C. 3301-5-01(A)(1) (a district’s emergency management plan shall consist of hazards a school may face, including but not limited to active shooter situations). If a school district allows for the concealed carry of a firearm, the authorized individuals must comply with Ohio’s Concealed Carry Law. R.C. 2923.12(C)(2); R.C. 2923.125. Thus, the General Assembly’s grant of authority to boards of education to allow certain staff to carry a firearm inherently prescribes that they will have satisfied the requirements to obtain a concealed carry permit.

Second, the plain language of R.C. 109.78(D) does not require a school district to send its administrators, teachers, and support staff to an approved basic peace officer training program or have 20 years’ experience as a peace officer. That statute says:

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

R.C. 109.78(D). The out-of-state group that sued Madison (and the lower court) focused on “or other position in which such person goes armed while on duty” to find that the General Assembly meant to include administrators, teachers, and support staff authorized by a board of education to carry a firearm on school property under that statute. The plain language of R.C. 109.78(D), however, makes no mention of those individuals. Instead it requires police academy training for special police officers, security guards, and other similarly-situated positions (such as a school resource officer). The Twelfth District erred in finding otherwise.

Third, one of the premier training programs for school personnel's response to active shooter training is in Ohio—FASTER Saves Lives (the Faculty/Administrator Safety Training and Emergency Response). More than 200 school districts from 79 counties in Ohio have sent their armed staff members to complete FASTER training to ensure that their staff members know how to effectively respond to an active shooter situation in their school. In each of the last two biennium budgets passed by the General Assembly, FASTER received money to assist school districts in training their armed staff to prevent active shooters. If Ohio law did not allow for the arming of school staff, the General Assembly would not continue to fund a program specifically designed to train armed school staff members.

Fourth, the Twelfth District's decision requires Ohio school districts to send their armed staff members to a police academy. OPOTA-approved police academies require 728 hours of instruction, including on criminal law, subject control, investigations, homeland security, patrol, traffic, and driving. Ohio police academies generally last either 24 weeks (full-time) or 36 weeks (part-time). This is virtually impossible for any school employee to complete. The vast majority of the content in a police academy is entirely useless to an elementary school principal. A high school teacher does not need to know how to recreate a crash scene in order to carry a firearm to protect her students. Requiring a middle school art teacher to attend a 24-week or 36-week long course would prevent her from doing her actual job—teaching. The Twelfth District's decision is simply unworkable and entirely frustrates a board of education's ability to authorize its staff members to carry a firearm on school property.

Fifth, the Twelfth District's determination runs afoul of what the law says, but it also is contrary to nearly every interpretation of the statute. By appropriating money to FASTER Saves Lives for armed-staff-member training, the General Assembly believes that Ohio law allows for

armed school personnel. In 2013, the former Attorney General found that R.C. 2923.122 allowed school districts to arm staff members and that R.C. 109.78(D) applies to security personnel hired by a school district, but not administrators, teachers, and support staff. In the case below, the current Attorney General made the same determination. Then there is the Twelfth District—on its own island, finding that R.C. 109.78(D) renders R.C. 2923.122 meaningless.

Sixth, local boards of education no longer can respond to the needs of their communities in a way that makes the most sense for them and fits within the resources they might have. Consider the difference between Cleveland Metropolitan School District and Noble Local Schools in Noble County. Cleveland's 107 schools each have at least one school resource officer. In addition, the City of Cleveland Police Department has over 2,200 employees (with approximately 1,500 officers) that are mere minutes from Cleveland's schools. Noble Local Schools, on the other hand, has 1,000 students and is a rural district over 289 square miles. Its two schools are located on the outskirts of Sarahsville—which has a population of 166. Police services are provided by the Noble County Sheriff's Office—which has at least a 20-minute response time to Noble Local's buildings. Because seconds matter in a school shooting and because it doesn't have the same resources as Cleveland, Noble Local Schools decided to arm some of their staff members and send them to FASTER Saves Lives—one of the country's preeminent training programs for active shooter situations in schools—for training. But because of the Twelfth District's one-size-must-fit-all decision, Noble Local Schools (and the other Districts) can no longer make that choice. Their students are less safe because of it.

The lower court's decision engulfs the local control of student safety given to boards of education by the General Assembly. The decision prevents the Districts from doing that. Each

has chosen to authorize certain staff members to carry or possess a firearm on school property. This Court should reverse.

VI. CONCLUSION

Amici curiae Claymont City Schools, East Guernsey Local Schools, Hardin Community School, Jackson Center Local Schools, Mad River Local Schools, Manchester Local Schools, Noble Local Schools, River View Local Schools, Russia Local Schools, Sidney City Schools, and Upper Scioto Valley School District respectfully request that this Court grant jurisdiction in this case and reverse the judgment of the Twelfth District Court of Appeals. The Districts, like many others throughout the State, simply want to be able to protect their students.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been served upon the following individuals this 14th day of May, 2020 via electronic mail:

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