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Gabbard v. Madison Local School Dist. Bd. Of Edn. 179 N.E.3d 1169 (2021)

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I. INTRODUCTION

From 2009 to 2019, there were at least 180 school shootings, affecting at a minimum 356 victims.[1] In 2016, one of these school shootings occurred in the Madison Local School District in Butler County, Ohio, wounding four students.[2] The school system's Board of Education enacted a resolution that would arm certain teachers with concealed handguns based on a determined set of requirements.[3]

When a group of parents challenged the resolution, the Ohio Supreme Court eventually heard the case.[4] What at first seemed like a dispute about a school defense policy became a long and convoluted argument between factions within the court regarding modes and methods of statutory interpretation.[5]

II. STATEMENT OF FACTS AND PROCEDURAL HISTORY

On February 29, 2016, Madison Junior-Senior High became the site of an all-too-familiar occurrence: a school shooting.[6] A high school student walked into the school building's cafeteria and began firing his weapon.[7] As a result of the gunman's actions, four students were injured, and the shooter was subsequently arrested.[8]

In April 2018, the Madison Local School District Board (hereinafter "Board") took an action it deemed necessary to help prevent and quell any future active-shooter situations.[9] The Board passed a resolution allowing the superintendent to designate up to ten school employees to carry

1. Gabbard v. Madison Local School Dist. Bd. Of Edn., 179 N.E.3d 1169, 1172 (majority opinion) (citing Christina Walker, *10 Years. 180 School Shootings. 356 Victims.*, CNN (accessed June 1, 2021), https://www.cnn.com/interactive/2019/07/us/ten-years-of-school-shootings-trnd/#storystart).

2. Dana Ford, *4 Students Injured in Ohio School Shooting*, CNN (Feb. 29, 2016), https://www.cnn.com/2016/02/29/us/ohio-school-incident/index.html.

3. *Gabbard*, 179 N.E.3d at 1174.

4. *Id*. at 1174-75.

5. Susan Tebben, *Ohio Supreme Court: Schools Can't Arm Teachers without Proper Training*, OH. CAP. J. (June 24, 2021), https://ohiocapitaljournal.com/2021/06/24/ohio-supreme-court-schools-cant-arm-teachers-without-proper-training/.

6. *Gabbard*, 179 N.E.3d at 1172; *see also* Ford, *supra* note 2.

7. Ford, *supra* note 2.

8. *Id*.

9. *Gabbard*, 179 N.E.3d at 1172; *see also* Rick McCrabb, *Closer Look: Madison School District's Plan to Arm Teachers, Staff*, JOURNAL-NEWS, (April 25, 2018), https://www.journal-news.com/news/closer-look-madison-school-district-plan-arm-teachers-staff/uhvquNFHRKDw1j7AFhL9MK/.

concealed firearms throughout the school so that these faculty members might use the weapons if facing an active-shooter situation.[10] The Board would then issue a written authorization to each individual, permitting him or her to carry a weapon as long as he or she met a list of requirements.[11] Designated employees were required to: "maintain an Ohio concealed-handgun license, satisfactorily complete at least twenty-four hours of response-to-active-shooter training, hold a handgun-qualification certificate, receive training regarding mental preparation to respond to active killers, and pass a criminal-background check and mental-health exam."[12]

The Board's resolution was met with backlash by some parents, students, and other community members.[13] A group of parents, Erin Gabbard, Aimee Robson, Dallas Robson, Benjamin Tobey, and Benjamin Adams (hereinafter "Parents"), sued the Board, seeking both declaratory judgment and an injunction against the resolution's application.[14] The sought declaratory judgment asked the court to determine that the Board's resolution was in violation of the Ohio Revised Code, specifically R.C. 109.78(D).[15] R.C. 109.78(D) reads:

> No public or private educational institution or superintendent of the state highway patrol 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.[16]

The Parents argued that teachers or administrators qualified as "other position[s] in which such person goes armed while on duty," and, thus, they must either have training as a peace officer or have previously completed twenty years of active duty as a peace officer.[17] Peace officer training requires at least 728 hours to complete and necessitates a background check,

10. *Gabbard*, 179 N.E.3d at 1174.
11. *Id*.
12. *Id*.
13. Marianna Bettman, *Oral Argument Preview: How Much Training Is Required for School Teachers and Staff to Carry Firearms in Ohio's Schools?*, LEGALLY SPEAKING OHIO (Jan. 4, 2021), https://legallyspeakingohio.com/2021/01/oral-argument-preview-how-much-training-is-required-for-school-teachers-and-staff-to-carry-firearms-in-ohios-schools-erin-g-gabbard-et-al-v-madison-local-school-district-board-of-educat/; *see also* Jessica Schmidt, *Parents Take Stand Against School's Decision to Allow Armed Staff*, FOX19 (Jul. 12, 2018), https://www.fox19.com/story/38626213/parents-nonprofit-take-stand-against-madison-resolution-to-arm-school-staff/.
14. *Gabbard*, 179 N.E.3d at 1174.
15. *Id*.
16. OHIO REV. CODE ANN. § 109.78(D) (2021).
17. *Gabbard*, 179 N.E.3d at 1174.

a fitness test, and a drug screening.[18] According to the Parents, the Board's resolution required twenty-four hours of response-to-active-shooter training, which is not nearly enough instruction to satisfy the requirements of R.C. 109.78(D).[19]

The Board countered, saying that R.C. 109.78(D) was not meant to apply to teachers or administrators, and the Board asserted that it was specifically empowered through a different statute, R.C. 2923.122.[20] This statute "defines the criminal offense of illegal conveyance into or possession in a school safety zone of a deadly weapon or dangerous ordnance."[21] Sections (A) and (B) of the statute forbid any person from "knowingly conveying or attempting to convey into or possessing" a weapon in a school safety zone, which is defined as a "school, school building, school premises, school activity, and school bus."[22] However, R.C. 2923.122(D)(1)(a) exempts criminal liability for the following:

> [A] law enforcement officer who is authorized to carry deadly weapons or dangerous ordnance, a security officer employed by a board of education or governing body of a school during the time that the security officer is on duty pursuant to that contract of employment, or any other person who has written authorization from the board of education or governing body of a school to convey deadly weapons or dangerous ordnance into a school safety zone or possess a deadly weapon or dangerous ordnance in a school safety zone and who conveys or possesses the deadly weapon or dangerous ordnance in accordance with that authorization.[23]

The Board argued that since it provided written authorization to the ten designated armed employees, the language of R.C. 2923.122(D)(1)(a) shielded those teachers or administrators from any criminal liability.[24] Therefore, the Board maintained that it was acting within the authority granted under R.C. 2923.122 and that the designated employees were not required to complete the peace officer training required under R.C. 109.78(D).[25]

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18. Bettman, *supra* note 13.
19. *Id*.
20. *Id*.
21. *Gabbard*, 179 N.E.3d at 1173.
22. *Id*.; OHIO REV. CODE ANN. § 2901.01(C)(1) (2021).
23. OHIO REV. CODE ANN. § 2923.122(D)(1)(a) (2021).
24. Bettman, *supra* note 13.
25. *Id*.

