IN THE SUPREME COURT OF OHIO

ERIN GABBARD, et al.,	:	
	:	
Plaintiffs-Appellees,	:	CASE NO. 2020-0612
	:	
v.	:	Appeal from the Butler County
	:	Court of Appeals, Twelfth
MADISON LOCAL SCHOOL DISTRICT	:	Appellate District
BOARD OF EDUCATION, et al.,	:	Case No. CA2019-03-0051
	:	
Defendants-Appellants.		

PLAINTIFFS-APPELLEES' RESPONSE TO THE BOARD'S MEMORANDUM IN SUPPORT OF JURISDICTION

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STATEMENT AS TO WHY THE COURT SHOULD NOT ACCEPT JURISDICTION

The Madison Local School Board and its amici ask this Court to wade unnecessarily into a political thicket. The question at issue in this case is hotly disputed: how much training must a teacher or other school staff member complete before carrying a firearm every day, all day, around Ohio's children at school? But the Legislature has already answered it. The plain text of R.C. 109.78(D) is clear: "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 he or she has "satisfactorily completed an approved basic peace officer training program," or has already served for twenty years as a peace officer. (Emphasis added.) The "clear and unambiguous dictates" of this statute, as the Twelfth District held, cover teachers, administrators, and other school employees who carry guns—*i.e.*, go "armed"—during the school day going about their jobs—*i.e.*, "while on duty." The policy of the Madison Local School District violates state law because it requires only one weekend of training.

The Board wants this Court to carve out an exception to R.C. 109.78(D). In its view, the current requirements are too onerous and each school district should be left to make its own determination as to arming teachers with no state oversight—even if that means districts could authorize teachers to carry firearms in classrooms or on the playground with only the eight hours of training (six of which can be completed online) currently needed for a concealed carry license. But the Board and its amici should not be seeking this Court's jurisdiction as a means to enact their policy preferences. As the Twelfth District acknowledged, regardless of the jurists' personal views, it was not up to them to "decide the wisdom of permitting concealed firearms in a school safety zone." *Gabbard v. Madison Local Sch. Dist. Bd. of Edn.*, 12th Dist. Butler No. CA2019-03-051, 2020-Ohio-1180, ¶ 14 ("*Gabbard*"). This is "a matter that the General Assembly has decided,"

and if the training requirements should be changed, "it is in the legislature's hands to do so." *Id.*; *id.* at ¶ 38 (Hendrickson, P.J., concurring).

The Legislature has, in fact, considered changing this requirement. After the tragedy at Sandy Hook Elementary School in 2013, several Ohio school districts considered arming teachers, but the Chief Legal Counsel for the Ohio School Board Association explained that, given the language of R.C. 109.78, "a board of education should not proceed with arming anyone in the district that doesn't have approved basic peace officer training." Complaint ¶ 30, Ex. 1. The Ohio House of Representatives then passed a bill that would have exempted teachers and others approved by a school board from R.C. 109.78(D)'s training requirements. But it did not pass the Senate and was not enacted into law. Subsequently, there have been other such proposals. Indeed, just last month, in the wake of the Twelfth District decision confirming the plain text meaning of R.C. 109.78(D), a lawmaker introduced new legislation that would change the training requirement. That bill is now pending. The General Assembly is the proper place for any proposed change in the law. It does not belong in this Court.

This Court time and time again has stressed the importance of the separation of powers and exercising judicial restraint because, under our constitutional system, "the legislative branch of government is 'the ultimate arbiter of public policy.'" *Stetter v. R.J. Corman Derailment Servs., L.L.C.*, 125 Ohio St.3d 280, 2010-Ohio-1029, 927 N.E.2d 1092, ¶ 34 (internal quotation marks and citation omitted). "In fulfilling that role, the legislature"—not the judiciary—"is entrusted with the power to continually refine Ohio's laws to meet the needs of our citizens." *Id.* The Court, therefore, should leave to the General Assembly this ongoing policy debate over whether to change the training required of armed school staff, and decline to accept jurisdiction over this matter.

