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.		

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REDACTED VERSION (TO BE FILED PUBLICLY)

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INTRODUCTION

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 appellee parents and appellant school administrators alike want to keep schoolchildren safe. The parties disagree over the best way to do that, and indeed there is a heated nationwide debate about how to best address school safety. In this case the parties dispute a single question: 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? While the parties have different policy preferences, it is the Ohio Legislature that gets to establish policy for the State. And it already answered this question in R.C. 109.78(D), which the parties agree has not been amended or superseded by any other law. The parties, and this Court, are bound to follow the dictates of that statute.

This case, then, turns on the meaning of R.C. 109.78(D). The plain text of this statute 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. R.C. 109.78(D) (emphasis added). The "clear and unambiguous dictates" of this statute, as the Twelfth District held, cover teachers, administrators, and other school employees who carry firearms—i.e., go "armed" during the school day while going about their jobs—i.e., "while on

duty." The policy adopted by the Madison Local School District Board of Education (the "Board") violates this statute because it requires only twenty-four hours of training for school staff members to receive the Board's authorization to carry a firearm at school.

The Board and its amici want this Court to rewrite R.C. 109.78(D), such that it applies only to school employees in "comparable" or "similar" positions to security guards and special police officers, or, alternatively, to narrow the statute to those school positions where an employee is "hired to" or is required by their job description to go armed. In their view, the current requirements are too onerous and each school district should be left to make its own determination as to the training of armed teachers, with no state oversight. School districts, they say, can authorize teachers to carry concealed firearms in classrooms or on the playground with only the eight hours of training currently needed for a concealed carry license, or with no training whatsoever if the district authorizes teachers to open carry. The state training requirements, they say, simply do not apply to school employees who "go armed while on duty" unless that person holds a position with a particular job description.

But R.C. 109.78(D) contains no such limiting language, and the Court cannot add it where the Legislature did not. If the Board believes that teachers and other school staff should be exempted from the statute's training requirements, it can ask the Legislature to change the law (indeed, some groups already have). As the Twelfth District acknowledged, regardless of the jurists' personal views, it was not up to the

court to "decide the wisdom" of existing law. *Gabbard v. Madison Local Sch. Dist. Bd. of Edn.*, 12th Dist. Butler No. CA2019-03-051, 2020-Ohio-1180, ¶ 14. 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). This Court should follow the plain meaning of the statute's text and affirm.

STATEMENT OF THE CASE AND FACTS

I. Statutory Background

Ohio law broadly makes it a crime for anyone to carry a firearm on school grounds. *See* R.C. 2923.122(B). Specifically, in 1992, the General Assembly amended Title XXIX (Crimes) to make it a crime to possess or convey a deadly weapon in a school zone. 1991–1992 Am.Sub.H.B. 154, Section 2923.122. It included a few exceptions to this new crime. For instance, it exempted law enforcement officers who bring firearms into any part of a school safety zone, including a school building, as part of their job. R.C. 2923.122(D)(1)(a). It also exempted "security officer[s]" who are employed by a school and carry a weapon "pursuant to that contract of employment." *Id.* 2923.122(D)(1)(a).

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." The Board and Attorney General dub this the "Authorizing Statute," but the operative

language in R.C. 2923.122(D)(1)(a) does not affirmatively grant any authority to school boards or address the scope of school board authorization for armed teacher programs. It is more appropriately called the "Criminal Statute," because all R.C. 2923.122(D)(1)(a) says is that a person carrying a firearm in a school building in accordance with board authorization cannot be prosecuted for doing so. That is all the statute does.

The Criminal Statute does not override any other law, including the preexisting training requirements in R.C. 109.78(D). That statute provides:

> 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* R.49, Pls.' MSJ Ex. L, at 1347 (House Journal). But the General Assembly ultimately rejected this language and enacted 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 currently 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* R.49, Pls.' MSJ, Ex. A; Ohio Adm.Code 109:2-1-16.

On several occasions, the Legislature has considered exempting teachers and other employees authorized to carry guns at school by a school board from R.C. 109.78(D)'s peace officer training 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." R.4, Compl. ¶ 30; *see also id.*, 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 requirement. But it did not pass the Senate and was not enacted into law. *See* 2013–14 Am.Sub.H.B. No. 8, Section 109.78 (as passed by House). Other such proposals have occasionally been advanced, but they too have failed. *See, e.g.*, 2017–18 Am.Sub.H.B. No. 693, Section 109.78 (as introduced). Last month, in the wake of the Twelfth District decision in this case, a Senate committee approved new

legislation that would eliminate the training requirement for teachers and others authorized by school boards to carry firearms. *See* 2019–20 Am.Sub.S.B. No. 317 (as reported). That bill is now pending. But as the law stands today, the training requirement of R.C. 109.78(D) remains in full force and effect.

II. Factual Background

On April 24, 2018, the Madison Local School District Board adopted the "Resolution to allow armed staff in school safety zone." Board Supp.3. 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 completed twenty-four hours of active shooter training with an approved vendor; (ii) have a concealed carry license; and (iii) have completed a mental health examination and background check. *See id.*; *see also* Board Supp.5–6 (Firearms Authorization Policy).

Over the summer of 2018, several Madison staff ("John Does") participated in a 27-hour private training program called "FASTER," that has no OPOTC oversight. R.51, Stip., ¶¶ 11, 19. 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." Parents Supp.1–4 (authorization letters). It is undisputed that the John Does have not completed basic peace officer training and do not have twenty years' experience as peace officers. R.51, Stip., ¶ 21.

III. Procedural Background

The appellees in this case are parents of students in the Madison Local School District and the appellants are the district's board and superintendent. The parents initiated this action because they are concerned about the safety risk to their children from insufficiently trained school staff carrying guns at school. They are not against guns; indeed, several plaintiffs are gun owners. Nor do they dismiss concerns about school safety; they all had children at school in 2016 when there was a shooting in the cafeteria and one parent, who is a firefighter, was one of the first to respond to the scene. R.22, Aff. of B. Adams ISO Prelim. Injunct., ¶ 3. Nonetheless, the parents are concerned about the tragic and fatal accidents that could befall their children when armed school staff have insufficient training and are carrying firearms all day, every day, in their children's classrooms and on the playground. Therefore, they brought this action seeking a declaration that the Resolution violates R.C. 109.78(D)'s training requirement. They also sought a preliminary injunction halting the Resolution's implementation. R.22, Mot. for Prelim. Injunct.