The Parents' suit was heard in the Butler County Common Pleas Court, where the court entered summary judgment for the Board.[26] The trial court found that R.C. 109.78(D) was only applicable to people employed to perform duties in a police-like capacity and was not germane to teachers, administrators, and other school employees.[27] Thus, the trial court concluded that the training requirements of R.C. 109.78(D) were not compulsory for the ten designated school employees described in the Board's resolution.[28] Further, the court found that the Board was within its authority to enable certain employees to carry concealed weapons on school premises under R.C. 2923.122.[29]

The Parents appealed, and by a 2-1 decision, the Twelfth District Court of Appeals reversed the lower court's judgment.[30] The majority found that the trial court read R.C. 109.78(D) too narrowly and that its language was unambiguous and was meant to be applied to all school staff, including teachers and administrators.[31] The majority held that the peace officer training requirements were mandatory for all school employees, and, therefore, the Board's resolution was in violation of R.C. 109.78(D).[32] The Ohio Supreme Court agreed to hear the Board's appeal of the Twelfth District's judgment and to determine whether R.C. 109.78(D) was applicable to all school employees.[33]

III. COURT'S DECISION AND RATIONALE

A. Majority Opinion by Chief Justice O'Connor

Chief Justice O'Connor delivered the opinion of the court, joined by Justices Brunner, Donnelly, and Stewart.[34] The Chief Justice began by describing the court's processes for analyzing a statute, stating that the primary goal is to understand the legislature's intent for creating the law.[35] Specifically, the majority stated that "when the statutory language is

26. *Gabbard*, 179 N.E.3d at 1174.
27. *Id*. at 1174-75.
28. *Id*. at 1175.
29. *Id*. at 1174-75.
30. *Id*. at 1175 (citing Gabbard v. Madison Local Sch. Dist. Bd. Of Educ., 2020-Ohio-1180, 153 N.E.3d 471, ¶¶ 21, 32. (Ohio Ct. App. 2020) [hereinafter *Madison*]); Bettman, *supra* note 13.
31. *Gabbard*, 179 N.E.3d at 1175 (citing *Madison*, 2020-Ohio-1180 at ¶¶ 17-19).
32. *Id*.
33. *Gabbard*, 179 N.E.3d at 1175.
34. Marianna Bettman, *Merit Decision: Armed Teachers Must Meet Statutory Training-or-Experience Requirements*, LEGALLY SPEAKING OHIO (July 16, 2021), https://legallyspeakingohio.com/2021/07/merit-decision-armed-teachers-must-meet-statutory-Training-or-Experience-requirements-erin-g-gabbard-et-al-v-madison-local-school-district-board-of-education-et-al/ [hereinafter *Merit Decision*].
35. *Gabbard*, 179 N.E.3d at 1175 (citing State ex rel. Steele v. Morrissey, 103 Ohio St.3d 355, 2004-Ohio-4960, 815 N.E.2d 1107, ¶ 21).

unambiguous, [the court will] apply it as written without resorting to rules of statutory interpretation or considerations of public policy."[36] The Chief Justice emphasized that the court's review begins and ends with the "unambiguous statutory language."[37]

The majority set aside the Board's argument that R.C. 2923.122(D)(1)(a) gives the Board permission to authorize school employees to carry concealed weapons on school property.[38] Instead, the court determined that the crucial question that must be answered in this case is the pertinence of R.C. 109.78(D).[39] Specifically, the court sought to resolve whether school employees (teachers, administrators, etc.) who carry weapons while performing their assigned duties are considered an "other position in which such person goes armed while on duty" according to the plain language of R.C. 109.78(D).[40] If the court decided that school employees do fall under this category, then, under R.C. 109.78(D), in order to carry a weapon on school premises, these employees would be required to either attend peace officer training or have at least twenty years of experience as a peace officer (hereinafter referred to as the "Training-or-Experience" requirement).[41]

The court began by looking at the plain language of R.C. 109.78(D).[42] The statute bars schools from employing any "person as a special police officer, security guard, or other position in which such person goes armed while on duty" unless the person has satisfied the Training-or-Experience requirement.[43] The Chief Justice emphasized that neither the Board nor the Parents argued that the language of R.C. 109.78(D) is ambiguous.[44] However, the court noted that the major disagreement between the two sides was in their readings and understandings of the statute's "other position in which such person goes armed while on duty" clause (hereinafter referred to as the "Clause").[45] The Board argued that this Clause only applied to school employees whose specific duties were to "serve in safety or security positions that inherently require the employee to be armed."[46] However, the

36. *Gabbard*, 179 N.E.3d at 1175 (citing Zumwalde v. Madeira & Indian Hill Joint Fire Dist., 128 Ohio St.3d 492, 2011-Ohio-1603, 946 N.E.2d 748, ¶¶ 23-24, 26).

37. *Gabbard*, 179 N.E.3d at 1175 (citing Johnson v. Montgomery, 151 Ohio St.3d 75, 2017-Ohio-7445, 86 N.E.3d 279, ¶ 15).

38. *Gabbard*, 179 N.E.3d at 1175.

39. *Id*. at 1175-76.

40. *Id*. (quoting § 109.78(D)).

41. *Gabbard*, 179 N.E.3d at 1175-76.

42. *Id*. at 1176.

43. *Id*. (quoting § 109.78(D)).

44. *Gabbard*, 179 N.E.3d at 1176.

45. *Id*.

46. *Id*.

Parents maintained that the Clause referred to all school employees, regardless of their assigned duties.[47]

To interpret the Clause, the court examined several of the words and phrases located within it.[48] It began by defining "other position," saying that "in the context of employment, the ordinary meaning of the word 'position' is a job."[49] The court went further, saying that "other" clearly modified "position," making the "other position" different from the two previously listed job categories (special police officer or security guard).[50] Therefore, the court held that a "school employee who is not employed as a special police officer or security guard is employed in an 'other position.'"[51]

The majority continued by examining which "other position[s]" were required to meet the Training-or-Experience condition.[52] From the plain language of the statute, the court determined that only school employees who held a "position 'in which [the employee] goes armed while on duty'" needed to meet the requirements of R.C. 109.78(D).[53] Thus, the statute limited which employees needed to meet the Training-or-Experience requirement to only those school employees who would be armed while performing their regular duties.[54] In the case of the Madison Local School District, the statute's Training-or-Experience mandate would apply only to the ten school employees designated as being allowed to carry firearms on school premises.[55]

The court acknowledged that the Board argued that the Training-or-Experience requirement should only apply to school employees whose actual duties relate to being armed.[56] The Board claimed that a teacher's or an administrator's actual responsibilities do not typically involve the possession of a concealed weapon, and, thus, the Board argued that the Clause did not apply to school employees.[57] However, the court rejected this interpretation, saying that the Board's construing of the Clause would require a rewording of the language of R.C. 109.78(D).[58] Specifically, the Board's reading would have changed the wording of the Clause from "other position in which such employee goes armed while on duty" to "other

47. *Id*.
48. *Id*.
49. *Gabbard*, 179 N.E.3d at 1176 (citing *Position*, RANDOM HOUSE DICTIONARY OF THE ENGLISH LANGUAGE (2d ed. 1987)).
50. *Gabbard*, 179 N.E.3d at 1176.
51. *Id*.
52. *Id*. at 1177.
53. *Id*. (quoting § 109.78(D)).
54. *Gabbard*, 179 N.E.3d at 1177.
55. *Id*.
56. *Id*.
57. *Id*.; *see also* Bettman, *supra* note 13.
58. *Gabbard*, 179 N.E.3d at 1177.

position 'the duties of which involve being armed.'"[59] The Chief Justice stressed that the General Assembly could have chosen to use language to fit the Board's argument, but it did not.[60] Quoting a previous case, the Chief Justice wrote, "[I]f the General Assembly could have used a particular word in a statute but did not, we will not add that word by judicial fiat."[61] The majority interpreted the statute as it was written and not as it might have been written using other language.[62]

