

IN THE SUPREME COURT OF OHIO

ERIN GABBARD, et al.,	:	CASE NO. 2020-0612
	:	
Plaintiffs-Appellees,	:	ON APPEAL FROM THE BUTLER
	:	COUNTY COURT OF APPEALS,
v.	:	TWELFTH APPELLATE
	:	DISTRICT
MADISON LOCAL SCHOOL DISTRICT	:	
BOARD OF EDUCATION, et al.,	:	COURT OF APPEALS CASE NO.
	:	CA2019-03-51
Defendants-Appellants.	:	

**AMICI CURIAE BRIEF OF
EXPERTS IN SCHOOL SAFETY AND FIREARMS TRAINING
IN SUPPORT OF PLAINTIFFS-APPELLEES**

C. Benjamin Cooper (0093103)
Counsel of Record
Sean R. Alto (0087713)
COOPER & ELLIOTT, LLC
305 West Nationwide Boulevard
Columbus, Ohio 43215
(614) 481-6000
(614) 481-6001 (fax)
benc@cooperelliott.com
seana@cooperelliott.com

*Counsel for Amici Curiae
Experts in School Safety and
Firearms Training*

Rachel Bloomekatz (0091376)
Counsel of Record
BLOOMEKATZ LAW
37 West Dominion Boulevard
Columbus, Ohio 43201
(614) 259-7611
(614) 559-6731 (fax)
rachel@bloomekatzlaw.com

Alla Lefkowitz
James Miller
EVERYTOWN LAW
450 Lexington Avenue #4184
New York, New York 10017
(646) 324-8365
alefkowitz@everytown.org
jmiller@everytown.org

*Counsel for Plaintiffs-Appellees
Erin Gabbard et al.*

Matthew C. Blickensderfer (0073019)

Counsel of Record

FROST BROWN TODD LLC

3300 Great American Tower

301 East Fourth Street

Cincinnati, Ohio 45202

(513) 651-6162

(513) 651-6981 (fax)

mblickensderfer@fbtlaw.com

Brodi J. Conover (0092082)

FROST BROWN TODD LLC

9277 Centre Pointe Driver, Suite 300

West Chester, Ohio 45069

(513) 870-8200

(513) 870-0999 (fax)

bconover@fbtlaw.com

***Counsel for Defendants-Appellants
Madison Local School District Board of
Education, et al.***

Dave Yost (0056290)

ATTORNEY GENERAL OF OHIO

Benjamin M. Flowers (0095284)

Counsel of Record

Michael J. Hendershot (0081842)

30 East Broad Street, 17th Floor

Columbus, Ohio 43215

(614) 466-8980

(614) 466-5087 (fax)

benjamin.flowers@ohioattorneygeneral.gov

Counsel for Amicus Curiae

Ohio Attorney General Dave Yost

Jonathan N. Fox (0040264)

Counsel of Record

LYONS & LYONS, CO., LPA

8310 Princeton-Glendale Road

West Chester, Ohio 45069

(513) 777-2222

jfox@lyonsandlyons.com

***Counsel for Amici Curiae
School Districts***

TABLE OF CONTENTS

TABLE OF AUTHORITIES ii

IDENTIFICATION OF AMICI CURIAE 1

STATEMENT OF THE CASE AND STATEMENT OF FACTS.....2

ARGUMENT2

 I. ARMING TEACHERS CREATES SERIOUS SAFETY RISKS.....2

 A. Arming teachers increases students’ access to guns, increasing the risks of death and harm.3

 B. Arming teachers increases the risk of shootings.....4

 C. Active shooter situations cause extreme stress, which decreases “hit rate.”5

 D. Law enforcement can think the armed teacher is the threat.....5

 E. Lax “weapon retention” policies create deadly risk.6

 F. Law enforcement, parents, teachers, and insurance companies recognize the serious safety risks.....7

 G. The American Bar Association recognizes the serious safety risks.8

 II. EXTENSIVE FIREARMS TRAINING IS NEEDED TO MITIGATE THE SERIOUS SAFETY RISKS TO KIDS.....9

 III. 27 HOURS OF TRAINING—LET ALONE ONLY 8 HOURS OF TRAINING—IS NOT ENOUGH TO ELIMINATE THESE SERIOUS SAFETY RISKS...12

 A. Concealed Carry Training.....12

 B. FASTER Training.....13

 C. Basic Peace Officer Training Program16

CONCLUSION.....20

CERTIFICATE OF SERVICE22

TABLE OF AUTHORITIES

Cases **Page(s)**

Martucci v. Civ. Serv. Comm., 194 Ohio App.3d 174, 2011-Ohio-1782, (9th Dist.).....16

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OAC § 109:2-1-1616, 17, 19

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J. Holland, The Nation, <i>Tactical Experts Destroy the NRA’s Heroic Gunslinger Fantasy</i> (Oct. 5, 2005), available at https://bit.ly/2SuWFKW	9
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Z. Koeske, Daily Southtown, <i>Dolton high school security guard threatened to kill student, held gun to his chest: police report</i> (Dec. 4, 2018), available at https://bit.ly/2RaAuZ6	4
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J. Rosiak, The Journal of School Safety, <i>Arming Educators: Insights from the Field</i> (Spring 2020)	5
B. Rostker et al., Rand Corporation, <i>Evaluation of the New York City Police Department firearm training and firearm-discharge review process</i> (2008), available at https://on.nyc.gov/1KQwfZL	5
J. Vickers & W. Lewinski, <i>Performing under pressure: Gaze control, decision making and shooting performance of elite and rookie police officers</i> , Human Movement Science 31(1): 101-117 (Feb. 2012).....	11
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IDENTIFICATION OF AMICI CURIAE¹

Amici are experts in school safety and firearms training. They are deeply interested in protecting students and educators in a safe, responsible manner.

