BUTLER COUNTY COURT OF COMMON PLEAS
CIVIL DIVISION

ERIN GABBARD, et al., *Plaintiffs/Relator*, v. MADISON LOCAL SCHOOL DISTRICT BOARD OF EDUCATION, et. al *Defendants/Respondents*,	Case No. CV 2018 09 2028 Judge Charles L. Pater MOTION FOR PRELIMINARY INJUNCTION AND MEMORANDUM IN SUPPORT ORAL ARGUMENT REQUESTED

PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION AND MEMORANDUM IN SUPPORT OF PRELIMINARY INJUNCTION

In accordance with Rule 65(B), the plaintiffs, through their counsel, request that the Court preliminarily enjoin the defendants from permitting any of their employees to go armed in Madison Local Schools pursuant to the Board of Education's "Resolution to allow armed staff in school safety zone" without having satisfactorily completed an approved peace officer training program or having twenty years' experience as a peace officer, as required by R.C. 109.78(D). In support of their motion, the plaintiffs submit the attached memorandum and accompanying affidavits.

Respectfully submitted,

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October 31, 2018

MEMORANDUM IN SUPPORT
OF PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION

Like all parents, the plaintiffs share the urgent desire to make Madison schools as safe as possible. They support the two full-time, well-trained, armed school resource officers (SROs) who protect students and staff every day. And they are glad that the school has taken myriad additional measures, like improving the building communication system and implementing a new security camera system, for the safety of the students. The Board, however, recently passed a Resolution that undermines the safety of their children because it allows teachers and other school employees to carry guns at school without the minimum training required by Ohio law. The plain language of R.C. 109.78(D) requires school employees who go "armed while on duty" to complete "basic peace officer training" or have twenty years' experience serving as a peace officer. *Id.* That training is over 700 hours, yet the Resolution allows school staff to go armed with 26 hours of training.

That violation is not just a technical matter. That difference in training means a difference in the harm that the plaintiffs' children face each day at school. As law enforcement experts explain, arming teachers with minimal training increases the risks of firearm accidents, improper use of force, and shooting innocent bystanders. Given that the Resolution violates R.C. 109.78(D), and places children at increased risk of irreparable harm—like a tragic accident—due to insufficient training, the Court should preliminarily enjoin the Resolution.

STATUTORY BACKGROUND

Although Ohio law authorizes school boards to decide whether to allow teachers and other school staff to go armed in school buildings, R.C. 2923.122(D)(1)(a), it does not leave that discretion unbounded. Ohio law requires a school employee who goes "armed while on duty" to complete "basic peace officer training" or have twenty years' experience serving as a peace officer. R.C. 109.78(D). That makes sense: if employees are going to be carrying firearms in close proximity to

children at school, the Ohio Legislature has mandated that they be well-trained. The key statutory provision is R.C. 109.78(D). It provides, in full:

> "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.* (emphasis added).

The requirement imposed by this provision is clear: a person in a "position in which such person goes armed while on duty" must have completed the basic peace officer training program, unless they have already served for twenty years as a peace officer. *See id.*

The basic peace officer training, in turn, is governed by another area of Ohio law. The Ohio Peace Officer Training Commission (OPOTC) sets the rules and approves the programs for certified peace officer training. *See* R.C. 109.73, 109.78. For example, the Commission drafts the rules regarding the "approval, or revocation of approval, of peace officer training schools" and the "[m]inimum courses of study, attendance requirements, and equipment and facilities to be required" at such schools. R.C. 109.73(A). The Ohio basic peace officer training program curriculum requires a minimum of 728 hours. Ex. A.[1] That curriculum spans firearm use, use of force, subject control, crisis intervention, building searches, critical incident stress awareness, and physical conditioning, among other topics. *See id*. The peace officer training focuses on practicing, utilizing, and internalizing various skills that will be critical to draw upon in high-stress situations in the field. Affidavit of Capt. Howard Rahtz (Ret.) ("Rahtz Aff."), ¶¶10–24 and 33–48, attached.