The majority made it clear that the Training-or-Experience requirement had nothing to do with one's duties within the scope of his or her employment.[63] The only condition that would trigger the statute's Training-or-Experience mandate is whether an employee "goes armed while on duty."[64] According to the court, once the Board allowed a school employee to carry a firearm on to school grounds, the Training-or-Experience requirement was triggered, regardless of that employee's actual job description.[65]

The court also rejected amicus curiae Ohio Attorney General Dave Yost's argument for a judgment rendered in favor of the Board.[66] The Attorney General argued that since the designated employees were not hired with the purpose of carrying weapons but were instead volunteering to carry weapons with the approval of the Board, R.C. 109.78(D) would not apply.[67] The majority set aside this argument by saying that the Attorney General was attempting to assert that the Training-or-Experience requirement is triggered by the status of one's employment.[68] However, as the court previously wrote, it is not the nature of the employment or the assigned responsibility that triggers the statute; instead, whether or not the employee is "armed while on duty" determines the application of R.C. 109.78(D).[69]

The Attorney General also argued that, if taken as a whole, R.C 109.78 describes the training required of "special police officers, security guards, and other persons privately employed in a police capacity."[70] To illustrate his argument, the Attorney General pointed to other sections of the statute that refer to the creation of a "peace-officer-private-security fund" that helps

59. *Id*.
60. *Id*.
61. *Id*. (quoting Hulsmeyer v. Hospice of Southwest Ohio, Inc., 142 Ohio St.3d 236, 2014-Ohio-5511, 29 N.E.3d 903, ¶ 26).
62. *Gabbard*, 179 N.E.3d at 1177.
63. *Id*.
64. *Id*; § 109.78(D).
65. *Gabbard*, 179 N.E.3d at 1177.
66. *Id*. at 1177-78.
67. *Id*. at 1177.
68. *Id*. at 1177-78.
69. *Id*; § 109.78(D).
70. *Gabbard*, 179 N.E.3d at 1178.

pay for training programs for those hired in security-related positions.[71] He also noted that R.C. 109.78(A) states that training programs are to be established to certify people for "positions as special police, security guards, or persons otherwise privately employed in a police capacity."[72] Because the rest of the statute concerned those serving as law enforcement or as security guards, the Attorney General asked the court to acknowledge that R.C. 109.78(D) should be limited to apply to those types of positions as well.[73]

Again, the court dismissed the Attorney General's reasoning, saying that the General Assembly had the power to limit R.C. 109.78(D) to employees who were specifically hired in some type of type of law enforcement or security capacity, but it chose not to.[74] The court took the other sections of the statute that specifically addressed those employed "in a police capacity" as evidence that the General Assembly knew how to tailor parts of the statute to refer to police-like employees.[75] Further, the majority said that since R.C. 109.78(D) was not modified to specify that it referred to only those employed "in a police capacity," the General Assembly must have intentionally left the statute broader than those other sections.[76] In taking this view, the court refused to attempt to correct what the Attorney General and some of the dissenting justices saw as inconsistencies within the statute.[77]

Using the same logic, the court rejected the Board's and Justice DeWine's argument (from his dissenting opinion) that the statute should be interpreted using the *ejusdem generis* rule.[78] This rule states that when a "general word or phrase follows a list of specifics, the general word or phrase will be interpreted to include only items of the same class as those listed."[79] The Board and Justice DeWine asserted that the term "other position" in the Clause should be limited to those positions sharing some similar quality with the two previous items in the list: special police officer and security guard.[80] Using *ejusdem generis* as a basis, they claimed that the similar quality connecting the list is "law enforcement or the protection of others and the inherent necessity to be armed while performing such

71. *Id*.; OHIO REV. CODE ANN. § 109.78(C) (2021).
72. *Gabbard*, 179 N.E.3d at 1178; OHIO REV. CODE ANN. § 109.78(A) (2021).
73. *Gabbard*, 179 N.E.3d at 1178.
74. *Id*.
75. *Id*.
76. *Id*.
77. *Id*.
78. *Gabbard*, 179 N.E.3d at 1179.
79. *Ejusdem Generis*, BLACK'S LAW DICTIONARY (11th ed. 2019).
80. *Gabbard*, 179 N.E.3d at 1179.

duties."[81] Thus, the Board and Justice DeWine defined "other position" as one that would be police-like in nature.[82]

However, the majority found that any application of the *ejusdem generis* rule was inappropriate, noting that the rule should only be applied "when the statutory language itself is subject to various interpretations."[83] The court ascertained no ambiguity in the language of the statute, and, therefore, it rejected any application of a statutory-interpreting device such as *ejusdem generis*.[84] Furthermore, the majority stated that even if *ejusdem generis* were to be applied, it would not produce the result the Board was seeking.[85] The Chief Justice wrote that the statute specifies the shared quality between special police officers, security guards, and "other position[s]" in its language: being armed on duty.[86] All of these types of employees are armed while on duty, and, thus, they are required to meet the Training-or-Experience requirement described within the statute.[87]

After holding that R.C. 109.78(D) applies to all school employees who are armed, the court then turned to the Board's argument that R.C. 2923.122(D)(1)(a) allowed it to circumvent the Training-or-Experience requirement.[88] R.C. 2923.122(D)(1)(a) describes the types of employees who are exempt from criminal liability for carrying firearms on to school premises.[89] The Board argued that R.C. 2923.122(D)(1)(a) gave it the power to authorize any person to carry a weapon on to school grounds and the freedom to determine the required amount of training for that person.[90] Justice Kennedy, in her dissent, agreed with the Board and even called R.C. 2923.122(D)(1)(a) the "authorizing statute."[91] However, the majority stated that R.C. 2923.122(D)(1)(a) does not authorize a school board to disregard other statutory provisions in absolving a person of criminal liability for carrying a firearm on school property.[92] For instance, a person who is authorized by a board of education to carry a concealed handgun on school premises must still have his or her license for concealed carry.[93] Using the same logic, the court held that while R.C. 2923.122(D)(1)(a) gave the Board the authority to grant a person the ability to be armed on school grounds,

81. *Id*.
82. *Id*.
83. *Id*.
84. *Id*.
85. *Gabbard*, 179 N.E.3d at 1179.
86. *Id*. at 1179-80.
87. *Id*.
88. *Id.* at 1180.
89. § 2923.122(D)(1)(a).
90. *Gabbard*, 179 N.E.3d at 1180.
91. *Id*. at 1180, 1183.
92. *Id*. at 1181.
93. *Id*.; OHIO REV. CODE ANN. § 2923.12(A) (2021).

that person would still be bound by the statutory requirements of R.C. 109.78(D).[94]

Despite the arguments of the Board, the court determined that there was no conflict between R.C. 2923.122(D)(1)(a) and R.C. 109.78(D).[95] The Board claimed that enforcement of the Training-or-Experience requirement of R.C. 109.78(D) impeded its authority to designate armed school employees.[96] However, the court rejected this notion, saying that the Board was still free to authorize whomever it saw fit to carry a concealed weapon on school premises but that those individuals must satisfy the Training-or-Experience requirements before coming to school armed.[97]

The majority ignored the policy arguments of the Board, the Parents, and the amici curiae about whether teachers should be armed, and, if so, what training should be required.[98] The court left these policy considerations for the legislature.[99] The court also acknowledged that it is possible that the two statutes may "fit together imperfectly" since R.C. 109.78(D) was enacted in 1969, whereas R.C. 2923.122(D)(1)(a) was enacted in 1992.[100] However, since the unambiguous language of each statute is not in conflict with the other, both statutes must be applied verbatim.[101] The Chief Justice insisted that if the statutes read together create an unideal result, the General Assembly, not the courts, should act to amend the situation.[102]

In the end, the court determined that the statutory requirements are clear.[103] R.C. 109.87(D) mandates that in order for a school employee to be armed while performing his or her required duties, he or she must have successfully completed a peace officer training program or have at least twenty years of experience as a peace officer.[104] R.C. 2923.122(D)(1)(a) does not allow a school board to avoid that requirement.[105] Therefore, since the Board's resolution did not require the Training-or-Experience mentioned in R.C. 109.78(D), the resolution violated the statute.[106] Because of this violation, the court affirmed the Twelfth District's judgment.[107]

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94. *Gabbard*, 179 N.E.3d at 1181.
95. *Id*.
96. *Id*.
97. *Id*.
98. *Id*. at 1182.
99. *Gabbard*, 179 N.E.3d at 1182.
100. *Id*.
101. *Id*.
102. *Id.*
103. *Gabbard*, 179 N.E.3d at 1182.
104. *Id*.
105. *Id*.
106. *Id*. at 1182-83.
107. *Id*. at 1183.