STATEMENT OF THE CASE AND FACTS

A. Statutory Background

Ohio law broadly makes it a crime 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 are allowed to carry firearms in school. *Id.* 2923.122(D)(1)(a). The same goes for other groups of well-trained law enforcement. *See id.* Another exception to the criminal prohibition against carrying guns in school is for persons authorized by a school board. Section 2923.122(D)(1)(a) permits "[a] person who has written authorization from the [school board] to possess a deadly weapon . . . in a school safety zone . . . in accordance with that authorization."

Although R.C. 2923.122(D)(1) exempts persons with school board authorization from criminal prosecution when they carry arms in school, it does not override any other law, including the training requirements in R.C. 109.78(D). That statute states:

> 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.*

The requirement imposed by this provision is clear: a school employee in a "position in which such person goes armed while on duty" must have completed the state's basic peace officer training program unless he or she has already served for twenty years as a peace officer. *See id.* In drafting 109.78(D), the Legislature considered limiting the peace officer training requirement to those employed by a school as a policeman, security guard, or "any similar position." *See* House Journal, Pls' MSJ, Ex. L at 1347. But the General Assembly ultimately rejected this language and enacted

much broader language, requiring peace officer training of those in "other position[s] in which such person goes armed while on duty."

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, de-escalation, and critical incident stress awareness, among others. *See* Complaint ¶ 49, Ex. 10.

On several occasions, the Legislature has considered exempting teachers and other employees authorized to carry arms at school by a school board from R.C. 109.78(D)'s peace officer training requirement. *See, e.g.*, 2013-14 Am.Sub.H.B. No. 8, Section 109.78 (as passed by House); 2017-18 Am.Sub.H.B. No. 693, Section 109.78 (as introduced). There is a bill currently pending in General Assembly that would do the same. *See* 2019-20 Am.Sub.S.B. No. 317 (as introduced). But as the law stands today there is no such exemption from 109.78(D).

B. Factual Background

On April 24, 2018, the Madison Local School District Board adopted the "Resolution to allow armed staff in school safety zone." The Resolution, along with the Firearms Authorization Policy that implements it, allows "teachers, school support staff, administrators, and others approved" to carry firearms in the district's school buildings if they (i) have a concealed carry license; (ii) have completed 24 hours of active shooter training with an approved vendor; and (iii) have been designated by the Superintendent after a mental health examination and background check. It is undisputed that neither the Resolution nor the Policy requires that the armed personnel complete basic peace officer training or have twenty years' experience as a peace officer. The

Policy mandates that the armed staff complete just 24 hours of training through programs that have no OPOTC oversight. Pls' MSJ, Ex. C.

Over the summer of 2018, several Madison staff ("John Does") completed the training through a 27-hour privately run program called "FASTER." One of the John Does failed the firearms test twice and passed on his third try. Then, by letter, the district's superintendent authorized these individuals "to possess a firearm *while on duty* at Madison Local School District" in order "to protect [ ] students and staff from harm." Pls' MSJ, Ex. J (emphasis added).

C. Procedural Background

The plaintiffs in this case are the parents of students in the Madison Local School District and the defendants are the district's board and superintendent. All the parties share an 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 defendant school administrators alike want to keep schoolchildren safe. Specifically, the parents are concerned about the safety risk to their children from insufficiently trained school staff carrying guns around their children at school. They are not against guns; several plaintiffs are gun owners. They are concerned about the tragic and fatal accidents that could befall their children when armed school staff have insufficient training. Therefore, they brought this action for a declaratory judgment that the Resolution violates R.C. 109.78(D)'s training requirement and sought a preliminary injunction halting its implementation.

Following a consolidated hearing on the merits and the preliminary injunction, the Butler County Court of Common Pleas denied the plaintiffs' motion for declaratory judgment and granted the defendants' motion for summary judgment. It held that R.C. 109.78(D) applied only to those serving as security guards or in a police-like capacity. The trial court admitted that in ruling that R.C 109.78(D) did not cover armed teachers and staff it was "adding language" to R.C. 109.78(D)

that was not in the statute's text. *See* Hearing Tr. (Feb. 25, 2019) at 89 ("Now I'm adding language, so I understand. I'm adding language to this . . . ."). But it justified doing so because of the statute's title. Not only are titles inappropriate for statutory construction, *see* R.C. 1.01, but the trial court also mistakenly stated that the "descriptive heading for this code section is 'Certification of special police, security guards, or ***other persons otherwise privately employed in a police capacity.***'" *Gabbard v. Madison Local Sch. Dist. Bd. of Edn.*, Butler C.P. No. CV 2018 09 2028, at 5 (Feb. 28, 2020) (emphasis in original). That title was written by a reporter and not the Legislature. The actual title from the Session Laws omits the critical phrase "persons otherwise privately employed in a police capacity" on which the court's entire analysis hinged.[1]