FACTUAL BACKGROUND

On April 24, 2018, the District's Board of Education adopted the "Resolution to allow armed staff in school safety zone." Ex. B. In violation of R.C. 109.78(D), it allows the Board to

[1] All exhibits ("Ex.") referenced in this memorandum are attached to the Affidavit of Attorney Rachel Bloomekatz submitted in support of this motion.

authorize teachers and others to carry firearms in school without the requisite peace officer training. Specifically, the Resolution authorizes "teachers, school support staff, administrators, and others approved" to carry firearms on the District's campuses if they (i) are permitted under state law to carry a concealed handgun; (ii) have undergone active shooter training and received annual re-certification; and (iii) have been designated by the Superintendent. *Id.*

To satisfy the "active shooter training" referenced in the Resolution, the Board requires teachers and other personnel to complete the "Level 1" FASTER training. That training, as described by the Board, "consists of a 26-hour program focused on armed response, crisis management, and medical aid." Ex. C.[2] The FASTER Program is not an approved basic peace officer training program. It is privately developed and operated, and it is not OPOTC-approved or subject to OPOTC oversight. Nor does the FASTER Program provide the same level of training as a basic peace officer training program certified by OPOTC. A comparison of the required hours alone (728 hours vs. 26 hours) demonstrates the vast difference in the training, and a more detailed substantive comparison of the two trainings by an expert in Ohio police training underscores both these significant disparities and the comparative risks posed by the much less comprehensive FASTER training. *See* Rahtz Aff. ¶¶10-48.

PROCEDURAL HISTORY

Before filing this lawsuit, the plaintiffs expressed concerns about the insufficiency of the training through letters and at Board meetings. Ex. D. They also asked the Board to confirm whether it indeed was arming teachers or staff. Ex. E. The Board would not say. Shortly thereafter, on September 12, 2018, the plaintiffs brought an action against the defendants that included two claims: (1) a count for declaratory relief stating that the Resolution violates R.C. 109.78(D)'s

[2] The Board has not indicated whether its staff members will also be required to take FASTER's one-day "primer" class that focuses on target practice.

training requirement; and (2) a petition for mandamus based on the defendants' failure to properly respond to public records requests. Only the first count (for declaratory relief) is at issue here.

On October 10, 2018, the Board filed a partial motion to dismiss the public records claim only. That motion should be denied for the reasons stated in the relator's opposition, filed concurrently with this motion. The Board's strategic decision to respond only to the public records claim unnecessarily delays resolution on plaintiffs' declaratory judgment action. While the parties litigate that issue, the Board will be able to implement its intended (and unlawful) policy to arm teachers with minimal training, putting the plaintiffs' children at increased risk each day for grave injuries (or worse) due to accidental discharges, improper firearm use, or the firearms getting into the wrong hands. Because that delay in reaching the validity of the Resolution could itself be deadly, the plaintiffs bring this motion for preliminary injunctive relief.

ARGUMENT

In deciding whether to grant a motion for a preliminary injunction, trial courts look at four well-known factors: (1) whether there is a substantial likelihood that the movant will prevail on the merits; (2) whether the movant will suffer, or is at an increased risk of, irreparable harm if the injunction is not granted; (3) whether third parties will be unjustifiably harmed if the injunction is granted; and (4) whether the public interest will be served by the injunction. S*ee Back v. Faith Properties, LLC*, 12th Dist. Butler No. CA2001−12−285, 2002-Ohio-6107, ¶26; *Convergys Corp. v. Tackman*, 169 Ohio App.3d 665, 2006-Ohio-6616, 864 N.E.2d 145, ¶9 (1st Dist.) (footnote omitted) (quoting *Procter & Gamble Co. v. Stoneham*, 140 Ohio App.3d 260, 274, 747 N.E.2d 268 (1st Dist.2000)).