B. Dissenting Opinion by Justice Kennedy

In the first of three dissenting opinions, Justice Kennedy began by saying that in order for the majority to form its opinion, it read R.C. 2923.122(D)(1)(a) *in pari materia* with R.C. 109.78(D).[108] *In pari materia* is a canon of statutory interpretation in which statutes that relate to the same subject matter may be "construed together, so that inconsistencies in one statute may be resolved by looking at another statute on the same subject."[109] Justice Kennedy, however, decried the use of *in pari materia*, saying that the canon should only be used when "one of the statutes expressly refers to the other or the statute being construed is ambiguous and both statutes relate to the same subject matter."[110] In her view, these statutes were not ambiguous, did not expressly refer to each other, and were not related.[111] Therefore, Justice Kennedy stated that the court's use of *in pari materia* was incorrect, and, consequently, she would not have held for the Parents.[112]

It is worth noting here that Chief Justice O'Connor, in the majority opinion, took time to counter Justice Kennedy's assertion about *in pari materia*.[113] The Chief Justice disputed Justice Kennedy's claim that the majority opinion was based on reading the two statutes at issue *in pari materia*.[114] In fact, the majority noted that neither the Parents' merit brief nor the majority opinion (other than to address Justice Kennedy's dissent) ever mentioned the use of the *in pari materia* canon of statutory interpretation.[115] The majority maintained that its opinion was formed by reading the plain language of the statutes and by applying the language of each independently.[116] Specifically, the Chief Justice wrote, "[O]ur understanding of one's meaning does not depend upon our understanding of the meaning of the other."[117]

Disregarding the majority's assertion to the contrary, Justice Kennedy continued her line of reasoning, arguing that R.C. 2923.122(D)(1)(a) should not be read *in pari materia* with R.C. 109.78(D).[118] She described the history and use of this linguistic tool, and she reaffirmed her belief that canons of statutory interpretation should not be used by the court unless

108. *Gabbard*, 179 N.E.3d at 1183 (Kennedy, J., dissenting).
109. *In Pari Materia*, BLACK'S LAW DICTIONARY (11th ed. 2019).
110. *Gabbard*, 179 N.E.3d at 1183.
111. *Id*.
112. *Id*.
113. *Gabbard*, 179 N.E.3d at 1176 (majority opinion).
114. *Id*.
115. *Id*.
116. *Id*.
117. *Id*.
118. *Gabbard*, 179 N.E.3d at 1184 (Kennedy, J., dissenting).

there is some ambiguity in the text of the statute.[119] In the current case, Justice Kennedy found that *in pari materia* should not be used for three reasons: 1) R.C. 2923.122 does not explicitly refer to R.C. 109.78(D) in any of its sections, 2) R.C. 2923.122(D)(1)(a) is unambiguous, and 3) even if R.C. 2923.122(D)(1)(a) were ambiguous, the two statutes do not relate to each other and, thus, should not be read *in pari materia*.[120]

First, she discussed the lack of a specific reference to R.C. 109.78(D) within R.C. 2923.122(D)(1)(a).[121] She highlighted another section of R.C. 2923.122 that referred to R.C. 109.801 and took this reference as evidence that the legislature knew of the existence of R.C. Chapter 109.[122] Thus, she concluded that since lawmakers knew of R.C. Chapter 109 but did not expressly refer to R.C. 109.78(D) in R.C. 2923.122(D)(1)(a), the two statutes should not be read *in pari materia*.[123] Justice Kennedy wrote that if the General Assembly had intended for a school board to only authorize school employees to be armed via R.C. 2923.122(D)(1)(a) after they had gone through the Training-or-Experience requirements of R.C. 109.78(D), the legislature would have specifically referred to R.C. 109.78(D) in the language of R.C. 2923.122(D)(1)(a).[124] In Justice Kennedy's view, the fact that there was no such mention of R.C. 109.78(D) in R.C. 2923.122(D)(1)(a) indicated that the legislature had no intention of requiring school employees to satisfy the Training-or-Experience requirement.[125] This factor contributed to Justice Kennedy's determination that the majority should not have used *in pari materia*.[126]

Second, this dissent stated that R.C. 2923.122(D)(1)(a) is plain and unambiguous and, therefore, in no need of any statutory-interpreting device such as *in pari materia*.[127] Unlike the majority, Justice Kennedy saw R.C. 2923.122(D)(1)(a) as "the authorizing statute," saying that it allowed a school board, without any limitations, to designate individuals to carry weapons on school premises.[128] She stated that the majority made a misstep when it began by examining R.C. 109.78(D) instead of starting with R.C. 2923.122(D)(1)(a).[129] In her view, the court should have read the plain language of R.C. 2923.122(D)(1)(a) and should have seen that the text

119. *Id*.
120. *Id*. at 1185.
121. *Id*.
122. *Id*.
123. *Gabbard*, 179 N.E.3d at 1185.
124. *Id*. at 1186.
125. *Id*.
126. *Id*.
127. *Id*. at 1187.
128. *Gabbard*, 179 N.E.3d at 1187.
129. *Id*.

clearly gave school boards total authority to arm its employees without any need to satisfy R.C. 109.78(D).[130] According to Justice Kennedy, since R.C. 2923.122(D)(1)(a) was unambiguous, there was no reason for the majority to consider any other statute *in pari materia*.[131]

Third, Justice Kennedy argued that even if there had been an express reference of one of the two statutes in the other or if R.C. 2923.122(D)(1)(a) had been ambiguous, the two statutes were unrelated to each other.[132] Since the two statutes did not cover the same subject matter, they should not be read *in pari materia*.[133] Justice Kennedy interpreted the two statutes as very different from one another.[134] She saw R.C. 2923.122(D)(1)(a) as a statute that allowed a school board to absolve school employees from criminal liability for being armed on school grounds.[135] On the other hand, it was her view that R.C. 109.78 as a whole was a statute governing the "certification and training of special police officers and security guards."[136] She asserted that R.C. 109.78(D) did "not speak to a situation in which a school district decides to permit a person [already employed] to carry a firearm on school grounds" and only governed situations in which an employee was hired "as a de facto police officer."[137] According to Justice Kennedy, because the two statutes are unrelated, they should not be read *in pari materia*.[138]

Justice Kennedy also disagreed with the majority's interpretation of "other position" in the Clause.[139] She found that "other position" was meant to refer to an employee "acting in a police capacity."[140] Under this understanding of "other position," the Training-or-Experience requirement would only apply to an employee who was hired as a "de facto police officer."[141] Therefore, Justice Kennedy would not require the language of R.C. 109.78(D) to be applied to teachers, administrators, or other school employees not involved in law enforcement or security.[142]