The Court of Appeals reversed. It held that the "clear and unambiguous dictates of R.C. 109.78(D)" require school staff that carry firearms while on duty to first have completed basic peace officer training or have twenty years' experience. *Gabbard*, 2020-Ohio-1180 at ¶¶ 16-17. Its decision was based on the "plain and unambiguous language found in R.C. 109.78(D)" and its recognition that "the power to create and amend" that law "belongs specifically to the General Assembly." *Id.* at ¶¶ 17, 20. Heeding "the limitations on [its] constitutional authority and exercis[ing] judicial restraint," the Court declined the Board and the Attorney General's invitation to depart from the plain language of the statute. *Id.* at ¶ 20.

On appeal, the Board and Attorney General did not defend the trial court's reasoning, but instead advanced the same statutory construction arguments that they do here, relying primarily on a school board's authority under R.C. 2923.122(D)(1)(a) to authorize persons to carry firearms

[1] Despite the briefing before both lower courts explaining that the title of the statute does not include this "police capacity" phrase, the Attorney General continues to repeat the incorrect title of the statute. *See* AG Br. at 11. *Compare with* 1969–1970 Ohio Laws 2398, 2400 (session laws) (reporting the title as "Certification as special policemen; payment of cost; special police-man for educational institution must have certificate").

in school zones. The Court of Appeals rejected these arguments, reasoning that the statutes "do not conflict with one another." *Id.* at ¶ 16. It explained: "Though the school board may provide written authorization so that an individual is not subject to prosecution under R.C. 2923.122" if he or she carries a firearm in school, "the school board is still subject to the training requirements mandated by the General Assembly in R.C. 109.78(D)." *Id.* at ¶ 18. As to R.C. 109.78(D), the Court rejected the Board and Attorney General's request to "consider rules of statutory interpretation and find ambiguity in the phrase 'other position in which such person goes armed while on duty.'" That would "violate [the] court's duty to apply, not interpret, an unambiguous statute." *Id.* at ¶ 17.

Judge Hendrickson concurred, writing separately to explain that even if R.C. 109.78(D) were ambiguous, he would "nonetheless find that Madison Local's authorized armed employees must still meet either the training or the peace officer experience requirements in R.C. 109.78(D)." *Id*. at ¶ 33. Even if R.C. 109.78(D) were read narrowly to apply only to those serving in a security-type function, he noted that the district's staff are authorized to possess a firearm "in order to protect students and staff from deadly harm while carrying out the duties they were hired to complete." "In this respect," they are "performing tasks no different than a hired special police officer or security guard." *Id*. at ¶ 35. Judge S. Powell dissented in relevant part because he viewed R.C. 109.78(D) as ambiguous and, applying *ejusdem generis*, limited the training requirement to those with "similar" positions to security guards and special police officers, like "school resource officers and school security officers." *Id*. ¶ 46.

ARGUMENT IN OPPOSITION TO THE BOARD'S PROPOSITION OF LAW

Board's Proposition of Law: "Ohio law does not require school administrators, teachers, and support staff to [complete peace officer training] or have twenty years' experience as a [peace] officer in order to be authorized by a board of education to carry a firearm in a school safety zone."