While the movant bears the burden of proof, no single factor is dispositive; "'if there is a strong likelihood of success on the merits, an injunction may be granted even though there is little evidence of irreparable harm and vice versa.'" *AK Steel Corp. v. ArcelorMittal USA, LLC*, 2016-Ohio-

3285, 55 N.E.3d 1152, ¶10 (12th Dist.) (quoting *Fischer Dev. Co. v. Union Twp.,* 12th Dist. Clermont No. CA99–10–100, 2000 WL 525815, at *3 (May 1, 2000)). The four factors must be balanced with the "'flexibility which traditionally has characterized the law of equity.'" *Cleveland v. Cleveland Elec. Illum. Co.*, 115 Ohio App.3d 1, 14, 684 N.E.2d 343 (8th Dist.1996) (quoting *Friendship Materials, Inc. v. Michigan Brick, Inc.*, 679 F.2d 100, 105 (6th Cir.1982)).

Here, these factors support granting a preliminary injunction. The Court should "preserve the status quo" that the Board has followed for years prior to this Resolution, allow armed SROs to continue protecting the school, but prevent the Board from implementing the Resolution and introducing insufficiently trained staff members into the classroom while this litigation is pending. *Procter & Gamble* at 267.

I. The plaintiffs have a strong likelihood of success on the merits.

The Resolution is unlawful because it allows school employees to go "armed while on duty" without having the training or experience required by R.C. 109.78(D). The Resolution violates the plain language of the statute. And if that weren't enough, the legislative history and statutory scheme further reinforce that the defendants are violating state law. Because the plaintiffs have a strong likelihood of success on the merits, the Court should preliminarily enjoin the Resolution.

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

The first step a court takes in interpreting a statute is to look at its plain language. "[I]f '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 statutory language is "plain," courts must "rely on what the General Assembly has said" and "and

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.

> This case begins and ends with the R.C. 109.78(D)'s plain language. It 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 requirements imposed by this provision are clear: any "person" that is "employ[ed]" by a "public . . . educational institution," in a "position in which such person goes armed while on duty," must have "satisfactorily completed an approved basic peace officer training program," unless he or she has already served for twenty years as a peace officer. *Id.*

Resort to a dictionary is not even necessary here, as the statute uses simple words with clear and definite meanings. Yet, in case there is any doubt, the dictionary confirms that R.C. 109.78(D) covers teachers, administrators, and other District employees who carry guns during the school day while going about their jobs. Going through the definition of the statute's various terms makes the point. Madison Local School District hires teachers, staff, coaches, administrators, and others in various "position[s]"—a word which, according to the dictionary (and common usage) means "job." *See* Oxford English Dictionary, *available at* https://perma.cc/5W2K-LJE3 (accessed Oct. 30, 2018). Under the Resolution, some of those employees may go "armed"—*i.e.*, "equipped with or carrying a firearm." R.C. 109.78(D). And they are armed while "on duty"—that is, while "engaged in one's regular work." *Id.; see also* Ex. F (Collective Bargaining Agreement between the Madison Education Association and the Madison Local Board of Education at 16, 28, 34 (July 1, 2016–June 30, 2019) (referring to, among other things, supplemental contracts for "extra duty assignments," teacher's "duty-free" lunch period, and "reporting to duty" after sick leave)). The result is

unavoidable: teachers and other District employees who carry firearms while at work in the school must meet the training requirements of R.C. 109.78(D).

B. The legislative history and statutory scheme demonstrate that R.C. 109.78(D)'s training requirement applies to armed teachers and staff.

Because the plain language of the statute is unambiguous, a court should not look to other cannons of statutory interpretation to discern legislative intent. Nonetheless, the legislative history and statutory scheme reinforce the plain meaning.