Justice Kennedy found that the majority opinion was only possible through an interpretation of the statutes using *in pari materia*.[143] Despite the majority countering this view and claiming that it had used no such

130. *Id*. at 1187-88.
131. *Id*. at 1188.
132. *Id*.
133. *Gabbard*, 179 N.E.3d at 1188.
134. *Id*.
135. *Id*.
136. *Id*.
137. *Id*. at 1189-90.
138. *Gabbard*, 179 N.E.3d at 1188.
139. *Id*. at 1189-90.
140. *Id*.
141. *Id*.
142. *Id*. at 1190.
143. *Gabbard*, 179 N.E.3d at 1183.

canon, Justice Kennedy listed the reasons why *in pari materia* was inappropriate for this particular case.[144] In the end, Justice Kennedy described R.C. 2923.122(D)(1)(a) as being clear-cut and not in need of any other statute for reference.[145] Based on this reading of the statute, the Board's resolution should not have been evaluated under a reading of R.C. 109.78(D), and, thus, the ten designated employees should not have to satisfy the Training-or-Experience requirement.[146] Therefore, Justice Kennedy would have reversed the Twelfth District's judgment and held for the Board.[147]

C. Dissenting Opinion by Justice Fischer

After a brief discussion of the court's role in interpreting statutes and not in making policies as the General Assembly does, Justice Fischer's dissenting opinion began by stating his agreement with the third dissenting opinion written by Justice DeWine.[148] He agreed with Justice DeWine that R.C. 109.78(D) should only apply to "those individuals who are employed in a security capacity."[149] However, he described *expressio unius est exclusio alterius*, another canon of statutory interpretation that could be used to reach Justice DeWine's conclusion.[150]

Expressio unius est exclusio alterius is a rule that says, "[T]o express or include one thing implies the exclusion of the other."[151] Justice Fischer explained that this "canon does not apply to every statutory listing or grouping."[152] Specifically, "it has force only when the items expressed are members of an 'associated group or series,' justifying the inference that items not mentioned were excluded by deliberate choice, not inadvertence."[153]

The statute in question, R.C. 109.78(D), detailed that any "special police officer, security guard, or other position in which such person goes armed while on duty" must satisfy the Training-or-Experience mandate.[154] Thus, in Justice Fischer's reading, special police officers and security guards would be understood as members of the same group.[155] Since

144. *Id*. at 1185; *Gabbard*, 179 N.E.3d at 1176 (majority opinion).
145. *Gabbard*, 179 N.E.3d at 1187-88 (Kennedy, J., dissenting).
146. *Id*. at 1190.
147. *Id*.
148. *Gabbard*, 179 N.E.3d at 1190 (Fischer, J., dissenting).
149. *Id*. at 1190-91.
150. *Id*.
151. *Expressio Unius Est Exclusio Alterius*, BLACK'S LAW DICTIONARY (11th ed. 2019).
152. *Gabbard*, 179 N.E.3d at 1191.
153. *Id*. (quoting Barnhart v. Peabody Coal Co., 537 U.S. 149, 168, 123 S.Ct. 748, 154 L.Ed.2d 653 (2003)).
154. § 109.78(D).
155. *Gabbard*, 179 N.E.3d at 1191.

teachers and other non-security personnel were never mentioned in the statute, Justice Fischer used *expresso unius est exclusion alterius* and argued that they were deliberately excluded from the list and not meant to be held to the Training-or-Experience requirement of R.C. 109.78(D).[156]

Based on *expresso unius est exclusion alterius* and the arguments made in Justice DeWine's dissent, Justice Fischer would have reversed the Twelfth District and ruled for the Board.[157]

D. Dissenting Opinion by Justice DeWine

Justice DeWine began his dissenting opinion by arguing that the majority refused to read R.C. 109.78(D) for its plain language and instead "adopt[ed] a strained reading of the statute that is at odds with the way ordinary speakers of the English language read texts."[158] He interpreted R.C. 109.78(D) to apply only to individuals "employed in a security-related position."[159] Because of this understanding of the statute, Justice DeWine would have held for the Board.[160]

Looking at the Clause, Justice DeWine wrote that a teacher is not a "position in which such person goes armed while on duty."[161] He argued that "going armed on duty is not part of the 'position' of being a teacher," specifically saying that "carrying firearms is not part of [a teacher's] job description."[162] Therefore, he disagreed with the majority's interpretation of the Clause, which necessitated that all employees authorized to carry firearms on school premises be subjected to R.C. 109.78(D).[163]

Another reason that Justice DeWine believed the majority came to the wrong conclusion was that it interpreted each word in the Clause individually rather than comprehending the statute as a whole.[164] He wrote that the majority, "by zeroing in on each word in isolation . . . los[t] its grasp on the meaning of the provision as a whole."[165]

When examining the text of R.C. 109.78, Justice DeWine began with the notion that the statute described whom a school may employ.[166] According to him, the statute does not detail what requirements must be met for a person who is employed by a school and who then "just happens to 'go

156. *Id*.
157. *Id*. at 1190-91.
158. *Gabbard*, 179 N.E.3d at 1192 (DeWine, J., dissenting).
159. *Id*.
160. *Id*.
161. *Id*.; § 109.78(D).
162. *Gabbard*, 179 N.E.3d at 1192.
163. *Id*. at 1193.
164. *Id*.
165. *Id*.
166. *Id.*

armed' while working in that position."[167] Because the statute concerned whom the school could employ, Justice DeWine differed from the majority, saying that the reason for which the person was employed by the school is essential to the triggering of R.C. 109.78(D).[168] According to Justice DeWine's interpretation, if a person were employed for the purpose of being armed, then the statute would apply.[169] If a person were employed for another purpose but then was subsequently authorized to be armed, the statute would not apply.[170]

Justice DeWine also argued that the majority's interpretation of R.C. 109.78(D) would make much of the statute redundant.[171] He asserted that the statute limits who may be employed by a school, and that if "other position" can be read to include teachers, they would obviously already have been employed by the school.[172] According to Justice DeWine, if the Clause were read broadly to include anyone employed by the school, it would "swallow up" the previously listed positions of special police officer and security guard, who are also employed by the school.[173] Thus, to avoid redundancy, he found that R.C. 109.78(D) should be understood to refer only to "security-related position[s]."[174]

Next, Justice DeWine applied the *ejusdem generis* canon of statutory interpretation to R.C. 109.78(D).[175] He disagreed with both the majority's refusal to apply the canon and its assertion that, even if applied, the canon would not change the majority's understanding of the applicability of R.C. 109.78(D) to school employees.[176] By using *ejusdem generis*, Justice DeWine concluded that "other position" in the Clause must be read in context with the previous items in the list, special police officers and security guards.[177] He contended that the position must refer to something "security-related," leaving teachers outside of the scope of the statute's reach.[178]

Justice DeWine continued by stating that R.C. 109.78 is part of a chapter of the Revised Code that addresses the "training and certification of law-enforcement and peace officers."[179] Specifically, R.C. 109.78 begins

167. *Gabbard*, 179 N.E.3d at 1193.
168. *Id*.
169. *Id*.
170. *Id*.
171. *Id*.
172. *Gabbard*, 179 N.E.3d at 1193-94.
173. *Id*. at 1194
174. *Id*.
175. *Id*.
176. *Id*. at 1195
177. *Gabbard*, 179 N.E.3d at 1195.
178. *Id*.
179. *Id*. at 1196.