Following a consolidated hearing on the merits and the preliminary injunction motion, the Butler County Court of Common Pleas denied the parents' motion for declaratory judgment and granted the Board's motion for summary judgment. Board Appx.22–28. It held that R.C. 109.78(D) applied only to those serving as security guards or in a "police-like capacity," not teachers or other staff. *Id.*, Appx.26. The trial court

admitted that its ruling required "adding language" to R.C. 109.78(D) that was not in the statute's text. *See* R.108, 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. Board Appx.26. Not only are titles inappropriate for statutory construction, *see* R.C. 1.01, but the trial court also got the title wrong.[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. 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 apply canons of construction that would depart from the plain language of the statute. *Id.* at ¶ 20. That would, it explained, "violate [the] court's duty to apply, not interpret, an unambiguous statute." *Id.* at ¶ 17.

[1] Along with their declaratory judgment action, the parents also brought a petition for mandamus to compel the Board to disclose public records related to the Resolution. R.4, Compl. ¶¶ 97–113. This public records request is not at issue in this appeal, as the requested documents either did not exist or were produced during the course of the trial court proceedings. *See, e.g.*, R.17, Board's Mot. for Partial Dismissal, Ex. A (indicating requests for which "no responsive public records exist"). For this reason, the mandamus action was dismissed as moot pursuant to a joint stipulation of the parties. R.107, Order on Joint Mot. for Voluntary Dismissal.

On appeal, the Board and Attorney General advanced the same statutory construction arguments that they do here, relying on a school board's authority under R.C. 2923.122(D)(1)(a) to authorize persons to carry firearms in school zones. The Court of Appeals rejected these arguments, reasoning that R.C. 2923.122(D)(1)(a) and R.C. 109.78(D) "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. And it was immaterial that the Board found the training overinclusive or too onerous because the text was clear. "Should the legislature want to reduce the amount of training or experience for teachers and staff, it is their legislative prerogative to create such an exception," it explained, but the "court cannot ignore the requirements of R.C. 109.78(D)." *Id*.

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 set forth 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, as the Board urges, Judge Hendrickson 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." *Id*. at ¶ 35. They are armed and ready to "immediately respond to an active shooter incident." *Id.* And "[i]n this respect," they are "performing tasks no different than a hired special police officer or security guard." *Id*. It would be anomalous, he reasoned, that "the legislature would recognize the need to protect students by ensuring that school peace officers and security guards who are armed are properly trained and experienced, but then allow administrative staff and teachers employed by the school to walk around armed after having only minimal training." *Id.* at ¶ 37.

Judge S. Powell dissented because he viewed R.C. 109.78(D) as ambiguous. Using the statutory canon ejusdem generis, he reasoned that the training requirement applies only to those with "similar" positions to security guards and special police officers, like "school resource officers and school security officers." *Id*. ¶ 46.[2]

This Court stayed the Twelfth District's judgment pending the outcome of this appeal and sua sponte expedited the briefing schedule. *See* Case Announcements, 2020-Ohio-4197 (Aug. 26, 2020).

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[2] The Court of Appeals affirmed the trial court on a second issue, not before this Court. The trial court had issued a protective order over some of the information and documents produced during discovery, namely the identities of Madison's armed staff and the mental health evaluations that they underwent before receiving authorization to carry guns on school grounds. R.75, Protective Order. The parents have always agreed that the names and identities of the armed staff should be kept secret and be redacted. *See, e.g.*, R.57, Opp'n to Mot. for Protective Order, at 2. The parents asked that the mental health evaluations be unsealed (with the identities of the staff redacted) so that parents in the district could evaluate the Board's claims that it was acting responsibly in arming staff. The parents have not cross-appealed on this issue.

ARGUMENT

Parents' Proposition of Law: Ohio law requires a school employee to meet the training or experience requirements of R.C. 109.78(D) if "such person goes armed while on duty."

This is a case of straightforward statutory interpretation, where the Twelfth District hued to R.C. 109.78(D)'s plain text. This Court should affirm.

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

As an initial matter, the Board seeks to confuse which statute governs the parties' dispute as to how much training armed school staff must complete. As the Twelfth District recognized, R.C. 109.78(D) is the governing statute. Seeking to avoid the plain language of R.C. 109.78(D), however, the Board focuses on the Criminal Statute—R.C. 2923.122(D)(1)(a)—arguing that it governs the case and gives school boards broad discretion to authorize teachers and other staff to go armed while on duty with whatever training the school board chooses. But, as the Twelfth District Court of Appeals appropriately concluded, the Criminal Statute does not displace any other applicable laws, including R.C. 109.78(D). *Gabbard*, 2020-Ohio-1180, at ¶¶ 16–18.

Contrary to the Board's position, the Criminal Statute does not confer school boards with an unencumbered "right," or "great latitude" to authorize their employees to go armed while on duty. Board Br. at 2, 8; AG Br. at 11. Section 2923.122 establishes criminal penalties for any person 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 rests its authority for arming staff—with whatever level of training it chooses—on this lone criminal provision "that excludes certain individuals from the offense of possessing a deadly weapon in a school safety zone." *Gabbard* at ¶ 2.

The Criminal Statute, however, does not displace any other applicable requirements for armed school staff members in the Ohio Revised Code—including R.C. 109.78(D). The Board emphasizes that the Criminal Statute "does not prescribe the terms and conditions" of armed teacher programs nor "the qualifications or training an authorized individual must have." Board Br. at 1. It stresses that the Criminal Statute "makes no reference—not even an implicit one—to R.C. 109.78(D) or any other statute that might limit the discretion enjoyed by a board of education." *Id*. at 8. The Board and its amici take this silence as an invitation for local "experiments" with how much training armed teachers should have—whether that be the peace officer training, the 27-hour FASTER program, the eight hours of training required for one's concealed carry permit (six hours can be completed online), or *no training at all* if a board allows its staff to open carry. *See* Board Br. at 9; AG Br. at 11; Districts' Br. at 6–7.