1. *Prior drafts of R.C. 109.78(D).* Consider, first, the prior drafts of R.C. 109.78(D). As initially passed by the House in 1969, the provision which became R.C. 109.78(D) only required the basic peace officer training for schools that hired a special policeman, security guard, or person "in any similar position." *See* Ex. G at 1347. But the General Assembly ultimately rejected this language. It did not want to limit the peace officer training requirement to special policemen, security guards, or other "similar" security officers in schools. Instead, the General Assembly chose much broader language to cover "other position[s] in which such person goes armed while on duty." R.C. 109.78(D). The key qualifying feature, then, is not whether an employee has a "similar" position to a security guard, but whether he or she goes "armed while on duty." And it would be antithetical to the legislature's decision to limit the text to those akin to security guards.

2. *Proposed Amendments to R.C. 109.78(D).* By the same token, the General Assembly has *rejected* attempts to either exempt teachers, staff, and other persons authorized by a local board of education to carry a firearm at school from the peace officer training requirement in R.C. 109.78(D), or to decrease the training requirements for teachers. For example, House Bill 8, introduced in 2013 in the wake of the tragic shooting at Sandy Hook Elementary School in Connecticut, would have created the precise exception that the defendants seek. Specifically, it would have amended R.C. 109.78(D) to add the following language: "This division does not apply

to a person authorized to carry a concealed handgun under a school safety plan adopted pursuant to section 3313.536 of the Revised Code." 2013-14 Am. Sub.H.B. No. 8, Section 109.78 (as passed by the House). The bill would have required the Attorney General to create a new specified training course for armed school staff. Though House Bill 8 passed the Ohio House, it failed in the Senate, and never reached the Governor's desk.

Similarly, a bill was introduced this Legislative session shortly after the Madison Resolution was passed that would exempt staff approved by a school board from R.C. 109.78(D)'s peace officer training requirement, as long as they completed a training course for armed school staff that would have to be designed by the Attorney General. *See* Ex. H. That bill is now pending. But it is not the law as it stands—the Legislature can change it, but neither this Court nor the Board can.

3. *Increased SRO Training*. Not only has the General Assembly thus far refused to reduce the training requirement necessary to carry guns in schools, it has now *increased* the training requirement for SROs. House Bill 318, which was signed into law on August 6, 2018, recognizes the unique difficulties of providing security in a school setting and requires each SRO to complete at least forty hours of specialized training for working in a school environment, in addition to the basic peace officer training that is already required. *See* R.C. 3313.951(B)(3)(c).

The upshot: the General Assembly intended that anyone carrying a firearm on duty at a school have—at a minimum—the basic peace officer training. The Legislature has considered changing that requirement, but it has not. This Court should not act for the Legislature.

C. The Board's interpretation of R.C. 109.78(D) must be rejected.

Contrary to the statute's plain language, the defendants have argued that teachers and other staff authorized to carry a firearm under the Resolution do not need to have the requisite peace officer training because they are not "security personnel." *See* Ex. I. For this proposition, they have pointed to an unofficial, nonbinding letter of the Attorney General that was sent to the

Chairman of the Buckeye Firearms Association on January 29, 2013. *See id;* Ex. J.

That interpretation must be rejected because it requires adding words to the statute that do not exist. According to the argument put forth in the Attorney General's letter, R.C. 109.78(D)'s training requirement only applies to school employees who are "considered 'security personnel.'" But the term "security personnel,"—which is placed in quotation marks in the Attorney General's letter—does not appear anywhere in R.C. 109.78(D), which applies generally to "other position[s]" where someone goes "armed while on duty." This interpretation attempts to rewrite the statute to apply only to "other *security personnel* position[s]." But courts must give effect "only to the words the legislature used, making neither additions to, nor deletions from, the statutory language." *Wilson v. Lawrence*, 150 Ohio St.3d 368, 2017-Ohio-1410, 81 N.E.3d 1242, ¶11.