The first rule of statutory interpretation is that statutes should be construed in accordance with their plain text and common meaning. Here, the plain text of R.C. 109.78(D) is clear: "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 he or she has "satisfactorily completed an approved basic peace officer training program," or has already served for twenty years as a peace officer. *Id.* (emphasis added). As the Twelfth District held, by its plain language this statute unambiguously covers teachers, administrators, and other school employees who carry guns because they are in an "other position" in which they go "armed while on duty." The Board nonetheless asks this Court to accept jurisdiction. It asserts that another statute, R.C. 2923.122(D)(1)(a), governs this case, even though it also concedes (as it must) that R.C. 2923.122(D)(1)(a) is a criminal statute that does not mention training nor displace any other applicable laws regarding training for armed school employees. Then the Board attempts to rewrite R.C. 109.78(D) so it does not apply to its Resolution. The Court of Appeals rejected these same arguments. This is a case of straightforward statutory interpretation, and the Board's dispute is with what the Legislature enacted.

A. The Board's reliance on R.C. 2923.122(D)(1)(a) is misplaced.

Seeking to avoid the plain language of R.C. 109.78(D), the defendants rest their proposition of law on another statute—R.C. 2923.122(D)(1)(a). That provision establishes criminal penalties for any person (including a person with a concealed carry permit) who brings a firearm into a school unless such person falls into a narrow category of exemptions. One of the exempted

categories is people who have received "written authorization" from a school board to bring a firearm into the school. R.C. 2923.122(D)(1)(a). The Board emphasizes that this statute "says nothing" about training requirements or other prerequisites a local board of education may require in making this authorization. Bd's Jur. Mem. at 1. The Board and its amici take this silence as an invitation for "federalism" and "experiments" with how much training armed teachers should have—whether that be the mere eight hours of training required for one's concealed carry permit (six hours can be completed online), the twenty-seven hour FASTER program, or something different. *See* Districts' Br. at 6; AG Br. at 11.

But the statutory silence is fatal to their argument. While R.C. 2923.122(D)(1)(a) itself imposes no training requirements, it also says nothing about displacing or superseding any separately applicable requirements, like the training mandate imposed by R.C. 109.78(D). Indeed, though the Board and the Attorney General extoll the virtues of local decision-making, not all school decisions are left up to localities; the code is replete with statewide school standards, including for mandating training for school personnel. *See, e.g.*, R.C. 3319.074 (mandating teacher licensure in accordance with state standards); R.C. 3319.39 (mandating state-administered background checks for school district employees). R.C. 109.78(D) is one such statewide standard that the Board may not "unilaterally change." *Gabbard,* 2020-Ohio-1180 at ¶ 19.

The Board concedes as much by admitting that the authorized staff can only go armed in accordance with the State's concealed carry law, including the eight-hour training required by R.C. 2923.125. And it concedes that, even with board authorization under R.C. 2923.122(D)(1)(a), a school security guard would need to undergo the training in R.C. 109.78(D). By the Board's own argument, then, persons authorized to carry firearms at school under R.C. 2923.122(D)(1)(a) are

still subject to other applicable statutory requirements. And it "cannot circumvent R.C. 109.78 by relying on R.C. 2923.122, a criminal statute, to implement its [R]esolution." *Gabbard* at ¶ 18.

Neither the Board nor its amici argue that the statutes conflict and that R.C. 2923.122(D)(1)(a) overrides R.C. 109.78(D). Nor have they ever made such an argument in their briefing over the course of this case. They instead argue that R.C. 109.78(D) on its own terms is inapplicable to the authorized staff. Thus, while the Board spends its pages arguing about R.C. 2923.122(D)(1)(a), that is a distraction: the case turns on the plain meaning of R.C. 109.78(D).

B. The Board's proposition contravenes the plain language of R.C. 109.78(D).

The Board's proposition must be rejected because it contravenes the "plain and unambiguous" language of R.C. 109.78(D), as the Court of Appeals held. *Gabbard* at ¶17.

1. 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 R.C. 109.78(D) 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, 415 (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 (quotation marks omitted).

The plain text of R.C. 109.78(D) is clear: "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 he or she has "satisfactorily completed an approved basic peace officer training program," or has already served for twenty years as a peace officer. *Id.* (emphasis added). This

statute unambiguously covers teachers, administrators, and other school employees who carry guns during the school day while going about their jobs. The 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/KJ5E-LGS3. Under the Resolution, some of those employees may go "armed"—which means "equipped with or carrying a firearm." *See id.* at https://perma.cc/A374-4AT2. And they are armed while "on duty"—that is, while "engaged in one's regular work." *See id.* at https://perma.cc/2YLN-227H. The confluence of these three prerequisites—a *position* in which a person goes *armed* while *on duty*—triggers the training requirement of 109.78(D). The Court of Appeals, therefore, came to the unremarkable conclusion that the statute means what it says: school employees, in addition to security guards and special police officers, in "other positions in which such person goes armed while on duty" must meet the R.C. 109.78(D) training requirements. *Gabbard* at ¶ 17. That includes the John Does the Board authorized to carry arms in Madison schools.