But the statutory silence is fatal to their argument. True, the Criminal Statute itself imposes no training requirements, but it also says nothing to suggest that it displaces or supersedes any separately applicable requirements, like the training

mandate imposed by R.C. 109.78(D). It is immaterial that the Criminal Statute does not cross-reference or "hint" at the training requirement in R.C. 109.78(D). Board Br. at 10. It does not have to. When the General Assembly enacted the Criminal Statute, it did not impliedly repeal the preexisting training requirements of R.C. 109.78(D). *See State ex rel. Specht v. Painesville Twp. Local Sch. Dist. Bd. of Edn.*, 63 Ohio St. 2d 146, 148, 407 N.E.2d 20 (1980) (repeal will not be implied by later-enacted statute unless the statutes are "irreconcilable"). It has long-since been established that "[l]egislatures are presumed to know, when passing any act, what the existing law is." *Carey v. Commrs. of Montgomery Cty.*, 19 Ohio 250, 271 (1850). And "it is in force until changed by [new] legislation." *Id*. So, for the Criminal Statute to override or narrow R.C. 109.78(D), there would have to be a conflict between the statutes. But there isn't.

For statutes to be in conflict, they have to be irreconcilable, such that they cannot both be given full effect. *See Davis v. Justice*, 31 Ohio St. 359, 360–61 (1877). Unsurprisingly, the appellants do not argue now, and have never argued in their many stages of briefing, that there is a conflict between the statutes. Instead, as the Twelfth District explained, the statutes fit together: one statute exempts armed school employees from prosecution if they have school authorization to carry in the school zone; the other establishes the training level that armed employees must have. *Gabbard*, 2020-Ohio-1180, at ¶ 18 (explaining that although "the school board may provide written authorization so that an individual is not subject to prosecution under R.C.

2923.122, the school board is still subject to the training requirements" under R.C. 109.79(D)). Because the statutes can be read harmoniously, they must be. *See Davis* at 360–61 ("Two or more laws must be so construed as that both can stand unless they are clearly repugnant," and "so contrary that they can not be reconciled.").

Indeed, the Board concedes that its discretion to authorize armed staff under the Criminal Statute is subject to other statutory limits. It admits that "of course" the authorized staff can go armed only in accordance with the State's concealed carry law, including the eight-hour training required by R.C. 2923.125, "[b]ecause Ohio law requires it." Board Br. at 3. 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. The Board cannot pick and choose which statutory provisions it will abide by. As with these other requirements that constrain the Board's authority, it must also comply with R.C. 109.78(D).

The upshot, as the Court of Appeals declared, is that the Board "cannot circumvent R.C. 109.78 by relying on R.C. 2923.122, a criminal statute, to implement its [R]esolution." *Gabbard* at ¶ 18.

II. The Twelfth District correctly held that R.C. 109.78(D) requires school employees who carry firearms while on duty at school to meet that statute's training or experience requirement.

The "plain and unambiguous" language of R.C. 109.78(D) requires school employees who go "armed while on duty" at school to meet that statute's training or experience requirement. *Gabbard*, 2020-Ohio-1180, at ¶ 17. Because the Board's Resolution allows teachers, administrators, and other school employees to go "armed while on duty" without satisfying this requirement, it is invalid.

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

The first step in applying 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 (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) states: "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). This statute, by its plain language, unambiguously covers teachers, administrators, and other school employees who carry guns during the school day while going about their jobs. Resort to a dictionary is not even necessary, but it confirms the point. The district employs teachers, coaches, administrators, and other people 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 go "armed"—which means "equipped with or carrying a weapon." *See id.* at https://perma.cc/A374-4AT2. And they are armed while "on duty"—that is, while "[e]ngaged in one's regular work." *See id.* at https://perma.cc/2YLN-227H. The confluence of these three prerequisites 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: a school employee in a "position in which such person goes armed while on duty," must meet the R.C. 109.78(D) training or experience 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 appellants *themselves* used in describing the armed staff. *See Gabbard*, 2020-Ohio-1180, 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." Parents' Supp.1–4 (authorization letters (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* R.22, Pls' Prelim. Inj. Mem., Ex. F (Collective Bargaining Agreement). 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 the Board's own plain language, teachers and staff who carry firearms at work in the school fall within R.C. 109.78(D)'s scope and thus must meet the statute's training requirement.

B. The Board's reading of R.C. 109.78(D) requires adding words to the statute.

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 Board and its amici propose various—and sometimes conflicting—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 in a given school (e.g., an assistant principal) provided a security function. Board Supp.7–8. The term "security personnel"—which he placed in quotation marks—does not appear anywhere in R.C. 109.78(D). Now, years later, the Board and its amici want to take it even further. They want to insert yet more words to

limit the statute to those school employees in "like," "similar," or "comparable" positions to special police officers or security guards, where the employees' "principal duties" involve providing security and where carrying a firearm is "necessarily" an "inherent part" of their designated position. Board Br. at 11–13; AG Br. at 3, 13.

As the Attorney General admits, under its interpretation there could be "countless factual permutations," each of which would need to be considered to determine if an employee falls within its reading of R.C. 109.78(D). 2019 Ohio Atty.Gen.Ops. No. 2019-023, at 3 (opining that whether an armed employee must comply with R.C. 109.78(D) depends "not only on [the employee's] title, but, more tellingly, on the duties and responsibilities assigned thereto."). Fortunately, no school district or court has to parse all of these proposed interpretations or make fact-intensive inquiries about job titles, position requirements, or the scope of assumed responsibilities to determine precisely which armed employees need the training. The Legislature drew a bright line: employees in a "position in which such person goes armed while on duty" must have the requisite training or experience. The Board cannot "unilaterally change" the statute. *Gabbard* at ¶ 19. It must adhere to it as written.