Derek Bauman was a police officer for 26 years, most with the Mason Police Department. He has been awarded the Medal of Valor. He retired in 2016, after suffering a career-ending injury during a felony arrest. During his long career, Mr. Bauman taught firearms curriculum as a trainer at the Ohio Peace Officer Training Academy.

Richard Biehl is Chief of the City of Dayton's Department of Police. He has more than 35 years of law enforcement experience, including nearly 25 years with the Cincinnati Police Department. He has led a number of gun violence reduction initiatives and is the recipient of several policing awards.

Aaron Grant was teaching at Madison Local School District the day of the 2016 school shooting. He has a decade of experience as an educator. In 2016, Mr. Grant left teaching to become a police officer. He now works for the St. Bernard Police Department in Cincinnati.

Commander Robert Meader, Esq. led the Columbus Division of Police Training Bureau from 2015 to 2020. He has overseen the law enforcement training of thousands of police personnel, including training on firearms and deadly use of force.

William Modzeleski served for more than 40 years with the U.S. Department of Justice and the U.S. Department of Education, retiring as the Associate Assistant Deputy Secretary of the Office of Safe Schools and Healthy Students. He was instrumental in developing and implementing numerous programs and studies related to school safety, emergency management,

¹ No counsel for any party has authored this brief in whole or in part, nor has made any monetary contribution to the preparation or submission of this brief.

and violence prevention. With staff from the U.S. Secret Service, Mr. Modzeleski co-authored the Safe School Initiative, the Threat Assessment Guide, and the By-Stander Study.

John Rosiak, founder of Prevention Partnerships, has decades of experience in school safety. He has trained thousands of school resource officers and other law enforcement, developed and evaluated curricula for training school resource officers, and worked with thousands of educators and school administrators on school safety and crime prevention.

STATEMENT OF THE CASE AND STATEMENT OF FACTS

Amici adopt the statement of the case and the statement of facts set forth in Appellees' merit brief.

ARGUMENT

I. ARMING TEACHERS CREATES SERIOUS SAFETY RISKS FOR KIDS.

Early in their training, rookie police officers are taught that every situation they respond to always involves a firearm: the officer's firearm. An officer's mere presence introduces a firearm to every situation. And, undeniably, the presence of a gun creates serious safety risks for each person involved or nearby. To mitigate these inherent serious safety risks—to keep us, law enforcement, and everyone else safe—officers undergo extensive firearms training.

Arming schoolteachers and staff also introduces inherent serious safety risks, with the risks falling almost entirely on children. Identifying and understanding these risks is critical to understanding what firearms training is needed to keep kids safe.

A. Arming teachers increases students’ access to guns, increasing the risks of death and harm.

In the last five years, there have been more than 90 publicly-reported incidents of armed adults mishandling guns at school.² Guns left in locker rooms, including a loaded weapon found by a sixth grader.³ Guns left in a bathrooms, including a loaded pistol found by four kids ages 6 to 8.⁴ Guns stolen by students, including one from a teacher with a concealed carry license who forgot to take the gun out of her purse before coming to class.⁵ These are just some of the reported incidents. It is fair to conclude there are more. Ultimately, increasing the number of guns in schools increases the chances that a child will access a gun.

Research strongly suggests that, when teachers and staff bring guns into schools, children likely will know where they are and will access them. For example, in a study published in the *Archives of Pediatrics & Adolescent Medicine*, a majority of children knew where their parents stored their guns.⁶ More than a third of the children had handled their parents’ guns—many without their parents’ knowledge, since nearly a quarter of the parents did not know their child

² K. Drane, Giffords Law Center, *Every Incident of Mishandled Guns in Schools* (Mar. 2, 2020), available at <https://bit.ly/2IbOCOW>.

³ Associated Press, *No charges after Isabella Co. sheriff accidentally leaves gun at school* (Apr. 3, 2018), available at <https://bit.ly/2GtNfeb>.

⁴ B. Metrick, USA Today, *Ex-teacher charged for leaving gun in school bathroom, police say* (Sept. 13, 2016), available at <https://bit.ly/2G9jlfF>.

⁵ D. Harten, Arkansas Democrat Gazette, *Police: Jacksonville High student steals gun from teacher* (Jan. 17, 2012), available at <https://bit.ly/2V3psWX>; see also R. Madden, Fox 2 Now, *Police find teacher’s stolen gun with student* (Oct. 25, 2018), available at <https://bit.ly/2S9hqy7>; R. Danielson, Patch.com, *Central Middle Teacher Brought Gun to Class, Students Stole It* (Oct. 26, 2018), available at <https://bit.ly/2RaznZq>.