This plain meaning of R.C. 109.78(D) is not only confirmed by common usage and dictionary definitions, it is the same language that the defendants *themselves* used in describing the armed staff. *See Gabbard* at ¶ 35 (Hendrickson, P.J., concurring). The authorization letter the Board provides to each armed staff member states: "This letter serves as written notification that I authorize you *to possess a firearm while on duty* at Madison Local School District." Pls' MSJ, Ex. J (emphasis added). There's no question the staff are "on duty" while at work, as the Board has signed legally binding documents saying as much. *See* Pls' Prelim. Inj. Mem., Ex. F (Collective Bargaining Agreement referencing "extra duty assignments," teachers' "duty-free" lunch period, and "reporting to duty" after sick leave). These examples demonstrate that the defendants have repeatedly referred to the authorized staff in terms that are synonymous with—and identical to—

the statutory language. Thus, by their own plain language, teachers who carry firearms at work in the school fall within R.C. 109.78(D)'s scope and thus must meet the statute's requirement.

2. The Court of Appeals properly rejected the Board's request to rewrite R.C. 109.78(D).

To adopt the Board's proposition of law, this Court would have to add modifying words to R.C. 109.78(D) that are just not there. The defendants and their amici propose various ways that they would like to amend the statute. In an unofficial, nonbinding letter from 2013, then-Attorney General DeWine opined that R.C. 109.78(D)'s training requirement applies only to school employees who are "considered 'security personnel,'" and said it would be a fact-specific inquiry to know if a particular employee provided a security function. Complaint, Ex. 4. The term "security personnel"—which he placed in quotation marks—does not appear anywhere in R.C. 109.78(D). Now, years later, the defendants want to take it even further. They want to insert even more words to limit the statute to those "positions that necessarily involve[] being armed while on duty." Bd's Jur. Mem. at 11; *see also id.* (carrying a gun must be an "inherent aspect" of the employee's job). And the new Attorney General now thinks R.C. 109.78(D) is limited to those "whose jobs entail carrying a weapon and whose *principal duties* include keeping the peace," AG Br. at 12, even though "principal duties" or any synonym is absent from the text. Luckily, no district or court has to parse all of these proposed interpretations or make fact-intensive inquiries to determine precisely which armed employees need the training because the Legislature drew a bright line—those who are in a "position in which such person goes armed while on duty" must have the requisite training.

Regardless of which interpretation the Board and its amici propose, they all suffer the same flaw: they impermissibly add words to the statute that the Legislature did not write. The Board may desire to rewrite the statute, but 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; *see Wachendorf v. Shaver,* 149 Ohio St. 231, 236–237, 78 N.E.2d 370 (1948) ("The Legislature will be presumed to have intended to make no limitations to a statute in which it has included by general language many subjects, persons or entities, without limitation."). Indeed, adding words to the statute violates a cardinal rule of statutory construction meant to preserve the separation of powers between courts and legislators. As is oft-repeated: "[T]his court does not sit as a superlegislature to amend Acts of the General Assembly," *Bd. of Edn. of Pike-Delta-York Local Sch. Dist. v. Fulton Cty. Budget Comm.*, 41 Ohio St.2d 147, 156, 324 N.E.2d 56 (1975).

The various reasons proffered for departing from the text fail, and the Court of Appeals properly rejected them. Because the plain language of the statute is unambiguous, the Court appropriately recognized that it was bound to follow that text and could not consider other canons of statutory interpretation to discern legislative intent. *Gabbard*, 2020-Ohio-1180 at ¶ 6 ("[W]e find that such a request would violate this court's duty to apply, not interpret, an unambiguous statute."). Regardless, the Board and its amici's statutory construction arguments are unavailing.