by establishing "training programs and certification for people privately employed in a police capacity."[180] In Justice DeWine's view, "R.C. 109.78(D) is nestled in a statute solely addressing training for people privately employed in a security or police capacity."[181] Looking at the statute in its entirety, rather than in pieces as he claimed the majority did, Justice DeWine read the statute as governing the requirements of peace officers and not of school employees such as teachers and administrators.[182]

Justice DeWine went further, rejecting the majority's insistence that if R.C. 109.78(D) was meant to be applied to only those employed in security-related positions, then the legislature "should have used the phrase 'employed in a police capacity,'" a phrase that was used in other sections of the statute.[183] He accused the majority of relying on the canon of statutory interpretation known as the "presumption of consistent usage."[184] This canon states that "a word or phrase is presumed to bear the same meaning throughout a text . . . unless a material variation in terms suggests a variation in meaning."[185] Justice DeWine argued that this canon should not have been used since he found overwhelming evidence that the text supported an interpretation that R.C. 109.78 referred to people employed in police-like positions.[186] Although the General Assembly did not use the phrase "employed in a police capacity" in R.C. 109.78(D), Justice DeWine did not read the lack of this phrase as a clear intention on the part of the legislature to broaden the Training-or-Experience requirement to all school employees who might be armed.[187] He found that the use of the phrase in other sections of the statute was sufficient to narrow R.C. 109.78(D) to those "employed in a police capacity."[188]

Finally, Justice DeWine disputed the majority's assertion that canons of statutory interpretation should only be used after finding a text to be ambiguous.[189] He maintained that courts have always been allowed to use "intrinsic linguistic tools to understand a statute's plain meaning" and that they should continue to be able to do so.[190] He highlighted several past instances when the Ohio Supreme Court used various canons to "understand and explain the plain meaning of a text."[191] He argued that most canons are

180. *Id*. (citing § 109.78(A)).
181. *Gabbard*, 179 N.E.3d at 1196.
182. *Id*.
183. *Id*. at 1197.
184. *Id*.
185. *Presumption of Consistent Usage*, BLACK'S LAW DICTIONARY (11th ed. 2019).
186. *Gabbard*, 179 N.E.3d at 1197.
187. *Id*.
188. *Id*.
189. *Id*.
190. *Id*.
191. *Gabbard*, 179 N.E.3d at 1198.

"merely descriptions of how we naturally interpret language to begin with," and "it is simply not the case that we must first declare a text ambiguous in order to rely on [canons]."[192]

Justice DeWine found that R.C. 109.78(D) did nothing to forbid school boards from authorizing school employees to carry concealed weapons on school premises.[193] He would hold in favor of the Board and would not require teachers to undergo the Training-or-Experience requirement mandated by R.C. 109.78(D).[194]

IV. ANALYSIS

A. Introduction

One of the nation's most pressing needs is to provide some type of remedy or solution to the problem of mass shootings, particularly in schools.[195] As the Chief Justice cited in the beginning of her opinion, there were approximately 180 shootings in the nation's schools from 2009 to 2019, claiming the lives of over a hundred students, teachers, and administrators and injuring many more.[196] States across the nation are implementing a variety of strategies to bolster schools' defenses and to protect students and school employees.[197] Many states have introduced legislation to arm teachers and other school employees, but Ohio is not one of those states.[198]

While possible solutions for gun violence in schools are passionately debated, this case hardly entertained any of these potential fixes.[199] In fact, *Gabbard*, rather than being a vehicle for the judiciary to weigh in on these matters, was really just a case about statutory interpretation and the role of the courts. However, in arguing about how R.C. 109.78(D) and R.C. 2923.122(D)(1)(a) should be interpreted, the court chose to ignore opposing views about how best to bolster schools' defenses.[200]

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192. *Id*.
193. *Id*. at 1199.
194. *Id*.
195. *See generally* Walker, *supra* note 1.
196. *Gabbard*, 179 N.E.3d at 1172 (majority opinion) (citing Walker, *supra* note 1).
197. *See* John Woodrow Cox & Steven Rich, *Armored School Doors, Bulletproof Whiteboards and Secret Snipers*, WASH. POST (Nov. 13, 2018), https://www.washingtonpost.com/graphics/2018/local/school-shootings-and-campus-safety-industry/.
198. *Gabbard*, 179 N.E.3d at 1173 (citing Council of State Governments Justice Center, *Arming Teachers and K-12 School Staff*, JUSTICE CENTER (accessed June 1, 2021), https://csgjusticecenter.org/wp-content/uploads/2020/01/NCSL-Arming-Staff-Brief.pdf.
199. *See* Zeeshan Aleem, *Oxford High School Shooting: Guns Are More Important Than the Motive*, MSNBC (Dec. 3, 2021), https://www.msnbc.com/opinion/oxford-high-school-shooting-guns-are-more-important-motive-n1285260.
200. *Gabbard*, 179 N.E.3d at 1182.

In *Gabbard*, the Ohio Supreme Court attempted to settle issues of statutory interpretation, providing Ohio citizens with three flawed approaches and a majority opinion that rightly leaves the policymaking to the legislature.

B. The Majority Correctly Interpreted the Two Statutes

At the heart of *Gabbard* was the interpretation and application of two statutes: R.C. 109.78(D) and R.C. 2923.122(D)(1)(a).[201] Read plainly, it would seem clear that R.C. 2923.122(D)(1)(a) carves out an exception for school boards to provide written authorization for certain employees to carry firearms on to school premises.[202] However, nothing in the text of that statute grants school boards the ability to be able to use this power without regard for any other laws.[203] The Board itself acknowledged this lack of total authority, conceding that those designated by the Board would still be required to attain the proper concealed carry licenses issued by the state.[204] Just as a statute governing an individual's ability to carry a concealed weapon would limit the Board's authority, so too would other statutes limit school boards attempting to authorize school employees to be armed under R.C. 2923.122(D)(1)(a).[205]

The majority correctly determined that R.C. 109.78(D) was one of these other statutes by which the Board's authority would be limited.[206] The plain language of the statute said that a school could not 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.[207]

The majority, without adding any language to the statute, took "other position" to mean a job other than that of "special police officer" or "security guard."[208] Furthermore, the Chief Justice wrote that it was not the nature of the employment that triggered the Training-or-Experience requirement but whether the employee was "armed while on duty."[209] It

201. *Id*. at 1173.
202. *Id*. at 1180-81; § 2923.122(D)(1)(a).
203. *Gabbard*, 179 N.E.3d at 1181.
204. *Id*.
205. *Id*.
206. *Id*.
207. § 109.78 (D).
208. *Gabbard*, 179 N.E.3d at 1176; *see also Merit Decision*, *supra* note 34.
209. *Gabbard*, 179 N.E.3d at 1177.

was the phrase "armed while on duty" that allowed the majority to reject the arguments from the Board, the Attorney General, and the dissenting justices that the Clause only applied to those hired in a police-like capacity.[210] Based on the majority's reading of the statute, R.C. 109.78(D) should apply to any employee of the school, regardless of the purpose for which he or she was hired, if the employee were required to carry a firearm while continuing to do his or her other assigned duties.[211]

C. Flaws in the Dissenting Opinions

The dissenting justices would have the court approach this issue from a different angle. Each of them chose to use various canons of statutory interpretation. While it might be argued, as Justice DeWine stated in his dissent, that the majority also chose to use canons, the majority never stated the application of any of these statutory interpretation tools in its opinion.[212] The majority insisted that its statutory "review 'starts and stops' with the unambiguous statutory language."[213] Finding the language of R.C. 109.78(D) and R.C. 2923.122(D)(1)(a) to be unambiguous, the majority stated its aversion to employing various canons to "dig deeper than the plain meaning of an unambiguous statute 'under the guise of . . . statutory interpretation.'"[214]