The Attorney General's letter points to "the General Assembly's use of 'special police officer, security guard, or other position,'" concluding that this "suggests that 'other positions' applies to security personnel." Ex. J. But this interpretation assumes ambiguity where none exists. "Other position," by the statute's plain language, is clearly limited only by the phrase "goes armed while on duty." 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, neither can this Court. *See Stewart v. Vivian*, 151 Ohio St.3d 574, 2017-Ohio-7526, 91 N.E.3d 716, ¶29 (rejecting interpretation of statute because "the General Assembly did not qualify the term . . . or place any limitation on the meaning of the term").

D. The Board's interpretation would mean that Ohio teachers could carry weapons in classrooms with *de minimis* training.

The defendants' interpretation must be rejected for another reason: If R.C. 109.78(D) does not apply, school boards could allow teachers to carry firearms with almost no training at all. Outside of R.C. 109.78(D), Ohio law places no meaningful training requirement on a district's

employees who carry guns at school. The only training requirement appears to be the *de minimis* eight-hour training one must complete to get a concealed carry license. Of those eight hours, most can be completed online; only two of the hours must be "in-person training that consists of range time and live-fire training." *Id.* 2923.125(G)(1)(e). Reading R.C. 109.78(D) as inapplicable to armed school staff gives school districts carte blanche to impose whatever training requirements they want, or *none* whatsoever. And such a reading would allow unaccountable private entities, not OPOTC, to develop the training—*if any*.

Adopting that interpretation would also upset the statutory scheme. The General Assembly requires everyone else who can carry a weapon in a school to have basic peace officer training or the equivalent, *see* R.C. 2923.122(D)(1), it rejected House Bill 8's attempt to exempt school personnel from the peace officer training, and it *increased* the training required of school resource officers. If SROs need over 700 hours to carry a gun at school around children, why would the Legislature say that teachers only need eight hours of training to do the same? It would make no sense for the Court to hold that those school personnel who are closest to Ohio's children—those who run with them on the playground, sit with them at circle time, and lean over their desks in the classroom—can carry firearms with no real training requirement. Even the Legislators who have recommended amending R.C. 109.78(D) to exempt armed school staff from the peace officer training requirement suggested a new OPOTC training in its place. *See supra* at I.B.2. This Court should not allow school staff to go armed in school with *de minimis* training.

E. Alternatively, armed teachers and staff are "security personnel" subject to R.C. 109.78(D)'s training requirement.

Even under the Board's erroneous argument that R.C. 109.78(D) applies only to "security personnel," the staff armed under the Resolution would still meet this interpretation; they are armed precisely to serve a special security function. The Attorney General's letter itself conceded

that armed teachers and staff could count. In his words, "how a school classifies a particular employee's duties is a question that can only be answered by the local school district's employment practices and policies." He recognized that every employee has some security functions, such as to "help secure the children" in a time of crisis. But, in the Attorney General's view, if an employee has increased security duties—even if security is not their primary responsibility—he could fall within R.C. 109.78(D). *See* Ex. J.

The personnel authorized to carry firearms under the Resolution are asked to act as "security personnel," with a role distinct from other teachers. Even without discovery that may take place later in this litigation, there are three undisputed pieces of evidence that make that point. *First*, the Resolution's stated purpose is to arm school personnel for the "safety and welfare" of the students because "the safety of [the District's] students is paramount." That is, teachers are allowed to carry guns so that they are "prepared and equipped to defend and to protect [the District's] students." Ex. B. *Second*, the Resolution requires that the armed staff are trained (albeit insufficiently) to do just that: provide armed response in a time of crisis. Unlike other teachers, the teachers covered by the Resolution are meant to provide armed security; that is the *only reason* to allow them to carry arms at all times at school. They are on-call at any, and every, moment. *Id.* *Third*, the school's proposed insurance clarifies the point. To insure the District from liability from any of the persons carrying firearms under the Resolution, the District sought insurance for "law enforcement activities." Ex. K (covering "wrongful acts" or negligence while "conducting law enforcement activities"). In light of all these facts, the designated armed staff would still be "security personnel" under defendants' misreading of R.C. 109.78(D). Under either reading of the statute, therefore, the Court should conclude that the plaintiffs are likely to succeed on the merits on their claim for declaratory relief that persons armed pursuant to the Resolution must comply with R.C. 109.78(D).

