

**THE SUPREME COURT OF OHIO**

ERIN GABBARD, *et al.*, : Case No. 2020-0612  
: :  
Plaintiffs-Appellees, : Appeal from the Butler County  
: Court of Appeals, Twelfth Appellate District  
v. : Case No. CA2019-03-0051  
: :  
MADISON LOCAL SCHOOL DISTRICT : **MERIT BRIEF OF AMICI CURIAE**  
BOARD OF EDUCATION, *et al.* : **OHIO EDUCATION ASSOCIATION &**  
: **OHIO FEDERATION OF TEACHERS**  
Defendants-Appellants. : **IN SUPPORT OF APPELLEES**

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## I. INTRODUCTION

As noted by the Twelfth District Court of Appeals in its decision rightly reversing the trial court’s determination on the issue of the interplay of O.R.C. § 109.78(D) and § 2923.122, the issue in this case is “how much training a teacher or school employee must receive before carrying a firearm into a school safety zone while on duty, a matter the General Assembly has decided.”<sup>1</sup> The issue is not one of philosophy on the wisdom of *anyone* bringing a firearm into a school safe zone, but rather one of what the training requirements are for such an individual under the clear language of the Ohio Revised Code. Educators overwhelmingly reject the idea of placing more guns in schools because two-thirds of them are concerned about safety and would feel *less* safe if school employees came to work armed.<sup>2</sup> However, training obviously increases the safety of students, educators, and anyone in a school building. All parties and *amici curiae* in this matter agree that safety in a school is of paramount importance, our disagreement relates to how to best realize that safety for all involved. Because O.R.C. § 109.78(D) and § 2923.122 do not conflict on their face and can clearly coexist peacefully, and because the need to increase school safety is furthered by requiring rigorous training for anyone authorized to carry a firearm into a school safety zone, this Court should affirm the decision of the Twelfth District Court of Appeals.

## II. STATEMENT OF AMICI INTEREST

*Amici curiae* the Ohio Education Association (“OEA”) and Ohio Federation of Teachers (“OFT”) (collectively “*amic*”) offer this brief in support of Plaintiffs-Appellees Erin Gabbard, *et al.* (“Appellees”) and urge this Court to affirm the Twelfth District’s decision below relating to the

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<sup>1</sup> Gabbard v. Madison Local Sch. Dist. Bd. of Educ., 2020-Ohio-1180, at ¶ 14 (12th Dist.).

<sup>2</sup> Tim Walker, *NEA Survey: Educators Say No to Arming Teachers, Favor Real Solutions to Gun Violence*, NEATODAY (Oct. 2, 2020, 1:02 PM), <https://www.nea.org/advocating-for-change/new-from-nea/nea-survey-educators-say-no-arming-teachers-favor-real-solutions>.

applicability of the provisions of O.R.C. § 109.78(D) to the actions of the Defendants-Appellants. All members of OEA and OFT have strong interests in these proceedings. Together, *amici* represent the overwhelming majority of Ohio's public-school employees. The foremost priority of these employees is to ensure the safety and well-being of all their students so that teaching and learning can occur.

OEA, an affiliate of the National Education Association, is a non-profit association which represents approximately one hundred twenty-one thousand (121,000) public school teachers, school support staff and higher education faculty and staff. OEA is Ohio's largest representative of public-school employees, with local affiliates serving as collective bargaining representatives in approximately 642 Ohio public school districts. Pursuant to its statement of mission, OEA pursues a leadership role in the continuous improvement of public education, and advocates on behalf of its members and the learners they serve. Because of all this, OEA has a strong interest in protecting the physical safety of students, teachers, and school staff in a responsible and thoughtful way.

The OFT is a union of professionals representing approximately 15,000 members, the majority of whom work in large, urban school districts. The OFT envisions an Ohio where all citizens have access to the high-quality public education and public services they need to develop to their full potential. The OFT supports the social and economic wellbeing of its members, Ohio's children, families, working people, and communities and is committed to advancing these principles through community engagement, legislative action, collective bargaining and political activism, and especially through the work of its members.

### III. STATEMENT OF THE CASE AND FACTS

*Amici* adopt the Statement of the Case and the Statement of Facts set forth by Plaintiffs in their merits brief.

### IV. ARGUMENT

**Amici's Proposition of Law:** O.R.C. § 109.78(D)'s text is plain and unambiguous and requires that 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 that person either completed a peace-officer training program or previously served for twenty (20) years as an active-duty peace officer. "Other positions" applies to all positions of employment in a school district, including teachers, administrators, and support staff, if they go armed while on duty.