⁶ F. Baxley & M. Miller, *Parental misperceptions about children and firearms*, *Archives of Pediatrics & Adolescent Medicine* 160(5): 542-547 (2006).

had handled the gun.⁷ And when children access guns, the risks of death and harm significantly increase.⁸

B. Arming teachers increases the risk of shootings.

Arming teachers and staff also increases the risk of shootings at school. There are dozens of reported cases of adults' guns being discharged unintentionally, adults' guns being mishandled during discipline, or adults' guns being used in times of personal stress or conflict at school.⁹

For example, in 2018, during a firearm safety demonstration, a high school teacher accidentally fired his gun into the ceiling. The shooting injured three students, including a boy who ended up with bullet fragments lodged in his neck.¹⁰ Elsewhere, a third grader was able to get his finger onto a school liaison officer's holstered gun and pull the trigger, firing the weapon.¹¹ But most disturbing are the incidents of teachers or staff pulling guns on students as a disciplinary tactic.¹²

⁷ *Id.*

⁸ See A. Anglemyer, et al., *The Accessibility of Firearms and Risk for Suicide and Homicide Victimization Among Household Members: A Systematic Review and Meta-analysis*, *Annals of Internal Medicine* 160: 101–110 (2014) (irrespective of age, access to a firearm triples the risk of death by suicide and doubles the risk of death by homicide).

⁹ Drane, *supra* n.2.

¹⁰ A. Larson, KSBW8, *Seaside High teacher accidentally fires gun in class, students injured* (Mar. 14, 2018), available at <https://bit.ly/2Be9cub>.

¹¹ Minnesota Public Radio News (Feb. 5, 2018), available at <https://bit.ly/2PBbXKk>.

¹² See, e.g., Z. Koeske, *Daily Southtown, Dolton high school security guard threatened to kill student, held gun to his chest: police report* (Dec. 4, 2018), available at <https://bit.ly/2RaAuZ6>; R. Atkins, KRQE, *APS custodian arrested for pulling gun at elementary* (Dec. 22, 2018), available at <https://bit.ly/2IcXWlq>; S. Ash, 47ABC, *Del. Wrestling coach*

Again, the presence of guns—even on highly-trained staff, such as school resource officers—increases the risk of shootings at school.¹³

C. Active shooter situations cause extreme stress, which decreases “hit rate.”

The physiological effects of acute stress are well-documented, and emergency situations are quite different than target practice on the firing range. The body’s responses to an active shooter situation decrease handgun shooting accuracy, or “hit rate.”

For example, in 2008 the New York City Police Department—which has some of the most highly-trained officers in the United States—studied the hit rate of its officers. Between 1998 and 2006, the average hit rate of NYPD officers in situations where gunfire was not returned was just 30 percent.¹⁴ When there was a gunfight, the hit rate dropped to 18 percent.¹⁵ If that is the hit rate of NYPD officers, who receive extensive and ongoing training and whose sole job is law enforcement, what can we expect of school teachers?

D. Law enforcement can think the armed teacher is the threat.

Active shooter situations are complex, quickly evolve, and require rapid responses by law enforcement. In the aftermath of some mass shootings, the public learns of communication

arrested for allegedly pulling a gun on a student (Dec. 21, 2018), available at <https://bit.ly/2XHyN87>.

¹³ See also J. Rosiak, The Journal of School Safety, *Arming Educators: Insights from the Field* (Spring 2020) (“Armed educators are more likely to inflict harm on an innocent bystander, or cause confusion when a law enforcement officer responds to a shooting scene.”).

¹⁴ B. Rostker et al., Rand Corporation, *Evaluation of the New York City Police Department firearm training and firearm-discharge review process* (2008), available at <https://on.nyc.gov/1KQwfZL>.

¹⁵ *Id.*

errors, a lack of coordination during responses, and narrowly-avoided friendly fire. An armed teacher becomes a new variable in an already challenging equation.

In 2016, twelve police officers were shot during a protest in Dallas. Five officers died. Many protesters were armed and (legally) carrying openly. After the mass shooting, the Dallas Chief of Police pointed out that armed protesters complicated law enforcement's attempts to identify the gunman: "We don't know who the good guy is versus the bad guy when everyone starts shooting."¹⁶

Armed law enforcement, including school resource officers, are in uniform. Armed teachers are not. When police respond to an active shooter at a school, and teachers have guns, it is more difficult for police to know who the true threat is, increasing the risks of death and harm to kids.

E. Lax "weapon retention" policies create deadly risk.

Police departments go to great lengths to ensure their officers' duty belts, holsters, and other gear are high quality, and rated for safety and security of the firearm. Most officers now use Level Three retention holsters, which require a sequential manipulation of the firearm and holster, in concert, to remove the firearm.

A policy that allows teachers to wear any holster greatly increases the likelihood that a person could disarm the teacher, or even that the firearm could fall out. Madison Local School's policy allows authorized school employees to carry a firearm "in a holster with an appropriate trigger guard." A trigger guard could be a safety switch on the gun. Thus, this lax holster policy creates additional risks to children, staff, parents, and school visitors.