II. The equitable factors weigh in favor of granting a preliminary injunction.

Given the strong likelihood of success on the merits, the Court should issue an injunction even if there is "little evidence" on the remaining equitable factors. *AK Steel Corp.*, 2016-Ohio-3285, 55 N.E.3d 1152, ¶10; s*ee also Toledo Police Patrolman's Assn., Local 10 v. City of Toledo*, 127 Ohio App.3d 450, 465, 469, 713 N.E.2d 78 (6th Dist.1998). But here, the equitable factors favor an injunction too.

A. The plaintiffs are at an increased risk of irreparable harm absent an injunction.

Each day inadequately trained teachers carry guns in school causes the plaintiffs irreparable harm: the increased risk that inadequate training will lead to their children being physically injured or killed because teachers or other staff with minimal training are allowed to carry deadly weapons in school. It is this increased risk of harm from inadequate training that makes the plaintiffs fearful each day when they drop their kids off at school or put them on the bus. *See* Gabbard Aff. ¶¶4–5; A.Robson Aff. ¶¶4–5; D.Robson Aff. ¶¶3–4; Tobey Aff. ¶4; Adams Aff. ¶¶5–6.

The plaintiffs' children could experience a tragic accident or misstep due to teachers' or staff members' inadequate training. The relationship between training and harm is common sense; with less training, persons are less skilled in handling firearms, less practiced in dealing with various difficult scenarios, and less able to "fall back on their training" in times of great stress. Accordingly, those with less training are more likely to be involved in accidents or missteps from, among other things, accidental discharge of the firearm, unauthorized access to the weapon, improper threat assessment, use of excessive force, basic shooting inaccuracy, or confusion by trained law enforcement arriving at the scene of an incident. *See* Rahtz Aff. ¶¶40–48. While it is impossible to quantify the increased risk, the consequences are so severe and irreparable that any meaningful increase is sufficient to constitute irreparable harm. *See Toledo Police Patrolman's Assn.* at 465, 470.

The increased risk of "potential harm" to "even a single [child] is sufficient to make the required showing" of irreparable harm. *Id.* at 470.

To be sure, these may be risks that exist to some extent with SROs and other armed personnel who have the basic peace officer training. But these risks of harm and even death are heightened when the District places guns in the hands of people with as little training as a little league umpire. Adams Aff. ¶4. Expert evidence confirms this.

Examining the differences between the basic peace officer training and the FASTER training program, retired Captain Howard Rahtz, the former Commander of the Cincinnati Police Academy, has opined that: (a) the full peace officer training includes "significantly more" hours of firearms training, Rahtz Decl. ¶34; (b) "many topics" in the full peace officer training "with clear relevance for armed staff in a school . . . do not appear to be covered by the FASTER program," *id.* ¶35; (c) the "more comprehensive and rigorous Peace Officer training is associated with higher levels of skill, retention of skills, and superior performance," *id.* ¶43; (d) "the risk of an accident, misstep, improper or unjustified use of force would be significantly less for staff completing" the full peace officer training, *id.* ¶44; and (e) "an armed staff member who completes the Peace Officer training has increased the chances of success when compared to a FASTER trained individual," *id.* ¶48.

Likewise, Ohio's lead law enforcement authorities agree that comprehensive training is required when arming teachers. For example, in 2014, in response to potential legislation regarding armed teachers (*supra* at I.B.2), the OPOTC preliminarily recommended completion of a 200-hour training program before a school board could authorize staff to carry in the school building. Sharon W. Buggs, *Ohio may exclude teachers from gun accident liability*, Dayton Daily News (Jan. 28, 2014), https://perma.cc/XPC3-38JV. Mary Davis, Executive Director of OPOTC, explained that these hours were necessary because training teachers to properly respond with firearms is about a lot

more than being able to "proficiently hit a paper target in a controlled setting." Ex. L. In her expert view, it is not enough to just train armed personnel for active shooter situations; if they are to be armed, for the "welfare of the children," they also have to be trained on "use of force, building search techniques, weapons retention, or using environmental tools." *Id.* She asked rhetorically: "Is it fair to anyone to leave the employee with only the option of deadly force and not include training on de-escalation/crisis intervention, subject control, or restraint tactics?" *Id.* If a teacher is only trained in deadly force and not in de-escalation or a number of other skills, a difficult situation could turn needlessly deadly. That is irreparable harm.

