

IN THE SUPREME COURT OF OHIO

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

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**BRIEF BY AMICI CURIAE CLAYMONT CITY SCHOOLS, EAST GUERNSEY LOCAL SCHOOLS, EDGERTON LOCAL SCHOOLS, HARDIN COMMUNITY SCHOOL, HARDIN-HOUSTON LOCAL SCHOOLS, JACKSON CENTER LOCAL SCHOOLS, MAD RIVER LOCAL SCHOOLS, MANCHESTER LOCAL SCHOOLS, MORGAN LOCAL SCHOOLS, NEW LEBANON LOCAL SCHOOLS, NOBLE LOCAL SCHOOLS, RIVER VIEW LOCAL SCHOOLS, ROLLING HILLS LOCAL SCHOOL DISTRICT, RUSSIA LOCAL SCHOOLS, SIDNEY CITY SCHOOLS, STREETSBORO CITY SCHOOLS, AND UPPER SCIOTO VALLEY SCHOOL DISTRICT IN SUPPORT OF APPELLANTS MADISON LOCAL SCHOOL DISTRICT BOARD OF EDUCATION, ET AL.**

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## I. INTRODUCTION

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.

This case tests whether Ohio school districts will be able to continue with making that choice. Though the specifics of this case deal with the decision by the Madison Local School District to arm some of its staff members in the aftermath of their own school shooting, the Court’s decision here will extend beyond just Madison. It will impact nearly two million students in more than 4,300 public and private Ohio schools.

Claymont City Schools, East Guernsey Local Schools, Edgerton Local Schools, Hardin Community School, Hardin-Houston Local Schools, Jackson Center Local Schools, Mad River Local Schools, Manchester Local Schools, Morgan Local Schools, New Lebanon Local Schools, Noble Local Schools, River View Local Schools, Rolling Hills Local School District, Russia Local Schools, Sidney City Schools, Streetsboro 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. 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 are tailored to their individual district though, in order to best provide for their respective 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). Like Madison and numerous other districts throughout Ohio, the Districts’ boards of education believe that arming some of their staff would accomplish that goal. The General Assembly provided Ohio’s over 600 public 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—it should be reversed.

## **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.

Edgerton Local Schools is located in Williams County and serves approximately 600 students. Its Board of Education voted to authorize certain staff members to carry a weapon into a school safety zone.

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.

Hardin-Houston Local School District is located in Shelby County and serves approximately 850 students. Its Board of Education voted to authorize certain staff members to carry a weapon into a school safety zone in August 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.

Morgan Local Schools is located in Morgan County and serves approximately 1,900 students. Its Board of Education voted to authorize certain staff members to carry a weapon into a school safety zone in August 2017.

New Lebanon Local Schools is located in Montgomery County and serves approximately 1,150 students. Its Board of Education voted to authorize certain staff members to carry a weapon into a school safety zone in August 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.

Rolling Hills Local School District is located in Guernsey County and serves approximately 1,500 students. Its Board of Education voted to authorize certain staff members to carry a weapon into a school safety zone in April 2018.

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.



Streetsboro City Schools is located in Portage County and serves approximately 2,200 students. Its Board of Education voted to authorize certain staff members to carry a weapon into a school safety zone in October 2017.

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. STATEMENT OF THE CASE AND FACTS

The Districts adopt the Statement of the Case and Facts set forth in the merit brief of the Madison Local School District Board of Education and its Superintendent Dr. Lisa Tuttle-Huff.

### IV. ARGUMENT

The Court accepted a single proposition of law for consideration:

**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 Districts fully stand in support of the positions taken and the arguments made in the merit brief submitted by the Madison Local School District. That includes urging this Court to reverse the decision of the Twelfth District Court of Appeals because it 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.

Neither the statute that authorizes boards of education to arm staff (R.C. 2923.122(D)(1)(a)) nor the statute that the Twelfth District relied upon (R.C. 109.78(D)) is

ambiguous. Section 2923.122(D)(1)(a) of the Revised Code prohibits anyone from carrying a firearm into a school safety zone, except law enforcement officers and “any other person who has written authorization from the board of education.” By its plain terms, this allows boards of education to authorize whomever—including administrators, teachers, or support staff—to possess a firearm in a school safety zone so long as they provide written authorization. R.C. 109.78(D) requires that any person employed by a school district who is a special police officer, a security guard, or “other position in which such person goes armed while on duty” must attend a basic police officer academy or have 20 years’ experience as a police officer. By its plain terms, this would apply to law enforcement but not to administrators, teachers, or support staff authorized to carry a firearm in a school safety zone.

A plain reading of these two statutes results in just one conclusion—that boards of education can provide written authorization to administrators, teachers, and support staff and not require those individuals to complete police academy training or have spent 20 years as a police officer. In addition to this commonsense approach to reading the statutes, the Districts wish to make a few additional points for the Court’s consideration.

*First*, decisions related to student safety like this—whether to arm school staff—are best left to locally-elected boards of education. This approach makes sense. Safety is an incredibly important component of educating a student; but a one-size-fits-all approach to student safety simply doesn’t work. The needs of school districts widely vary across the State. An urban district has very different needs than a rural district. What may work for the 33 school districts in Cuyahoga County likely doesn’t work for the three school districts in Meigs County. Ohio has over 600 public boards of education and each governs their districts in different ways.