¹⁶ M. Hennessy-Fiske, Los Angeles Times, *Dallas police chief: Open carry makes things confusing during mass shootings* (July 11, 2016), available at <https://lat.ms/2GpxGUw>.

Moreover, as part of their initial and ongoing physical training, police officers are trained in weapon retention, weapon strips of others, and unarmed self-defense, which includes ground fighting. The goal is to do everything possible to not lose possession of the weapon, especially when someone bigger and stronger is trying to take it from them. Indeed, officers are trained that an attempt to take their weapon is considered deadly force, and thus deadly force may be used to retain the weapon. Are teachers prepared to use deadly force on a student who tries to take their gun? Either way poses additional safety concerns for children.

F. Law enforcement, parents, teachers, and insurance companies recognize the serious safety risks.

Insurance companies certainly recognize the serious safety risks above. When a school arms teachers and staff, many insurance companies flat out refuse to offer liability insurance to the school, and others hike their premiums.¹⁷ Insurance companies are “worried more guns in schools might not only fail to stop mass shootings but lead to more accidents.”¹⁸

These risks may also be why some law enforcement,¹⁹ parents,²⁰ and teachers²¹ oppose

¹⁷ See T. Frankel, *The Washington Post*, *One roadblock to arming teachers: Insurance companies* (May 26, 2018), available at <https://wapo.st/2IDclqj>; P. McCausland, *NBC News*, *Guns in schools: Insurance premiums could present hurdle in arming teachers* (Apr. 2, 2018), available at <https://nbcnews.to/2GsPsaT>.

¹⁸ Frankel, *supra* n.17.

¹⁹ National Association of School Resource Officers, *NASRO opposes arming teachers* (Feb. 22, 2018), available at <https://bit.ly/2K7iAq3>.

²⁰ PDK Poll, *School security: Is your child safe at school?* (Sept. 2018), available at <https://bit.ly/2P6HXux>; R. Payton, et al., *J. Community Health*, *Parents' Expectations of High Schools in Firearm Violence Prevention*. 42(6):1118–1126 (2017), available at <https://www.ncbi.nlm.nih.gov/pubmed/28527100/>.

²¹ M. Brenan, *Gallup*, *Most U.S. Teachers Oppose Carrying Guns in Schools*, (Mar. 16, 2018), available at <https://bit.ly/2MPTRV5>.

arming teachers regardless of their training. For example, the president of the Major Cities Chiefs Association, which represents 75 big-city police forces in the United States and Canada, said, “A cop shows up and there’s people with guns in their hand. We don’t know who’s the good guy, who’s the bad guy. That’s very dangerous for the police. And it’s dangerous for the community.”²²

G. The American Bar Association recognizes the serious safety risks.

The American Bar Association also recognizes the safety risks inherent in arming teachers. Earlier this year, after its investigation of this issue, the ABA concluded that “[a]vailable data suggests that arming teachers will increase the risk of students being shot, not reduce it.”²³ The ABA’s detailed report explained that arming teachers increases the risk of bystander injury, that “in high stress situations the vast majority of shots miss the intended target,” that law enforcement personnel risk mistaking an armed teacher for the real shooter, that students would likely know how to access a teacher’s gun, and that accidental discharge of a teacher’s gun also endangers students.²⁴ In light of the serious safety risks to kids, and the evidence-based alternatives to reducing school shootings, the ABA made clear it “opposes laws and policies that would authorize teachers, principals or other non-security school personnel to possess a firearm.”²⁵

²² B. Paterson, Mother Jones, *America's police chiefs call BS on arming teachers* (Mar. 8, 2018), available at <https://bit.ly/2HjsDT3>.

²³ American Bar Ass’n, Standing Committee on Gun Violence, *Report to the House of Delegates* (Jan. 2019), available at <https://bit.ly/3cOvBzU>.

²⁴ *Id.* (citing a variety of sources).

²⁵ *Id.*

II. EXTENSIVE FIREARMS TRAINING IS NEEDED TO MITIGATE THE SERIOUS SAFETY RISKS TO KIDS.

The presence of a firearm at school, even in the hands of a teacher or staff member, brings serious safety risks to children and others in the building. In Amici’s collective experience, it is possible to mitigate some of these risks, but only with extensive training.

We often hear that police officers in high stress, high stakes situations “fall back on their training”—that is, the strategies and responses baked into their muscle memory. This muscle memory is critical in high stress, high stakes situations, such as an active shooter at school, because it allows the “good guy with a gun” to react automatically. Police trainers know this from decades of experience. “[U]nder stressful conditions a person needs to rely upon reflexive actions. . . . This is one of the keys to tactical shooting—to instinctively react and shoot when the situation warrants the use of this type and level of force.”²⁶

Reacting reflexively, relying on muscle memory, makes a person more likely to avoid the errors, biases, and risks that extreme stress causes in humans. As explained by the Director of the Advanced Law Enforcement Rapid Response Training Center at Texas State University, the natural response to high-stress situations includes “‘tunnel vision, audio exclusion and time dilation,’ and one would expect people who weren’t trained in these situations to ‘freeze up or not know what to do, and to have difficulty performing actions correctly.’”²⁷ But stress-based

²⁶ B. Johnson, *Crucial elements of police firearms training*, 18 (New York: Looseleaf 2007).