The dissenting justices disagreed with the majority's unwillingness to utilize canons of statutory interpretation. Due to their use of various canons, each of the dissenting opinions requires a significant amount of inference regarding the intent of the General Assembly.

i. Justice Kennedy Saw R.C. 109.78(D) as Irrelevant to the Issue

Justice Kennedy would have the court start with what she called the authorizing statute, R.C. 2923.122(D)(1)(a).[215] She wrote that if one were to read the plain language of this statute, it would seem obvious that school boards are given broad and almost limitless authority to designate school employees to be armed while working.[216] Following her reading of R.C. 2923.122(D)(1)(a), she made it clear that her analysis would stop.[217]

210. *Id*. at 1178; *see also Merit Decision*, *supra* note 34.
211. *Gabbard*, 179 N.E.3d at 1178.
212. *Gabbard*, 179 N.E.3d at 1198 (DeWine, J., dissenting).
213. *Gabbard*, 179 N.E.3d at 1175 (majority opinion) (citing *Johnson*, 151 Ohio St.3d 75, 2017-Ohio-7445, 86 N.E.3d 279 at ¶ 15).
214. *Gabbard*, 179 N.E.3d at 1179 (quoting Jacobson v. Kaforey, 149 Ohio St.3d 398, 2016-Ohio-8434, 75 N.E.3d 203, ¶ 8).
215. *Gabbard*, 179 N.E.3d at 1183 (Kennedy, J., dissenting).
216. *Id*. at 1187.
217. *Id*.

Because the statute is unambiguous, R.C. 2923.122(D)(1)(a) makes no reference to R.C. 109.78(D), and the two statutes, in her mind, are unrelated, she dissented with the majority's finding that R.C. 109.78(D) applied.[218]

Justice Kennedy's dissenting opinion would have the court only read R.C. 2923.122(D)(1)(a) and apply it to its fullest extent.[219] Instead of recognizing that the Ohio Revised Code is a collection of statutes, some possibly applying to the same situation, Justice Kennedy would have the court read and interpret only the statute most relevant to the problem before it.[220] Here, it would seem clear that the language of both statutes concerns the ability of employees to be armed in schools.[221] Also, as the majority said, it is quite possible to read both statutes independently and to understand each statute's meaning without reliance upon the other.[222] As the Chief Justice wrote, "[I]t is an unremarkable proposition that multiple statutes might apply to a single factual scenario and that we may not simply ignore any of those statutes."[223] Because both statutes relate to school employees who may be armed, it would seem appropriate to read and to apply both statutes, not *in pari materia* as Justice Kennedy accused the majority of doing, but independently and together.[224] The majority applied each statute simultaneously, understanding that R.C. 2923.122(D)(1)(a) gives school boards the authority to designate employees to be armed if those employees satisfy the Training-or-Experience requirement of R.C. 109.78(D).[225]

Justice Kennedy avoided much of the deep textual interpretation of R.C. 109.78(D) that made up most of the other opinions. By opting to predominantly consider the implications of R.C. 2923.122(D)(1)(a), she essentially decided that this statute should be valued more than R.C. 109.78(D). Did the General Assembly intend for R.C. 2923.122(D)(1)(a) to supersede R.C. 109.78(D)?

ii. Justice Fischer and Expressio Unius Est Exclusio Alterius

Justice Fischer, while joining Justice DeWine's dissent, determined that the entire case could have been decided due to the lack of one word in R.C. 109.78(D): "teachers."[226] Using the *expressio unius est exclusio alterius*

218. *Id*. at 1185.
219. *Id*. at 1187.
220. *Gabbard*, 179 N.E.3d at 1187.
221. §§109.78(D), 2923.122(D)(1)(a).
222. *Gabbard*, 179 N.E.3d at 1176 (majority opinion).
223. *Id*.
224. *Id*., *Gabbard*, 179 N.E.3d at 1183 (Kennedy, J., dissenting).
225. *Gabbard*, 179 N.E.3d at 1182 (majority opinion).
226. *Gabbard*, 179 N.E.3d at 1191 (Fischer, J., dissenting).

canon of statutory interpretation, Justice Fischer insisted that the lack of the word "teachers" in the Clause indicated that the General Assembly never intended to include educators.[227] By this logic, any employee not specifically mentioned in the statute was intentionally left out.

Justice Fischer's argument vastly narrowed the reading of the Clause. It is also questionable whether the use of this canon is even appropriate since the Clause ends in a "catchall phrase."[228] However, what seems most troubling about Justice Fischer's interpretation is his joining Justice DeWine's fervent argument encouraging the court to read R.C. 109.78 as a whole and demanding that it look at all of the statute's subsections and not just section (D).[229] As part of his argument, Justice DeWine asserted that the preponderance of the statute dealt with "security-related positions."[230] However, he dismissed the majority's claim that if R.C. 109.78(D) had been meant to be limited to peace officers and their like, then the General Assembly would have used the phrase "employed in a police capacity" as it had in the remainder of the statute.[231] The majority argued that the absence of this statement showed the General Assembly's intent to broaden R.C. 109.78(D)'s applicability.[232]

Here lies the inconsistency in Justice Fischer's argument. On one hand, he said that the absence of the word "teachers" showed the intent of the legislature not to include them under the statute.[233] On the other hand, he joined Justice DeWine in claiming that the absence of the phrase "employed in a police capacity" was inconsequential.[234] How can the absence of the word "teachers" demonstrate clear legislative intent, yet the lack of the phrase "employed in a police capacity" not carry that same legislative intent?

iii. Justice DeWine Insisted That Canons of Statutory Interpretation Should Be Employed

Justice DeWine's dissent attempted to poke numerous holes in the majority's opinion, starting with the majority's reading of R.C. 109.78(D).[235] He argued that the "other position in which such person goes

227. *Id*.

228. Jack. L. Landau, *Oregon Statutory Construction*, 97 OR. L. REV. 583, 689 (2019) ("Unlike *ejusdem generis*, though, [*expressio unius est exclusio alterius*] applies when a statute states a list and does not end with a general catchall phrase that invites interpreters to add to it.").

229. *Gabbard*, 179 N.E.3d at 1196 (DeWine, J., dissenting).

230. *Id*. at 1197.

231. *Id*.

232. *Gabbard*, 179 N.E.3d at 1178 (majority opinion).

233. *Gabbard*, 179 N.E.3d at 1191 (Fischer, J., dissenting).

234. *Gabbard*, 179 N.E.3d at 1197 (DeWine, J., dissenting).