#### **A. O.R.C. §§ 109.78(D) and 2923.122 Do Not Conflict by Their Plain and Unambiguous Text.**

Despite the arguments made by Defendants-Appellants, both sections of the Ohio Revised Code at issue in this matter can be read in harmony and their text is plain and unambiguous. "When the language of a statute is plain and unambiguous and conveys a clear and definite meaning, there is no need for this court to apply the rules of statutory interpretation."<sup>3</sup> Defendants-Appellants attempt to create a conflict between O.R.C. § 109.78(D), a statute setting forth training requirements for employees, and O.R.C. § 2923.122, a statute that makes it a crime to carry a weapon into a school safe zone except when an exception exists, where there is none. Just because something is not a crime does not make it compliant with other laws. Such is the case in the instant matter. There is simply no conflict between these two statutes and thus, resorting to rules of statutory interpretation as Defendants-Appellants urge is improper.

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<sup>3</sup> Symmes Twp. Bd. of Trustees v. Smyth, 87 Ohio St.3d 549, 553 (2000).

**B. Safety in Ohio Schools is Furthered by Utilizing Employees with *More* Training with Firearms, Not Less.**

The Twelfth Appellate District’s decision should be upheld because, as that court clearly stated, this case concerns clear training requirements set forth in statute that will only *increase* the safety of students and educators. Only those with sufficient training in the use of firearms should bring guns into schools. Indeed, many law enforcement experts, including Experts in School Safety<sup>4</sup>, agree that traditional school staff lack the “tactical knowledge of handling weapons that trained law enforcement personnel receive on a regular basis.” When traditional school staff carry guns into a school safety zone without this tactical knowledge, the danger to students and staff increases.<sup>5</sup> This tactical knowledge is part of what is taught to participants of The Ohio Peace Officer Training Academy (“OPOTA”).<sup>6</sup> Lowering this bar of vital knowledge and training is not only contrary to the plain and wholly unambiguous language of O.R.C. § 109.78(D), but it also decries common sense. Anyone who is authorized to carry a firearm into a school should have as much knowledge about and training with that weapon as possible. The OPOTA training is a qualification for any police officer that, as noted in the concurrence at the lower level, does not permit local control to lower the standard.<sup>7</sup> *Amici* ask the simple question: why hold unidentified

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<sup>4</sup> Experts in School Safety presented an amicus brief to the Twelfth District Court of Appeals in this matter.

<sup>5</sup> Tim Walker & Cindy Long, *Arming Teachers is Not the Answer*, NEATODAY (Oct. 2, 2020, 1:04 PM), <https://www.nea.org/advocating-for-change/new-from-nea/arming-teachers-not-answer>.

<sup>6</sup> See O.A.C. § 109:2-1-16 (the 728 hours of OPOTA training includes 60 hours of firearms training).

<sup>7</sup> Gabbard v. Madison Local Sch. Dist. Bd. of Educ., 2020-Ohio-1180 ¶36 (12th Dist.) (Hendrickson, concurrence) (“By requiring more than 700 hours of training or 20 years of peace officer experience, the legislature expressed its clear intent that only individuals of the highest caliber, with significant training and experience, be permitted to carry a firearm on school grounds.”)



individuals carrying concealed firearms into school to a lower standard of training and competence than school resource officers and security guards?

According to a survey commissioned by the National Education Association in 2018, 74% of educators (including teaching and non-teaching employees) opposed arming school staff.<sup>8</sup> The reason educators overwhelmingly reject the idea of placing more guns in schools is that two-thirds of them say they would feel *less* safe if school employees came to work armed.<sup>9</sup> Educators want to focus on the goal of educating their students and keeping them safe. More training will result in more safety and an increase in the effectiveness and timeliness of a response to any emergency situation. Individuals coming into a school with only a few hours' worth of training with a firearm will, at best, undermine the necessary feeling of safety in a school that is required for students. At worst, it will lead to more death. It is properly trained, OPOTA-certified individuals that will provide necessary safety for teachers, students, and staff.

Defendants-Appellants continually refer to their decision to impose requirements above and beyond what O.R.C. § 2923.122 (a criminal statute) requires as a reason for this Court to reverse the decision below. Defendants-Appellants also continually emphasize the importance of local control in determining the issue of qualifications required for non-school resource officer or security guard positions to carry a concealed weapon into a school safe zone. These positions conflict with each other and undermine safety. If this Court were to agree that these decisions are a matter of local control, then Defendants-Appellants could unilaterally remove the requirements above and beyond what § 2923.122 provides. In other words, the statewide standard for carrying

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<sup>8</sup> Tim Walker, *NEA Survey: Educators Say No to Arming Teachers, Favor Real Solutions to Gun Violence*, NEATODAY (Oct. 2, 2020, 1:07 PM), <https://www.nea.org/advocating-for-change/new-from-nea/nea-survey-educators-say-no-arming-teachers-favor-real-solutions>.