²⁷ J. Holland, *The Nation*, *Tactical Experts Destroy the NRA’s Heroic Gunslinger Fantasy* (Oct. 5, 2005), available at <https://bit.ly/2SuWFKW>.

training over and over on real-world scenarios to develop muscle memory helps inoculate officers against these natural responses.²⁸

For example, a 2015 study put three groups of citizens with varying levels of shooting skill (no skill, some skill, advanced skill) into a scenario-based simulator to measure outcomes in potential defensive gun uses.²⁹ Only the skilled shooters used various techniques needed to make sound judgments.³⁰ For example, only the skilled shooters “used the barriers for cover (thereby giving themselves some protection), routinely exercised trigger discipline (that is, they did not place their fingers on the trigger until they were ready to shoot thereby reducing the chance of firing accidentally), issued commands to try to get the suspect to comply and thereby reduce the chances of a deadly outcome.”³¹ The authors concluded that “more training increases the probability” of using these important techniques.”³² “To put it plainly, our findings make clear that training and experience are absolutely needed to increase proficiency, decrease the chance that innocent persons (bystanders, law enforcement officers, and those authorized to carry a firearm) could be killed or serious injured, and is certainly in the best interest of overall public safety.”³³

²⁸ *See id.*

²⁹ J. Vince Jr., et al., Mount St. Mary’s University & The National Gun Victims Action Council, *Firearms Training and Self-Defense: Does the Quality and Frequency of Training Determine the Realistic Use of Firearms by Citizens for Self-Defense?* (2015).

³⁰ *See id.* at 22.

³¹ *Id.*

³² *Id.* at 43-44.

³³ *Id.*

In another recent study, the gaze of elite and rookie police officers were analyzed as they faced a potentially lethal encounter that required them to use a handgun, or to *not* shoot because the suspect drew a cell phone.”³⁴ In the final six fixations on the assailant, the percent of fixations on the assailant’s weapon or cell phone for elite officers fixated was 71%-86%.³⁵ For rookies, it was only 34%.³⁶ Not only did the elite officers shoot more accurately than the rookies, (74.6% vs. 53.8%), but they made fewer decisions errors in the cell phone condition. 18.5% of elite officers erroneously fired at someone with a cell phone, but **61.5% of rookies fired at someone who only had a cell phone, not a gun.**³⁷ The authors concluded that the results “provide new insights into officer weapon focus, firearms training and the role of optimal gaze control when under extreme pressure.”

It is clear that training to form muscle memory and reflexive action is critical. It is equally clear that muscle memory is achieved only through time and repetition. “Muscle memory will lead to the shooter performing the same movements under high-stress situations.”³⁸ Importantly, “[m]uscle memory does not develop rapidly. In fact, it could take thousands of perfect repetitions. Nevertheless, developing muscle memory is the key to becoming an effective combat shooter.”³⁹

³⁴ J. Vickers & W. Lewinski, *Performing under pressure: Gaze control, decision making and shooting performance of elite and rookie police officers*, Human Movement Science 31(1): 101-117 (Feb. 2012).

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*

³⁸ Johnson, *supra* n.26.

³⁹ *Id.*

III. 27 HOURS OF TRAINING—LET ALONE ONLY 8 HOURS OF TRAINING—IS NOT ENOUGH TO ELIMINATE THESE SERIOUS SAFETY RISKS.

Serious safety risks are posed by allowing teachers and staff to bring guns to school, and only extensive training can mitigate some of these risks. Amici see at least three tiers of training offered in Ohio:

1. Ohio concealed carry training (8 hours);
2. FASTER training (27 hours); and
3. Approved basic peace officer training program (737 hours).

Each training is detailed below. Both the FASTER and concealed carry training are insufficient to mitigate the serious safety risks posed to kids.⁴⁰

A. Concealed Carry Training

To obtain a concealed carry permit in Ohio, you must meet only two requirements: (1) be at least 21 years old and (2) complete an 8-hour course.⁴¹ The 8-hour course includes six hours of education and two hours of in-person training consisting of live-fire training. The education portion of the training is designed to ensure a person has the bare minimum of knowledge of firearms, including:

- The ability to name, explain, and demonstrate the rules for safe handling of a handgun and proper storage practices for handguns and ammunition,
- The ability to demonstrate and explain how to handle ammunition in a safe manner,
- The ability to demonstrate the knowledge, skills, and attitude necessary to shoot a handgun in a safe manner, and

⁴⁰ These three tiers do not include a fourth option that would be permitted under Appellant's statutory interpretation: allowing schools to authorize open carry with *zero training*. Allowing a person to carry a firearm openly in a school with zero training is as dangerous as it is reckless.

⁴¹ Ohio Attorney General's Office, *Ohio's Concealed Carry Laws and License Application*, available at <https://bit.ly/2KMst1D> (accessed Sept. 1, 2020).

- Gun-handling training.