First, to support adding this non-existent language to the statute, the defendants and the Attorney General rely on the rule of construction (referred to as *ejusdem generis*) that a "catch-all term" used to conclude a list should be construed in accordance with the preceding list. Because the statute mentions "special police officer" and "security guard," they contend that the following phrase "other position" should be construed to include only "similar" or "comparable" security roles. But this canon only applies where the statute is ambiguous about the scope of the "catch-all phrase." Here, "other position," is clearly limited by the phrase "goes armed while on duty." *See* R.C. 109.78(D). 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").

Moreover, by misconstruing R.C. 109.78(D) to apply only to those in "similar" positions to that of a security guard or special police officer, the Board and its amici render the statutory language redundant (and superfluous), violating another rule of statutory construction. *See State v. Noling*, 153 Ohio St.3d 108, 2018-Ohio-795, 101 N.E.3d 435, ¶ 75. Under this canon, the phrase "other position in which such person goes armed while on duty" must be interpreted to cover people who are not "security guards" or "special police officers,"—the two other classes identified in the text of R.C. 109.78(D). But the defendants and amici say that "other position" covers only a position where the employee's "principal duty" is "maintaining security," and carrying a gun must be "inherent" to their "enforcement" job. AG Br. at 12; Bd's Jur. Mem. at 2, 10-11. That is the precise definition of a security guard under Ohio law. *See* R.C. 4749.01(D)(1) (defining security guard as a "person[] whose primary duties are to protect persons or property"). And the only positions defendants can think of that would be encompassed within their limited view of the "other position" phrase are "school resource officers," or "school security guards." Bd's Jur. Mem. at 11; Districts' Br. at 7. Those are already covered by the statute's reference to "special police officer" and "security guard." Thus, the defendants afford the "other positions" clause no independent meaning. *See Noling* at ¶ 78 (concluding that it would violate the canon against surplusage for "two separate statutory provisions" to "mandate" the same thing).

Second, the defendants and the Attorney General argue that the statute speaks in terms of "positions" and therefore R.C. 109.78(D) must be confined to persons who are in "positions" where carrying a firearm is inherent to the "position." Bd's Jur. Mem. at 11; AG Br. at 13–14. But

the statute is not so limited. R.C. 109.78(D) says a school cannot employ a "person" as a security guard "or other position in which such *person* goes armed while on duty." Thus, the definitive factor is whether the "person goes armed while on duty," not his or her job description. Moreover, the statute's mention of "position," by its plain language, includes a teacher, principal, or janitor—those are "positions." The statute does not say "security position" or "similar position" to a security guard. This Court cannot insert those limitations into R.C. 109.78(D) if the Legislature did not.

Third, and again ignoring the text of the statute, the defendants and their amici argue that R.C. 109.78(D) must apply only to school security officers because, buried on page 3,050 of the last General Assembly's budget bill, there was an appropriation to the FASTER program, which provides a 27-hour training program. But where, as here, an appropriations bill "did not amend the statute, it should have little bearing on [the] analysis of the statutory text." *Sinclair Wyoming Ref. Co. v. U.S. Envtl. Prot. Agency*, 887 F.3d 986, 1002 (10th Cir. 2017). Nothing about the appropriation states that the FASTER program alone is sufficient for concealed carry in school, so the appropriation cannot be read as amending R.C. 109.78(D*) sub silencio*. *See Tennessee Valley Auth. v. Hill*, 437 U.S. 153, 189-90, 98 S.Ct. 2279, 57 L.Ed.2d 117 (1978). The Legislature can support a program as an enhanced training tool without it replacing the state's minimum standard.

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The Board and its amici urge this Court to have the "final word" on training for armed teachers. AG Br. at 8. But it is the Legislature that gets the final word—and that is R.C. 109.78(D). The Twelfth District followed those words. The Board's request to change the law belongs in the Legislature, not this Court.

CONCLUSION

For these reasons, the parents respectfully request that the Court decline jurisdiction.

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CERTIFICATE OF SERVICE

I hereby certify that I served a copy of the Plaintiffs-Appellees' Response to the Board's Memorandum In Support Of Jurisdiction by e-mail on June 12, 2020, to:

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