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. None of these various modifiers are in the text of the statute. Indeed, the Legislature specifically deleted the word "similar"—as in "similar position"—from the

original draft of the statute. *See supra* at 4. Neither the Board nor this Court can now insert what the Legislature chose to exclude.[3]

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*, 150 Ohio St.3d 368, 2017-Ohio-1410, 81 N.E.3d 1242, at ¶ 11; *see Wachendorf v. Shaver*, 149 Ohio St. 231, 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."). This Court has held time and again that "it is the duty of the court to give effect to the words used in a statute, not to delete words used or to insert words not used." *Bailey v. Republic Eng. Steels, Inc.*, 91 Ohio St. 3d 38, 39–40, 741 N.E.2d 121 (2001) (citing *Cleveland Elec. Illum. Co. v. Cleveland*, 37 Ohio St. 3d 50, 524 N.E.2d 441 (1988),

[3] The Attorney General argues that the legislative history also supports his view that R.C. 109.78(D) was targeting only peace-officer-related positions because the House Journal says the law's intent was to "'to prohibit circumvention of the requirements for appointment *as a peace officer*.'" AG Br. at 28 (emphasis sic) (quoting House Journal, R.49, Ex. L, at 1347). That is wrong. Portions of the House Journal that the Attorney General selectively omits make clear that the quoted phrase refers to section 109.77—not to section 109.78. As introduced, House Bill 575's intent was "[t]o amend sections 109.71 and 109.77 of the Revised Code to define peace officer, and to prohibit circumvention of the requirements for appointment as a peace officer." R.49, Ex. L, at 386. This makes sense, because the original bill amended R.C. 109.71 to define "peace officer" and R.C. 109.77 to say that "no peace officer shall have his employment terminated and then reinstated with intent to circumvent this section." Language to enact section 109.78 was added in a later substitute bill, and the description of the bill's intent was simply carried over with a reference to 109.78 appended. When viewed in its full context, the phrase that the Attorney General quotes is not about R.C. 109.78(D).

paragraph three of the syllabus). 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 566 (1975).

C. The plain language of R.C. 109.78(D) does not exempt employees who volunteer to go "armed while on duty" at school.

The applicability of R.C. 109.78(D) does not turn upon whether a school employee volunteers to carry a firearm while on duty at school or is specifically hired to do so; nothing in the statute's plain language makes this distinction. The Board and the Attorney General argue that the authorized staff cannot fall within R.C. 109.78(D)'s text because they are "approved volunteers," and therefore are not armed in their "positions" as teachers, administrators, and other school staff. Board Br. at 11–12; AG Br. at 3–4, 14–15. They argue that R.C. 109.78(D)'s training requirement applies only to some armed employees depending on whether they are "hired to" or "paid to" carry a firearm. Board Br. at 12; *see also* AG Br. at 14 (arguing that because R.C. 109.78(D) applies to people a school "employs," the training requirement is only "triggered by *employment* in a security-related job," not volunteering. (Emphasis sic.)).

The Court of Appeals rejected this argument for good reason: This distinction is not embedded in the word "employ" or "position"—nor is it otherwise dictated by the statute's text. *Gabbard*, 2020-Ohio-1180, at ¶ 19. As the Twelfth District reasoned, the

"approved volunteer" designation does not alter the "inevitable conclusion" that the John Does are covered by R.C. 109.78(D) because regardless of whether they volunteered, "the teachers and staff members are *employed* by Madison Local in a *position* in which they go into a school 'armed while on duty." *Id.* (emphasis added).

Rather than focusing on a particular job description, the statute is framed in terms of the "person" employed by a school. Read in full, R.C. 109.78(D) says a school cannot "employ a *person* as a special police officer, security guard or other position in which *such person* goes armed while on duty." (Emphasis added.) The words "other position" do not limit the statute to particular jobs, but instead *extend* the training requirement to a "person" the school employs in an "other position" *besides* a special police officer or security guard. The definitive factor is whether "*such person* goes armed while on duty,"—not the job title or whether an employee volunteers to go armed. Contrary to the Attorney General's argument (at 14–15), "a teacher who *chooses* to carry a weapon at work" does in fact "work in a 'position' in which she 'goes armed while on duty." (Emphasis sic.) And none of the Attorney General's examples about valets, landscapers, or lawyers shows that R.C. 109.78(D) is limited to those specifically employed to carry a firearm. *See* AG Br. at 4, 15. If a valet voluntarily carries his gun to work, the parking company would "employ a person" in a "position" other than a security guard or special police officer, "in which such person goes armed while on duty." One might not typically think that teachers go armed at work, just like

landscapers, valets, lawyers, or the other examples the Attorney General cites. But under the Resolution, they do. Thus, the Board "was obligated to follow the dictates of R.C. 109.78(D)." *Gabbard* at ¶ 19.

Moreover, as the concurrence pointed out, the armed staff members in fact provide security as part of their "position" as teachers, administrators, or other school staff. *See id.* at ¶ 35 (Hendrickson, P.J., concurring). Thus, even if the statute were ambiguous (it's not) and the "position" had to involve "security" (it doesn't), as the concurrence recognized, "Madison Local's authorized armed employees must still meet" R.C. 109.78(D)'s training or experience requirement. *Id.* at ¶ 33. The John Does are authorized to carry firearms "in order to protect students and staff" with, if necessary, deadly force. *Id.* at ¶ 35; *see also* Parents' Supp.1–4 (letters authorizing armed staff "as an additional safety measure to protect our students and staff from harm"); Board Supp.3 ("Resolution" is for the "welfare and safety of the Students"). The District paid at least $3,000 out of its funds to send the John Does to a training that teaches them to "hunt the bad guy," "approach gunfire," and "kill." *See* R.49, Pls' MSJ, Ex. O (payment records); R.96, Doe 1 Tr. 40:12–41:3; R.96, Doe 3 Tr. 43:17–44:6; R.96, Doe 2 Tr. 29:14–30:3. And they are authorized to carry firearms 100% of the time they are "on duty" at school. Parents' Supp.1–4 (authorization letters). Thus, like a security guard, they are ready at all times to "immediately respond to an active shooter incident" or otherwise protect students with their firearm. *Gabbard* at ¶ 35 (Hendrickson, P.J., concurring). Indeed, the

separate insurance policy the District obtained for the John Does only covers "law enforcement activities," R.49, Pls' MSJ, Ex. K, Sections I.A & I.C.5, confirming that the John Does are operating in a law enforcement capacity while on duty at school.