The 2-hour practical training is designed to ensure that applicants can safely handle, fire, and store a firearm. As part of the training, applicants must also receive and certify that they have reviewed a copy of the “Ohio’s Concealed Carry Law” booklet. The training and written exam may be completed online or as a combination of in-person and online training. The online portion of the training must include a component that regularly engages the person.

Concealed carry training is designed to give you *information* and not real-world *training*. Additionally, there is no requirement that the gun used for live-fire training be the same gun (or even type of gun) that is ultimately carried. This presents yet another safety problem because a person could use a revolver for the live-fire training and then carry a semi-automatic pistol. These two types of guns operate very differently, injecting even more potential problems into an already volatile situation. Moreover, the live fire training does not require a minimum score, which means the teacher would have not actual training requirement in placement of rounds. The omission of a minimum target selection will be exacerbated under the stress of an active shooter, weapon retention, or other critical incident involving a firearm.

A mere 8 hours of training is woefully inadequate to mitigate the risks identified above.

B. FASTER Training

FASTER stands for Faculty/Administrator Safety Training & Emergency Responses. FASTER training is just as it sounds—fast. But doing something fast does not doing it right. The premium should be on *safety*, not *speed*. It should be universally accepted that it is never okay to sacrifice safety of kids for speed.

Unlike OPOTA basic training, FASTER requires just 27 hours of training. FASTER offers several levels of training, but only Level 1 is at issue here. Level 1 training takes place

over three days and generally covers developing the right mindset, arming school staff, learning trauma combat casualty care.⁴² The training is broken down into classroom training, live-fire training, tactics, decision making skills, tactical combat casualty care, force-on-force, and scenario-based training.

Before getting into the training, it is important to understand the baseline experience of FASTER participants. According to FASTER program director Joe Eaton, “When the program began, most participants were former law enforcement, military or hunters, Eaton says. But in the past two years, that has changed: More than half had never touched a firearm until their schools asked them to take part.”⁴³ Appellant’s position is that FASTER training takes a person who has never touched a firearm and prepares them to concealed carry a firearm in a school in just 27 hours. For the reasons described herein, that is an incredibly dangerous position and puts children’s safety at risk.

On the first day of training, participants are shown a PowerPoint presentation detailing, among other things, the “History of Active Mass Murder” and “3 Levels of Active Killers.” (Pltf.’s MSJ, Ex. V.) The PowerPoint also suggests that the reason there are “[n]o active killers in inner city schools” is because “[t]hey would be beat down before they could get started. The other students are fighters . . . and may be armed!” (*Id.*) There is no doubt that FASTER teaches participants to *actively engage* the shooter, to the exclusion of helping wounded students. Participants are specifically taught that “[y]our primary job is to STOP THE KILLING. Walk

⁴² FASTER, *Be Prepared for the Next School Shooting*, available at https://fastersaveslives.org/wp-content/uploads/2016/09/FASTER-White-Paper_REV032816.pdf (last visited Sept. 1, 2020).

⁴³ See J. Heim, *The Washington Post*, *Armed and safe? At Ohio schools, the security plan includes teachers and guns* (Mar. 12, 2018), available at <https://wapo.st/30xzGmW>.

over wounded, push away clinging survivors.” (*Id.*) After detailing the horrific attacks in Beslan in 2004 and Mumbai in 2008, the training materials ask “How Do We Respond?” (*Id.*) The answer—according to FASTER—is as follows:

- If you can not escape... You have no CHOICE
 - o You must FIGHT
 - o You will be KILLED
 - o Adult males will be tortured and killed
 - o Females will be raped and killed.

(*Id.* at 43.)

FASTER participants are also taught that “[t]errorist will not stop when confronted and they will not commit suicide, they will have to be killed.” (*Id.* at 26.) After the classroom portion is complete, participants spend the remainder of the day learning stance and trigger management, and shooting at small, stationary targets. This takes approximately six hours.

On day two, FASTER participants spend the morning practicing magazine changes, loading magazines, shooting on the move, and off-hand shooting. In the afternoon, participants learn about setting an ambush and engage in additional roped gun practice. That evening, participants learn “Tactical Combat Casualty Care.” This includes identifying wound patterns, assessing injuries, and providing various types of treatment for typical gunshot wounds.

On day three—the final day of the FASTER Level 1 training—participants engage in one “force on force” drill and one live-fire scenario. In the case below, John Doe 1 testified that he completed one live-fire drill that lasted approximately 10 minutes. (John Doe 1 Dep., 48:2-8.) Participants play various roles using non-lethal firearm alternatives to roleplay different scenarios. At the conclusion of the training, participants must hit 26/28 targets, which includes 3 moving targets.

In just 27 hours spread out over the course of 3 days, the FASTER Training purports to cover the history of mass shootings, basic firearm training, advanced firearm training, live-fire drills, advanced tactics related to clearing a room, decision-making skills, first aid, and scenario-based training. OPOTA basic training takes more than 728 hours to complete and is designed “to provide the student with a strong basic knowledge of the role, function, and practices of a peace officer.” See OAC § 109:2-1-16. According to the Ohio legislature, it takes 728 hours—or nearly 2,700% more time than FASTER Level 1—to provide student with the necessary “basic knowledge.”