A system where different local authorities are given the flexibility to govern in different

ways isn't profound—it's 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).

Boards of education are tasked with keeping their students and staff safe. School districts must have a school emergency management plan that includes protocols for addressing threats to the safety of students and staff. R.C. 3313.356(B)(2)(a). Those rules, though, don't specifically prescribe *how* school districts must accomplish that response. Instead, the Department of Education's rules regarding those emergency management plans includes responses to active shooter situations but allows for districts to determine their own response. O.A.C. 3301-5-01(A)(1). The General Assembly gave local control over matters of student safety to boards of education. But the Twelfth District usurped that local control. Their decision engulfs boards of education ability to make their own decisions related to keeping their students and staff safe.

*Second*, the Twelfth District's decision also divests the statute that grants boards of education with the authority to arm staff—R.C. 2923.122(D)(1)(a)—of any meaning. It makes arming staff entirely impractical. As a result of the Twelfth District's decision, if an Ohio school district desires to arm any administrator, teacher, or support staff, the District is left with two options: (1) hire a police officer to teach English; or (2) send an algebra teacher to the police academy. Neither scenario is realistic and renders the authority granted to boards of education to

arm staff members entirely meaningless.

An Ohio Peace Officer Training Academy-approved training academy requires at least 728 hours of instruction. Required instruction topics at a police academy include criminal offenses found in the Revised Code, community policing, driving, investigations, physical conditioning, patrol, traffic, and subject control. Police academies generally last either 18-to-24 weeks (full-time) or 36 weeks (part-time). A school employee tasked with educating students cannot complete police academy training while maintaining their job as an educator.

In addition, the vast majority of the content in a police academy is entirely useless to an elementary school principal. A high school government teacher does not need to know how to recreate a crash scene in order to carry a firearm to protect her students. Nor does a biology teacher need to know how to conduct a field sobriety test. Requiring a middle school art teacher to attend a 36-week long academy 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.

*Third*, schools will be less safe if the Twelfth District’s decision is applied throughout the entire State. This is not intended to be a dramatic alarm bell; it is simply a reality for many schools across Ohio. Different school districts have different resources. A common retort from those opposed to arming school staff is: just hire more school resource officers. But not all school districts have that capability. Hiring a school resource officer can cost a school district over \$50,000 per year; sending an administrator, teacher, or support staff to be trained at FASTER, for example, costs a school district a couple thousand dollars.

Unsurprisingly, the resource discrepancy between districts in Ohio is largely exacerbated between larger, suburban and urban districts and smaller, rural districts. This money gap, though,

has a direct impact on the ability of a school district to safely protect its students and staff. And where do most school shootings happen in America? Small towns. *See, e.g.,* Lisa Marie Pane, *Mass school shootings mostly happening in small-town America*, Chicago Tribune (May 22, 2018), available at <https://www.chicagotribune.com/nation-world/ct-mass-shootings-small-towns-20180521-story.html> (last accessed September 11, 2020). So it makes sense that most of the school districts in Ohio that have made the decision to arm staff come from smaller (and rural) districts.

Consider the difference between Cleveland Metropolitan School District and Noble Local Schools in Noble County. Cleveland's school has an enrollment of nearly 39,000 students in a district that covers 79 square miles. Each of the district's 107 schools 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 seconds from Cleveland's schools. Noble Local Schools, on the other hand, has 1,000 students and is a rural district over 289 square miles without a single stoplight. Its two schools are located on the outskirts of Sarahsville—which has a population of 166. The Noble County Sheriff's Office has a *minimum* 20-minute response time to Noble Local Schools.

The ability to have armed staff members is critical to Noble Local Schools protecting its students and staff. 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.

*Fourth*, the Twelfth District’s decision runs afoul of what the law says, but it also is contrary to nearly every interpretation of the statute. The General Assembly created a system that allows boards of education to arm staff members. It also appropriated money to FASTER Saves Lives—the State’s (and country’s) preeminent active school shooter training program—to assist in funding the training of armed staff members. Nearly 200 school districts from 79 of Ohio’s 88 counties have sent staff members to FASTER Saves Lives. In 2013, the former Attorney General determined 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. *See* January 29, 2013 Letter from the Attorney General and Executive Director of the Ohio Peace Officer Training Commission to Chairman of the Buckeye Firearms Association. The current Attorney General made the same determination. *See* 2019 Op. Att’y Gen. No. 2019-023.

The Districts want to be able to keep their students and staff safe. One way they have chosen to do that is by allowing certain staff members to possess a firearm in a school safety zone. The Districts realize that choice may not be the best one for other school districts across the State; but they have determined it is for them. The Districts, like many others throughout the State, simply want to be able to protect their students.

## **V. CONCLUSION**

Amici curiae Claymont City Schools, East Guernsey Local Schools, Edgerton Local Schools, Hardin Community School, Hardin-Houston Local Schools, Jackson Center Local Schools, Mad River Local Schools, Manchester Local Schools, Morgan Local Schools, New Lebanon Local Schools, Noble Local Schools, River View Local Schools, Rolling Hills Local School District, Russia Local Schools, Sidney City Schools, Streetsboro City Schools, and Upper

Scioto Valley School District respectfully request that this Court reverse the decision of the Twelfth District Court of Appeals.

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 15th day of September, 2020 via electronic mail:

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