Providing this security becomes part of their position as a teacher or other job. The John Does must keep the Board apprised of any updates with their health that may impair this security function. *See* Board Supp.6 (Firearms Authorization Policy). And if they violate the terms of their authorization, not only can the Board revoke their authorization to carry a firearm, but it also can fire them entirely. *See* Parents Supp.1–4 (advising John Does: "Any abuse of this authority could result in discipline up to and including termination."). Accordingly, the fact that the John Does volunteer to go armed while on duty to provide this security function does not make it divorced from their "position."

Teachers, administrators, and school staff volunteer for all types of activities not required by their job descriptions; chaperoning dances, supervising clubs, fundraising for uniforms, transporting students to academic competitions—the list is endless. Even if not hired or paid to specifically, or not incorporated into a formal job description, they still do these things as part of their "position[s]" at the school. This reasoning applies equally to providing armed security at the school.[4]

[4] For these reasons, to the extent this Court concludes that the armed personnel must serve in a security capacity to fall within R.C. 109.78(D), they unequivocally do. As the appellees argued below, and as the concurrence agreed, the Court could affirm

Accordingly, there is no exemption in R.C. 109.78(D) for a person a school employs in a "position in which such person [voluntarily] goes armed while on duty." Like the Court of Appeals, this Court should reject the Board's attempt to engraft this exception into the statute's text.

III. The Board and its amici's various additional arguments for rewriting the statute fail.

Because their interpretation of R.C. 109.78(D) is not supported by the plain language, the Board and its amici proffer various reasons for departing from the text. The Court of Appeals correctly recognized that it was bound to apply the unambiguous text of the statute and had no basis to consider other canons of statutory interpretation to discern legislative intent. *Gabbard*, 2020-Ohio-1180, at ¶ 17 ("[W]e find that such a request would violate this court's duty to apply, not interpret, an unambiguous statute."). This Court should do the same; it need not, and therefore it should not, veer beyond the plain language. But even if this Court did so, the Board and its amici's statutory construction arguments would still fail.

A. Ejusdem generis is not applicable and, if applied, would render the statutory language superfluous.

To support adding this non-existent language to the statute, the appellants and the Attorney General rely on ejusdem generis—the canon of statutory construction whereby a "catch-all term" used to conclude a list is construed in accordance with the

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on that alternative basis. *See* R.50, Pls' MSJ, at 13–15; R.28, Br. of Appellants Erin Gabbard et al, at 13 n. 3.

preceding list. Because the statute mentions "special police officer" and "security guard," they contend that the following "other position" phrase should be construed to include only "similar" or "comparable" security roles. Board Br. at 12; AG Br. at 13–14. Not so. The Court should not "woodenly apply limiting principles every time [the General Assembly] includes a specific example along with a general phrase." *Ali v. Fed. Bur. of Prisons*, 552 U.S. 214, 227, 128 S.Ct. 831, 169 L.Ed.2d 680 (2008). And, as the Twelfth District recognized, ejusdem generis not appropriate here.

Ejusdem generis applies only where the statute is ambiguous about its scope based on its plain language. *See Harrison v. PPG Indus., Inc.*, 446 U.S. 578, 588, 100 S.Ct. 1889, 64 L.Ed.2d 525 (1980) (refusing to apply the canon because there is "no uncertainty in the meaning of the phrase."); *Brooks v. Ohio State Univ.*, 111 Ohio App.3d 342, 349–350, 676 N.E.2d 162 (10th Dist.1996) (holding that "the doctrine of ejusdem generis need not be applied" where "the words of the statute are clear"). If a statute is unclear, courts sometimes use ejusdem generis to construe an ambiguous catch-all phrase "as embracing only things of a similar character" that have the same "well-known and definite features and characteristics" of the other categories listed. *State v. Aspell*, 10 Ohio St.2d 1, 4, 225 N.E.2d 226 (1967). But "other position" is clearly limited by the phrase "goes armed while on duty." *See* R.C. 109.78(D). The statute does not generally say it applies to a person serving in an "other position"—it specifies that it applies to "other position[s] *in which such person goes armed while on duty*." *Id.* (emphasis added).

As such, the General Assembly has already specified the "definite feature[] and characteristic[]" that makes the training requirement applicable: whether the employee goes "armed while on duty." *Aspell* at 4. And 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 should 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"). That is even more so when the Legislature considered and deleted the word "similar" in drafting 109.78(D). *See Levorsen v. Octapharma Plasma, Inc.*, 828 F.3d 1227, 1233 (10th Cir.2016) (rejecting edjusdem generis in part because Congress changed the statuary language when drafting "from 'other *similar* service establishments' to 'other service establishments,' presumably to make clear that a particular business need *not* be similar to the enumerated examples." (Emphasis sic)).

In response, the Attorney General argues that the Court must apply the canon ejusdem generis as its *first* step in looking at the statute, regardless if there is ambiguity, because the canon is needed to understand the statute's plain meaning. AG Br. at 21–22. That puts the cart before the horse; the Court does not apply canons of statutory interpretation if the plain language of the statute is clear. And there is no special rule for ejusdem generis that would allow it to precede a plain language analysis, as this Court affirmed last year. *See City of Cleveland v. State*, 157 Ohio St.3d 330, 2019-Ohio-3820,

136 N.E.3d 466, ¶ 23 (holding that when the language is "plain and unambiguous" the Court may not "resort to . . . canons of construction such as the doctrine of ejusdem generis.").

Undeterred, the Attorney General next argues that even though the General Assembly already carefully defined the scope of which "positions" must meet the training requirement—i.e., those in "positions in which such person goes armed while on duty"—there is still room for "interpretation" because a "qualified catch-all is a catch-all nonetheless." AG Br. at 23. He asks this Court to further narrow the General Assembly's words even when they are clear as written. And not only does he and the Board request that the Court limit the "other position" phrase to mean "other similar positions," but also to mean those where the "principal duties" are security related and the employee's job "necessarily involves" carrying a firearm. AG Br. at 12–14; Board Br. at 12. At what point then, would a court stop narrowing a statute's scope beyond the limits set forth in the statute? The Attorney General does not say. The answer is that the Court should not invoke the canon in the first place.