B. A preliminary injunction will not unjustifiably harm third parties.

Nor will any third parties be unjustifiably harmed by granting a preliminary injunction. For this factor, the Court does not consider all potential harm to third parties, but only "unjustifiable" harm. *Youngstown Edn. Assn. v. Kimble*, 2016-Ohio-1481, 63 N.E.3d 649, ¶30 (7th Dist.). Granting a preliminary injunction would not cause such unjustifiable harm to students, school staff, or other parents because the plaintiffs are only asking that the District follow R.C. 109.78(D) and have armed personnel receive *more* training than the Board requires. An injunction does not prevent properly trained teachers, or additional SROs, from being armed in Madison schools. It just means those that carry guns around students are better trained.

Furthermore, according to the Board, arming teachers is "one small piece of the District's security policy." Ex. M. The Board has at least ten other security measures that it has implemented and can continue to utilize while a preliminary injunction is in effect: (i) an anonymous tip line, (ii) penetration resistant classroom doors; (iii) a State Homeland Security threat assessment; (iv) an improved building communications system; (v) a new security camera system; (vi) limiting access to one entrance during the school day and requiring staff to allow entrance "through these locked access points"; (vii) metal detectors with random screenings; (viii) counselors for depression,

bullying and stressors, (ix) ongoing active shooter training for students and staff; and (x) additional anonymous safety measures. *Id*. The Board has even admitted that it has no evidence that armed teachers and staff make students safer. *See* MTD Ex. A (asserting that "no public records exist" documenting Board's purported research before enacting the Resolution). Nor will enjoining the Resolution impair the District from continuing its implementation in the future if the Court were to determine that it is lawful.

C. A preliminary injunction would serve the public interest.

The safety of children at school is of the utmost public importance. The parties here do not disagree on that point, although they disagree on the Resolution. The bottom line, however, is that the General Assembly concluded that school staff must be well-trained if they go armed while on duty. Enforcing the law is itself in the public interest, *see Kimble*, 2016-Ohio-1481, 63 N.E.3d 649, at ¶31, especially when it comes to state standards on issues so fundamental to public safety as deadly weapons in schools.

The public interest is further served through an injunction because that legislatively-mandated training can prevent tragic accidents that endanger the lives of schoolchildren. Without it, Madison's children are subject to undue risk. The General Assembly determined that such training is necessary to protect the public interest. This Court too, respecting that legislative judgment, should recognize that granting a preliminary injunction serves the public interest.

CONCLUSION

For these reasons, the plaintiffs respectfully request that the Court grant their motion for a preliminary injunction.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on October 31, 2018, a copy of the foregoing was served via email on the following:

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LIST OF ATTACHED DOCUMENTATION
IN SUPPORT OF PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION

- Affidavit of Attorney Rachel Bloomekatz in Support of Motion for Preliminary Injunction (including exhibits A–M)
- Affidavit of Erin Gabbard in Support of Motion for Preliminary Injunction
- Affidavit of Aimee Robson in Support of Motion for Preliminary Injunction
- Affidavit of Dallas Robson in Support of Motion for Preliminary Injunction
- Affidavit of Benjamin Tobey in Support of Motion for Preliminary Injunction
- Affidavit of Benjamin Adams in Support of Motion for Preliminary Injunction
- Affidavit of Captain Howard Rahtz (Ret.) in Support of Motion for Preliminary Injunction (including exhibits A–C).