FASTER training attempts to squeeze in to 3 days what the OPOTA basic training covers over nearly four months. The FASTER website claims that the program “exceeds the requirements of the Ohio Peace Officer Training Academy.”⁴⁴ Comparing OPOTA basic training to FASTER reveals there is simply no comparison. One is a comprehensive training program designed to prepare participants to carry firearms and how to deal with complicated situations. The other is simply a crash course in gun safety.

C. Basic Peace Officer Training Program

The Ohio Peace Officer Training Commission (“OPOTC”) governs basic peace officer training in Ohio. The OPOTC sets rules and approves programs for certified peace officer training. Training takes place at the “Ohio Peace Officer Training Academy (“OPOTA”) or an approved local police academy.” *Martucci v. Civ. Serv. Comm.*, 194 Ohio App.3d 174, 2011-Ohio-1782, 955 N.E.2d 404, ¶ 2 (9th Dist.). There are more than 60 approved Peace Officer Basic Training Academies in Ohio. More than 500 courses are available, with more than half of

⁴⁴ About FASTER, available at <https://fastersaveslives.org/about>.

those involving hands-on learning.⁴⁵ The current curriculum requires a minimum of 737 hours of training (“OPOTA basic training”).⁴⁶ Generally, this takes approximately 15 weeks on a full-time basis, or approximately 9 months part-time to complete. Individuals must also pass a criminal background check, a physical fitness test (consisting of sit ups, pushups, and a 1.5-mile run), and a drug screen before taking a state certification test.

The OPOTA basic training curriculum provides thorough and comprehensive instruction in 13 different areas, called Units. *See* OAC § 109:2-1-16. These Units are further broken down into 59 sub-Units, which include crisis intervention, subject control techniques, building searches, and critical injury first aid, among others. The 737 hours of training is broken down as follows:⁴⁷

1. Administration (43 hours)
2. Legal (111 hours)
3. Human Relations (84 hours)
4. Firearms (60 hours)
5. Driving (24 hours)
6. Investigation (53 hours)
7. Traffic (125 hours)
8. Patrol (69 hours)
9. Civil Disorders (8 hours)
10. Subject Control (78 hours)
11. First Aid (16 hours)
12. Physical Conditioning (44 hours)
13. Homeland Security (22 hours)

⁴⁵ Ohio Attorney General’s Office, *2019 Ohio Peace Officer Training Commission and Academy Fiscal Year Annual Report*, available at <https://bit.ly/32JY4Ce>.

⁴⁶ Ohio Attorney General’s Office, *How to Become a Peace Officer in Ohio* (Sept. 2018), available at <https://bit.ly/2RiJHic>.

⁴⁷ OPOTC Peace Officer Basic Training – Compliance Officer Audit Sheet, available at <https://bit.ly/3lx3M2O> (accessed Sept. 1, 2020).

Unlike FASTER training, OPOTA basic training goes well beyond just firearms training. This is critically important.

According to the Ohio Attorney General’s Office, OPOTA basic training is “unparalleled.”⁴⁸ That is, in part, because of the state-of-the-art technology used to train students on the use of firearms:

Firearms and use-of-force training is offered on state-of-the-art simulators that can be set up in minutes within local training sites. Featuring high-definition video, recoil weapons, and other realistic equipment, the simulators offer hundreds of scenarios, drills, and exercises. *Id.*

The OPOTA basic training firearm unit includes a minimum of 46 hours of live-fire range time.

Underscoring the importance of practical training, then-Attorney General Mike DeWine said:

Scenario-based training gives officers the opportunity to enhance their communication, decision making, force-on-force, and other skills in a safe training environment. OPOTA launched the Scenario Training Equipment Program (STEP) in November 2017 as a customized, low-cost way for departments to receive scenario-based training.⁴⁹

OPOTA basic training is designed to prepare a person for a stressful career and teaches people to deal with that stress while carrying a firearm. The new Scenario Training Equipment described above provides immense benefits to participants:

A wide range of situations can be addressed in scenario-based training, such as *how to safely de-escalate a situation through verbal skills or non-lethal force and tactics for responding to a hostage situation, active shooter, ambush, or mass casualty incident.*⁵⁰

⁴⁸ Ohio Attorney General’s Office, *Ohio Peace Officer Training Commission and Academy*, available at <https://bit.ly/2XbfdEa> (accessed Sept. 1, 2020).

⁴⁹ Ohio Attorney General’s Office, *2018 Ohio Peace Officer Training Commission and Academy Fiscal Year Annual Report*, available at <https://bit.ly/3jM5qMz>.

⁵⁰ *Id.*

Indeed, the specific purpose of the OPOTA basic training is “to provide the student with a strong basic knowledge of the role, function, and practices of a peace officer.” OAC § 109:2-1-16. The Ohio legislature has decided that accomplishing this goal requires 737 hours of training in a myriad of different courses, not simply an introduction to extremely complicated topics over just three days.