Lest the Court need more confirmation that it would be improper to apply ejusdem generis, doing so would violate other canons of statutory construction, and thus, should not apply. *See United States v. Alpers*, 338 U.S. 680, 682, 70 S.Ct. 352, 94 L.Ed. 457 (1950). 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). *See State v. Noling*, 153 Ohio St.3d 108, 2018-Ohio-795, 101 N.E.3d 435, ¶ 75. To avoid superfluity, 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 Board and its amici say that "other position" covers only a position where the employee's "principal duties" include "maintaining security." AG Br. at 3, 13–14; Board Br. at 11, 13. 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, throughout the entire course of this litigation, the only jobs the Board or any of its amici could think of that would be encompassed within their limited view of the "other position" phrase are "school resource officers" or "school security guards." Board Br. at 12; AG Br. at 14. Those groups are already covered by the statute's reference to "special police officer" and "security guard." Thus, the Board affords 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).

The U.S. Supreme Court cautions that ejusdem generis "cannot be employed to render general words meaningless." *Alpers* at 682; *see also Ali*, 552 U.S. at 226–227, 128 S.Ct. 831, 169 L.Ed.2d 680 (rejecting the application of ejusdem generis to a statute because if it did, it was "not clear when, if ever" the general phrase would apply); *see*

also Antonin Scalia and Bryan Garner, *Reading Law: The Interpretation of Legal Texts*, 209–210 (2012) (ejusdem generis does not apply if the narrowing construction of the catch-all phrase would mean "there is nothing left besides what has been enumerated"). But that is what it would do here.

B. The statutory context does not support the Board's narrow reading of R.C. 109.78(D)—it supports the plain language reading affirmed by the Twelfth District.

Next, the Board and its amici invoke the overall context of R.C. 109.78(D). Board Br. at 6; AG Br. at 15, 25. But looking to the statute as a whole further supports the *parents'* interpretation.

To start, the Attorney General argues that because "much" of R.C. 109.78 "addresses training for special police officers to be employed either by the state highway patrol or political subdivisions," R.C. 109.78(D)—despite its plain text—should be given the same gloss such that only those in "other [police-capacity like] positions" have to satisfy the training requirement. AG Br. at 15–16; *see also* Board Br. at 10. To be sure, as the Attorney General emphasizes, R.C. 109.78(D) uses different language from the other subsections—which address, among others, those employed in a "police capacity." AG Br. at 15–16 (quoting R.C. 109.78(C)). But "the General Assembly's use of particular language to modify one part of a statute but not another part demonstrates that the General Assembly knows how to make that modification and has chosen not to make that modification in the latter part of the statute." *Hulsmeyer v. Hospice of Sw. Ohio,*

Inc., 142 Ohio St.3d 236, 2014-Ohio-5511, 29 N.E.3d 309, ¶ 26. As a result, the Legislature's decision to specifically limit the scope of R.C. 109.78(A) and (C) to "persons otherwise employed in a police capacity" means that its choice *not* to do so in (D) demonstrates an intent for (D) to apply more broadly—to persons beyond just security personnel if they go "armed while on duty." This Court cannot insert the exact limitation from other subsections into R.C. 109.78(D) when the Legislature chose not to.

The Attorney General's context arguments make even less sense considering when the different subsections were added. The Legislature originally enacted R.C. 109.78 without the language that later became paragraphs (B) and (C), and thus, contrary to the Attorney General's argument, these paragraphs shed no light on how the Legislature originally understood the phrase "other position in which such person goes armed while on duty." *See* 1969–1970 Ohio Laws 2398, 2400 (session laws). Similarly, the Attorney General argues that the statute was really meant to target the "state highway patrol" and other state subdivisions. AG Br. at 15. Yet the "state highway patrol" was added into R.C. 109.78(D) over a decade *after* the Legislature had already set the training requirements for educational institutions that hire individuals who go "armed while on duty." The highway patrol reference thus has no bearing on the Legislature's intent with regard to schools. *See* 1987 Am.Sub.H.B. No. 419. There is no indication (and the Attorney General points to none), that when the General Assembly added the state highway patrol to the training requirements of R.C. 109.78(D)

it in any way wanted to narrow the existing scope of training required by school employees.

The Attorney General argues that it "makes no difference" that these subsections and the highway patrol language were added after the operative language for this case because "R.C. 109.78 *now* contains this language." AG Br. at 25 (emphasis sic). But pages later, it argues that "what matters is the purpose of the General Assembly *that enacted the law*." *Id.* at 30 (emphasis sic). Thus, by its own argument, the Attorney General should not be using these later-enacted subsections or amendments where, as here, those later-enacted provisions did not alter the operative language at issue in this case. *See Pension Ben. Guar. Corp. v. LTV Corp.*, 496 U.S. 633, 650, 110 S.Ct. 2668, 110 L.Ed.2d 579 (1990) ("[S]ubsequent legislative history is a hazardous basis for inferring the intent of an earlier [legislature].") (internal quotation marks omitted). But regardless of whether R.C. 109.78(D) is viewed in light of the full version today, or as enacted, there is no reason to alter the plain language reading of R.C. 109.78 based on the greater context of the statute.

If anything, as the concurrence recognized, the statutory scheme as a whole supports the parents' argument that armed teachers and staff are covered by R.C. 109.78(D). All other categories of persons who the General Assembly excepted from the general ban on firearms in schools—including federal agents, state law enforcement officers, and SROs—must have peace officer or like training. *See* R.C. 2923.122(D)(1)(a).

Yet outside of R.C. 109.78(D), Ohio law places no meaningful training or other requirements on a district's employees who carry guns at school. The Board agrees that if the Court adopts its interpretation, teachers and staff could carry firearms concealed in school with only eight hours of training (six of which can be completed online), or carry them openly with no training at all. Board Br. at 9; *see also* R.C. 2923.125(G)(1). It would upset Ohio's statutory scheme to give school districts carte blanche to impose whatever training requirements they want and allow teachers and staff—those closest to school children—to carry firearms in schools with minimal training, or none whatsoever. Schools could easily circumvent R.C. 109.78(D)'s requirement and not hire SROs and other trained professionals to protect kids, instead leaving teachers and other school personnel to provide armed protection without any state oversight or training.