<sup>9</sup> Id.

a concealed weapon into a school safe zone would be characterized as “whatever is not a crime” because anything above the conduct proscribed by § 2923.122 would be subject to local control. This standard both defies common sense and the plain language of § 109.78(D).

Additionally, while Appellants and their *amici* argue that the legislature intended for each local school board to determine the amount and type of training necessary for armed staff, this “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.”<sup>10</sup> In fact, the State legislature frequently sets minimum statewide standards for schools, both with regard to teaching and safety.<sup>11</sup> While some of these standards may be less relevant in some school districts than others, they are vital to ensure a minimum level of quality. Clearly, as the statute provides, a strong statewide standard must be applied to the issue of training requirements for unidentified employees authorized to carry weapons into a school zone to further the safety of all Ohio schools.

**C. Defendants-Appellants’ Policy Makes the Unidentified Armed Employees the Comparable to a School Resource Officer or Security Guard.**

Defendants-Appellants improperly attempt to persuade this Court that O.R.C. § 109.78(D)’s use of the terms “other positions” relates to positions substantially similar to school resource officers or security guards, i.e., positions primarily concerned with law enforcement. Initially, it should be noted that Defendants-Appellants and the *amici* filing on their behalf have failed to identify any examples of what types of individuals would actually fit within their definition of “other positions” who are not teachers, support staff, or administrators. The

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<sup>10</sup> Gabbard v. Madison Local Sch. Dist. Bd. of Educ., 2020-Ohio-1180 at ¶ 37 (12th Dist.) (Hendrickson, P.J., concurring).

<sup>11</sup> *See e.g.*, O.R.C. §§ 3319.22 (setting state standards for teacher licensing); 3737.73 (setting a minimum number of yearly fire drills and school safety drills); 3313.536 (setting the required contents of school emergency management plan; and 3319.073(A) (setting the minimum number of hours teachers must attend training on child abuse prevention).

undersigned are similarly unable to imagine who would fit in such an interpretation. Ultimately, the Defendants-Appellants' reading of the "other positions" results in the clause being superfluous. Regardless, even if Defendants-Appellants' interpretation is accepted, what they have done through their policy is transform those in "other positions," who are armed teachers in this case, into positions comparable to school resource officers, thus making § 109.78(D) applicable to them.

As described by statute, school resource officers are those officers, employed by a law enforcement agency, who provide a safe learning environment, foster positive relationships with students and staff, develop strategies for resolving problems affecting young and protecting all students, assist with the development and implementation of the district's emergency management plan, and who also hold such other responsibilities as may be identified in their relevant employment documents with the school district.<sup>12</sup> Clearly, the duties of a school resource officer extend beyond responding to emergency situations such as an active school shooter. Many of the officers' duties do not require the use of a firearm at all. The justifications for Defendants-Appellants' policy included providing a safe learning environment and assisting with emergency management, both duties that fall within the statutory delineation of duties of a school resource officer. Therefore, their argument that these unidentified individuals who are carrying firearms into a school safe zone are wholly different from a trained and experienced resource officer fails. The very nature of their policy makes these individuals responsible for many of the same items as a school resource officer with only a fraction of the required training.

**D. Appellants' Overreliance on the Word "Volunteer" is Misplaced.**

Defendants-Appellants and their *amici* argue that school districts are not obligated to follow the dictates of § 109.78(D) because school employees "volunteer" to carry firearms while

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<sup>12</sup> O.R.C. § 3313.951.

on duty.<sup>13</sup> However, the legal obligations and responsibilities of a school district do not disappear if a school district employee volunteers to take on additional duties that go above and beyond his or her primary duties. For example, an English teacher who volunteers to chaperone a school dance is still employed by the school and is on duty; conduct by that teacher during the dance can have negative repercussions for his or her employment, as well as the school district. The same is true for a teacher who "volunteers" to carry a firearm on school grounds while on duty. Per Defendants-Appellants' own policy, staff are authorized "to possess a firearm while on duty" for the "safety and security of the Students" and "[a]ny abuse of this authority could result in discipline up to and including termination."<sup>14</sup> As such, an employee "volunteer" is covered by the plain language of O.R.C. § 109.78(D). Defendants-Appellants' overreliance on the word "volunteer" does not negate this applicability.

## V. CONCLUSION

For the reasons set forth above and for those described in Plaintiffs' merit brief, Amici respectfully request this Court uphold the decision of the Twelfth Appellate District.

Respectfully submitted,

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<sup>13</sup> See e.g., AG Br. at 14 ("That [a teacher] voluntarily chooses to carry a weapon does not mean she is 'employed' in a position in which she goes armed while on duty.").

<sup>14</sup> (Firearm Authorization Policy and Authorization Letters) (emphasis added).

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Merit Brief of *Amici Curiae* Ohio Education Association and Ohio Federation of Teachers in Support of Appellees was served on this 5th day of October, 2020, by email on the following:

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