It is no coincidence that absent OPOTA basic training, only a person with “twenty years of active duty as a peace officer” may carry a firearm in a school. *See* R.C. § 109.78(D). The OPOTA basic training is extensive and Ohio law is clear that if a teacher wants to carry a firearm in a school, they must either complete the 737 hours of OPOTA basic training or have twenty years of active duty experience as a peace officer. Using a firearm in a crisis is about more than just pointing the gun and squeezing the trigger. Anyone can shoot a gun at a shooting range at a piece of paper. Using a firearm in an active shooter situation forces an individual to fall back on their training or experience. A teacher at Madison School District, John Doe 1, agreed: “I’m going to fall back on my training” (Dep. of John Doe 1 at 34:6.)⁵¹ Teachers who do not have twenty years of active duty peace officer work will *have* to fall back on their training, which is one of the reasons the Ohio legislature decided that OPOTA basic training is necessary before allowing a teacher to carry a firearm in a school.

While OPOTA may not be perfectly tailored, it is the best option available to keep children in schools as safe as possible because it goes beyond merely firearm safety and live fire

⁵¹ As the Greek poet Archilochus said, “We don’t rise to the level of our expectations; we fall to the level of our training.”

exercises. In an affidavit submitted below, Capt. Howard Rahtz (Ret.) addressed the stark differences between OPOTA and FASTER:

It could be argued that much of required peace officer training is irrelevant to a narrow focus on school shooting situations. However, as outlined above, there are many topics in the Basic Training Program with clear relevance for armed staff in a school that do not appear to be covered by the FASTER program. Further, discarding the bulk of peace officer training requirements misses the connection between performance and the stress inoculation and mental preparedness incorporated in more comprehensive and longer term training.

(Rahtz Aff., ¶ 35.) Capt. Rahtz also explained that “for armed law enforcement, skill with a firearm fits within a context of legal, ethical and moral issues. Use of force is at the core of the peace officer role and nearly every class in a basic academy will relate in some fashion to the force issue.” (*Id.* ¶ 23.) The broader spectrum of training provided through OPOTA prepare trainees how to deal with stressful situations involving firearms.

CONCLUSION

We often hear that police officers in high stress, high stakes situations “fall back on their training”—in other words, their muscle memory. Muscle memory is achieved through time and repetition. 27 hours of training, let alone only 8 hours, is simply not enough time to form that critical muscle memory.

Given each of the serious safety risks posed to children, the General Assembly would not have wanted teachers and other staff to go armed all day every day at school, with such little training as the School Board suggests.

Amici respectfully urge this Court to affirm the Twelfth District’s decision.

Respectfully submitted,

/s/ C. Benjamin Cooper

C. Benjamin Cooper (0093103)

Counsel of Record

Sean R. Alto (0087713)

COOPER & ELLIOTT, LLC

305 West Nationwide Boulevard

Columbus, Ohio 43215

(614) 481-6000

(614) 481-6001 (fax)

benc@cooperelliott.com

seana@cooperelliott.com

Counsel for Amicus Curiae

Experts in School Safety and

Firearms Training

CERTIFICATE OF SERVICE

A copy of the foregoing *Brief of Amici Curiae Experts in School Safety and Firearms Training in Support of Plaintiffs-Appellants* was served upon the following counsel of record by electronic mail on October 5, 2020:

Rachel Bloomekatz (0091376)
Counsel of Record
BLOOMEKATZ LAW
37 West Dominion Boulevard
Columbus, OH 43201
(614) 259-7611
(614) 559-6731 (fax)
rachel@bloomekatzlaw.com

Alla Lefkowitz
James Miller
EVERYTOWN LAW
450 Lexington Avenue #4184
New York, NY 10017
(646) 324-8365
alefkowitz@everytown.org
jmiller@everytown.org

Counsel for Plaintiffs-Appellees
Erin Gabbard, et al.

Dave Yost (0056290)
ATTORNEY GENERAL OF OHIO
Benjamin M. Flowers (0095284)
Counsel of Record
Michael J. Hendershot (0081842)
30 East Broad Street, 17th Floor
Columbus, Ohio 43215
(614) 466-8980
(614) 466-5087 (fax)
benjamin.flowers@ohioattorneygeneral.gov

Counsel for Amicus Curiae
Ohio Attorney General Dave Yost

Matthew C. Blickensderfer (0073019)
Counsel of Record
FROST BROWN TODD LLC
3300 Great American Tower
301 East Fourth Street
Cincinnati, Ohio 45202
(513) 651-6162
(513) 651-6981 (fax)
mblickensderfer@fbtlaw.com

Brodi J. Conover (0092082)
FROST BROWN TODD LLC
9277 Centre Pointe Drive, Suite 300
West Chester, Ohio 45069
(513) 870-8200
(513) 870-0999 (fax)
bconover@fbtlaw.com

Counsel for Defendants-Appellants
Madison Local School District Board of Education, et al.

Jonathan N. Fox (0040264)
Counsel of Record
LYONS & LYONS, CO., LPA
8310 Princeton-Glendale Road
West Chester, Ohio 45069
(513) 777-2222
jfox@lyonsandlyons.com

Counsel for Amici Curiae
School Districts

/s/ C. Benjamin Cooper

C. Benjamin Cooper (0093103)
COOPER & ELLIOTT, LLC

*Counsel for Amici Curiae,
Experts in School Safety and
Firearms Training*