Accordingly, the statutory scheme reinforces the plain text reading of R.C. 109.78(D) and reflects the General Assembly's intent, expressed through its plain language, that those persons carrying guns in school buildings must have substantial training or experience.

C. The Board's view that the training requirement is too onerous does not justify ignoring the plain language of the statute.

For its final argument, the Board asks this Court to stray from the text of the statute because of the "practical concerns" that it would face if it had to adhere to R.C. 109.78(D)'s mandate. Board Br. at 14–17; *see also* AG Br. at 16–19. Primarily, it argues that R.C. 109.78(D) unduly limits school boards' discretion to determine whether to arm

teachers because its training or experience requirements are too onerous. This argument, however, attempts to draw the Court into a policy debate.

While the Board argues that R.C. 109.78(D)'s training requirements are too long and too expensive, so too the parents and supporting amici argue that the Board's interpretation is similarly unreasonable because it would allow districts to authorize staff to go armed all day, every day, in school with only eight hours of training for a concealed carry permit, or none at all if the staff carry openly. With such little training, law enforcement experts—including the Fraternal Order of Police of Ohio, Inc.—say that "people will needlessly die," and the Legislature could not have intended such a tragic and reckless result. FOP Br. at 8. If the Board wants to contest the amount or type of training, and if local school districts want more latitude to deviate from R.C. 109.78(D)'s requirements, that debate belongs in the Legislature. It is not the role of the courts "to establish legislative policies or to second-guess the General Assembly's policy choices." *Stetter v. R.J. Corman Derailment Servs., LLC*, 125 Ohio St.3d 280, 2010-Ohio-1029, 927 N.E.2d 1092, ¶ 35. Thus, these "practicalities" are not "disqualifying"—they are policy debates for the General Assembly. Board Br. 14; AG Br. at 16.

The Board makes four arguments about the consequences of requiring school employees who go "armed while on duty" to meet R.C. 109.78(D)'s training or experience requirements. None merit the Court deviating from the statute's plain text.

First, the Board argues that requiring teachers, administrators and other school staff to meet R.C. 109.78(D)'s requirements would "gut" its "freedom" to authorize persons to carry firearms in school buildings. Board Br. at 2, 11, 16; AG Br. at 4. If these employees have to undergo extensive training, the Board argues that its "right" to implement an armed teacher program is "seriously circumscribed." Board Br. at 2, 10. This argument rests on a false premise. Nowhere did the General Assembly grant school districts broad, unencumbered latitude to implement armed staff programs under whatever "terms and conditions" they want. *Id.* at 1. Rather, the Board's authority rests only on R.C. 2923.122(D)(1)(a)—the Criminal Statute—which protects anyone authorized by a school board to bring a gun to school from going to jail. That's it. And, as described above (at 11–14), that provision does not supersede or displace any other applicable laws that mandate additional restrictions on a person a board employs who goes "armed while on duty"—whether it be the concealed carry permit requirements of R.C. 2923.125 (which the Board agrees applies, Board Br. at 9) or R.C. 109.78(D) (which the Board argues does not apply).

Moreover, there is nothing improper about the General Assembly giving boards only circumscribed authority; state law narrows local authority in many respects, including with respect to schools, education, and law enforcement. *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.

109.77(B) & (E) (mandating peace officer and training and criminal background check for various categories of law enforcement officers). It was perfectly acceptable for the Legislature to decide that boards could authorize their employees to go armed while on duty, but that such employees also had to have extensive training. Likewise, it could have wanted to grant school districts latitude to allow employees that already had law enforcement training or experience to provide security support in the school setting even if they were now coaches, teachers, or administrators. Or it could have wanted to give districts the ability to have law enforcement officers be armed when visiting campus, even when doing so is not part of their officer duties—they would need such authorization to avoid criminal penalty. *See* R.C. 2923.122(D)(1)(a) (exempting law enforcement only when acting in the "scope of their duties."). Thus, the discretion the Criminal Statute affords districts is not "meaningless." Board Br. at 15.[5]

Second, the Board argues that local school districts are "best situated" to make determinations about whether to arm school staff and what requirements to impose based on the circumstances particular to each district. Board Br. at 8. Given the differing

[5] In passing, the Board mentions that the General Assembly has appropriated funds to the FASTER program, suggesting that school districts should be able to rely on that 27-hour program to train its armed staff. Board Br. at 4; *see also* Districts' Br. at 10. But where, as here, an appropriations bill did not amend the statute, it should have little bearing on the analysis of the statutory text. *See Tennessee Valley Auth. v. Hill*, 437 U.S. 153, 189–190, 98 S.Ct. 2279, 57 L.Ed.2d 117 (1978). 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. *Id*. The Legislature can support a program as an enhanced training tool without it replacing the state's minimum standard.

rural and urban areas of Ohio, it argues that the General Assembly wanted local tailoring rather than a uniform training requirement. *Id.* at 16; *see also* Districts' Br. at 6–7. But whether to provide more or less local control, like deciding the amount of training, is a policy judgment left to the Legislature—and one that this Court must discern based on text, not a party's policy preferences. The concurring opinion explained that "[w]hen enacting laws regarding the amount of training required to become a peace officer, the legislature did not permit localities or individual police departments to determine training requirements based on their respective local needs." *Gabbard*, 2020-Ohio-1180, at ¶ 37 (Hendrickson, P.J.). It made the same choice about armed school employees in R.C. 109.78(D). And the Board's interpretation "if adopted, would create vast discrepancies among school districts throughout the state as to the extent of training and experience necessary to provide protection to Ohio school children," when the Legislature instead "required standardization and uniformity throughout the state" with respect to training. *Id.*

The record in this case further underscores why the General Assembly did not decide to leave the "terms and conditions" of arming school staff to the full discretion of local school boards without any state oversight. Specifically, the record—much of which the Board has sought to shield from the parents and the public—sheds doubt on the Board's claims that local districts are best situated to decide training and oversight standards for armed staff. When it came to adopting its Policy, the Board testified that

none of its members had law enforcement expertise nor even researched or investigated the various potential training options. *See*, *e.g.*, R.101, French Dep. Tr. at 108:23–109:21 (Board President testified that he is not "aware of any expertise held by a board member in terms of law enforcement training," and has none himself, and Board selected training program based on "information that's out there" on the internet.). The Board had no record of any "due diligence"—including research articles or data—it conducted in deciding to adopt its policy requiring only 24-hours of training. R.17, Bd's Mot. for Partial Dismissal, Ex. A (Board response to public records request). And when it came time to approve particular individuals, its process paled in comparison to the robust measures it assured the school community that it was taking. While the Board represented to parents that it would undergo a robust screening program for authorized armed staff members, including multiple interviews, intensive training, and a mental health evaluation, *see* Board Supp.1–2, discovery revealed that the reality was markedly different. *See* BieryGolick, *A failed firearm test and questions about mental health: Inside arming teachers at Madison*, Cincinnati Enquirer (Mar. 14, 2019) available at https://perma.cc/5S6D-ZZ75; *see also* R.48, Pls.' MSJ, at 10–12.

[redacted]

[redacted]

Another approved armed employee failed the firearms test multiple times. R.96, Doe 2 Tr. 66:18-67:17. [redacted]

[redacted]. The Board and the Attorney General want this Court to consider "real world" consequences. If it does, it has to consider these too.

Third, the Board and the Attorney General think it is unreasonable that the General Assembly would have required so much training for armed school employees, especially because in their view some of the peace officer training curriculum is not directly useful for armed school staff. They argue that many hours of the training go to "policing skills unrelated to the use of firearms," and call training in subjects like "human relations" a "waste of time" and "totally irrelevant" for armed teachers. Board Br. at 17; AG Br. at 7, 18, 26. It is, of course, within the Legislature's prerogative to require extensive training, especially when it comes to keeping children safe from gun accidents and violence at school. And the fact that armed school staff may have to complete a training that is in some parts overinclusive for their role, should not make the Court doubt the General Assembly's words requiring armed school employees to complete it. It makes sense that the Legislature chose the basic peace officer training because it is the state-certified and monitored program that provides extensive training.

Notably, school security guards—even those that are not SROs or special police officers—have to complete this training even though they too do not directly utilize some of the included skills, like responding to car crashes. *See* R.C. 109.78(D) (schools cannot employ person as a "security guard" without the peace officer training or twenty years' experience). But neither the Board nor Attorney General doubts that

under R.C. 109.78(D) a school security guard still has to undergo the full peace officer training. So too with teachers, administrators, and other armed staff.

By requiring basic peace officer training or twenty years' experience, the General Assembly assured that all employees who carry firearms in the classrooms, cafeterias, and gymnasiums with school children were well prepared to deal with myriad stressful situations that may arise. The parents do not dispute that it is more onerous training, but the "General Assembly is responsible for weighing [policy] concerns and making policy decisions." *Groch v. Gen. Motors Corp.*, 117 Ohio St.3d 192, 2008-Ohio-546, 883 N.E.2d 377, ¶ 212 (quotation marks omitted). And its decision to err on the side of overinclusive training should not be "second-guessed" by a court. As firearms experts explain, many "policing skills unrelated to the use of firearms"—which the Attorney General finds irrelevant (at 18)—indeed bear on whether a teacher can safety control a gun at school without fatal accidents and respond appropriately in stressful, chaotic, situations. *See* R.22, Aff. of Capt. H. Rahtz, at ¶¶ 15–24. An extensive training course also helps weed out individuals who do not have the mental fortitude or do not exhibit the appropriate level of judgment to complete the state-approved course. *Id.* at ¶ 24.

School districts can, of course, ask the Legislature to exempt them from the peace officer requirement and have OPOTC develop a more tailored program. But that is not the current law. *See, e.g.*, 2013–14 Am.Sub.H.B. No. 8, Section 109.78 (as passed by House, but not passed by the Senate) (requiring the Attorney General to design training

course for armed school staff); 2017–18 Am.Sub.HB. No. 693, Section 109.78 (as introduced) (same).

Lastly, the Board argues that the plain language of R.C. 109.78(D) should be jettisoned because it "creates an untenable distinction" between employees and non-employees a school district could authorize to carry firearms at school. Because R.C. 109.78(D) applies only to a person a school employs, the Board posits that a district "could authorize anyone not employed by the district—perhaps a parent or a retired teacher—to carry a concealed weapon on school property and have them sit in each classroom or at each school entrance" and it "would not trigger the requirements in R.C. 109.78(D)." Board Br. at 15. True enough, but notably no party or amicus has suggested that any district does this or wants to do this. And that is unsurprising because there are other constraints on a board authorizing untrained armed volunteers to police schools, including a lack of oversight, *see* AG Br. at 17, and serious liability issues. Moreover, the Legislature does not have to provide rules for all possible hypothetical scenarios that have not, and are unlikely to, materialize.

The Board's interpretation would also lead to anomalous results. As noted above (at 31–32), all other persons who carry guns in a school building are highly trained, such as law enforcement officers who are acting in the course of their jobs or SROs, who the General Assembly has recently mandated have even more than the basic peace officer training. R.C. 3313.951(B). As the concurrence stated: "It makes little sense that the

legislature would recognize the need to protect students by ensuring that school peace officers and security guards who are armed are properly trained and experienced, but then allow administrative staff and teachers employed by the school to walk around armed after having only minimal training" or none at all. *Gabbard*, 2020-Ohio-1180, at ¶ 37 (Hendrickson, P.J.). The Board's reading would allow schools to circumvent the SRO requirements altogether, by allowing inadequately trained staff members to go armed rather than hiring trained security.

Accordingly, the Board's reliance on what it views as the negative consequences of the Twelfth District's decision provide it no support. This Court should hew to the plain text of R.C. 109.78(D), just as the Twelfth District did, and decline the Board and its amici's invitation to rewrite the statute.

CONCLUSION

For these reasons, the parents respectfully request that the Court affirm the decision of the Twelfth District Court of Appeals.

Respectfully submitted,

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