235. *Id*. at 1192.

armed while on duty" could not refer to teachers since teachers are not employed to carry a weapon.[236] However, the majority disputed this claim, saying that the Clause is not about the duties for which an employee was hired.[237] To make the statute imply that the Clause only applied to those who were hired to be armed, the majority highlighted that the statute's language would have to be changed, possibly to "special police officer, security guard, or other position 'the duties of which involve being armed.'"[238]

The chief difference in the two opposing interpretations is that the majority held that the Clause referred to anyone who has duties *and then* happens to go armed whereas Justice DeWine maintained that the statute only applied to those who were *hired* to be armed. While Justice DeWine dismissed the majority's interpretation, saying that it was "interpreting each word in the phrase in isolation," Justice DeWine's reading required the addition of defining text into the statute.[239] The majority found the insertion of terms into the statute to be an unacceptable option, saying that "if the General Assembly could have used a particular word in a statute but did not, we will not add that word by judicial fiat."[240]

Justice DeWine also used the canon of *ejusdem generis* to try to define "other position" as one that would necessarily be "security-related."[241] The majority demonstrated that this argument was not persuasive in two ways: 1) this canon and others should only be used when the language of the statute is ambiguous; and 2) even if it were appropriate to use the canon, R.C. 109.78(D) would still apply to the Board.[242]

First, the majority stated that canons of statutory interpretation should be used "only when the statutory language itself is subject to various interpretations."[243] However, Justice DeWine also rejected this notion toward the end of his dissent.[244] He argued that canons are constantly used by the courts in interpreting statutes, and he asserted that the majority, despite not naming them, used many such "linguistic aids" in its own interpretation of R.C. 109.78(D).[245] He stated that the majority used

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236. *Id*.
237. *Gabbard*, 179 N.E.3d at 1177 (majority opinion).
238. *Id*.
239. *Id*.; Gabbard, 179 N.E.3d at 1193 (DeWine, J., dissenting).
240. *Gabbard*, 179 N.E.3d at 1177 (majority opinion) (quoting *Hulsmeyer* 142 Ohio St.3d 236, 2014-Ohio-5511, 29 N.E.3d 903 at ¶ 26).
241. *Gabbard*, 179 N.E.3d at1194-95 (DeWine, J., dissenting).
242. *Gabbard*, 179 N.E.3d at 1179 (majority opinion).
243. *Id*.
244. *Gabbard*, 179 N.E.3d at 1197 (DeWine, J., dissenting).
245. *Id*. at 1197-98.

> canons stating that words should be given their ordinary meanings in accordance with the rules of grammar and common usage, that the text should be read as a whole, that the legislature is presumed to have meant something different when it uses differing terms, and that the court should avoid interpretations that fail to give meaning to every part of the text.[246]

Whether the majority actually used each of these canons is uncertain since they were not named in the majority opinion. However, it would seem that Justice DeWine's use of *ejusdem generis* is more than just a "linguistic aid." By using the canon, he attempted to change the ordinary meaning of the phrase "other position" in the Clause.[247] Rather than simply looking at grammar, Justice DeWine was trying to find a common link between "special police officer," "security guard," and "other position in which such person goes armed while on duty."[248] However, Justice DeWine, toward the end of his opinion, wrote that "*ejusdem generis* is 'one of various factors to be considered in the interpretation of a text.'"[249] While it may be the case that Justice DeWine considered the use of *ejusdem generis* as just one more tool utilized to understand the text, it would appear that much of his analysis was based on this one canon and his findings from it.

The majority, while dismissing the use of *ejusdem generis*, held that had the canon been employed, the statute would still apply to teachers.[250] To use the canon, a common link between the list items would need to be established.[251] Justice DeWine insisted that the common link was that each item of the list was a "security-related position."[252] However, the Chief Justice countered that the commonality between the terms was that each position may go armed while in the course of his or her employment.[253] The majority defended its common link by pointing to the plain language of the statute itself.[254] It argued that the General Assembly explicitly stated the shared characteristic of a "special police officer," a "security guard," and an "other position" when it followed "other position" with the qualifying phrase "in which such person goes armed while on duty."[255] Rather than

246. *Id*. at 1198.
247. *See Id*. at 1195.
248. *Gabbard*, 179 N.E.3d at 1194.
249. *Id*. at 1198 (quoting Antonin Scalia & Bryan A. Garner, READING LAW: THE INTERPRETATION OF LEGAL TEXTS 212 (1st ed. 2012)).
250. *Gabbard*, 179 N.E.3d at 1179-80 (majority opinion).
251. *Ejusdem Generis*, BLACK'S LAW DICTIONARY (11th ed. 2019); *see also* Landau, *supra* note 228, at 684.
252. *Gabbard*, 179 N.E.3d at 1195 (DeWine, J., dissenting).
253. *Gabbard*, 179 N.E.3d at 1179-80 (majority opinion).
254. *Id*. at 1180.
255. *Id*. at 1179; § 109.78(D).

trying to infer a commonality as Justice DeWine did in his dissent, the majority's view was based on the demonstrable language of the statute.

Finally, Justice DeWine insisted that the entirety of R.C. 109.78 should be taken into consideration when interpreting section (D).[256] He argued that since the rest of the statute refers to training and funding peace officers, R.C. 109.78(D) should only refer to "security-related positions."[257] While he admitted that variations in the statutory language should not be ignored, he maintained that there was overwhelming evidence that the remainder of the statute focused on officers in police-like positions.[258]

This argument appears to be Justice DeWine's strongest. However, the majority chose to set his assertion aside and, instead, read the text for what was actually written.[259] In other parts of the statute, Justice DeWine correctly highlighted that the General Assembly used the phrases "employed in a police capacity" and "employment in a police capacity."[260] However, the General Assembly did not use these phrases in R.C. 109.78(D).[261] Was that omission intentional? While Justice DeWine decided that these phrases' absences were possible mistakes by the legislature, the majority interpreted the text literally and did not assume that any errors were made.[262]

While Justice DeWine's dissenting opinion posed the most challenges to the majority, it required him to make several inferences about what the General Assembly intended. Instead, the majority chose to read the text of the statutes as literally as possible and to apply both. Rather than attempting to divine legislative intent through extrinsic methods, the majority tried to apply the law that was written.

V. CONCLUSION: THE MAJORITY OPINION IS THE BEST POSSIBLE OUTCOME

It is impossible to know how the majority's use of statutory interpretation principles will be used in the future. The three dissenting opinions and the majority clearly have very differing views about how and when canons of statutory interpretation should be applied.[263] However, the majority's plain-English application of both statutes seems to be the most logical way to interpret the General Assembly's meaning. Whether the

256. *Gabbard*, 179 N.E.3d at 1196 (DeWine, J., dissenting).
257. *Id*. at 1197.
258. *Id*.
259. *Gabbard*, 179 N.E.3d at 1178 (majority opinion).
260. § 109.78(A), (C).
261. § 109.78(D).
262. *Gabbard*, 179 N.E.3d at 1178.
263. *See generally supra* Part III.

dividing lines that were drawn in the Ohio Supreme Court in *Gabbard* will affect the outcome of future cases has yet to be determined.

Had any of the dissenting justices prevailed, the implications for Ohio schools would have been momentous. School boards across the state would have the ability not only to designate individuals to go armed, a power guaranteed by R.C. 2923.122(D)(1)(a), but also to set the amount of training required for these individuals to carry a weapon on to school grounds.

What if the Board's resolution had not been overturned by the court? If another shooting were to have happened in a school in the Madison Local School District, special police officers or security guards, who had met the Training-or-Experience requirement, would have to respond to the active shooter.[264] However, teachers or administrators, who would likely have far less training and experience in responding to such situations, would also be required to act.[265]

Should a teacher or administrator be able to carry a concealed weapon without meeting the Training-or-Experience requirement? This is a policy consideration over which Ohio citizens are divided.[266] Instead of deciding which policy was best, the Ohio Supreme Court, by a majority, interpreted the statutes as literally as possible and chose to "apply both statutes as written unless and until the General Assembly directs otherwise by legislative action."[267] The majority indicated it would "neither establish policy nor second-guess the General Assembly's policy choices" and that "such arguments are more appropriately directed to the General Assembly."[268] Instead of infusing school boards with new, nearly limitless power to arm their staffs, the court chose to keep training requirements for school employees in line with special police officers and security guards.[269]

If school boards are to be able to set their own training or experience requirements in the future, it will be the General Assembly and not the courts that make those decisions.[270] For now, as one of the plaintiffs was quoted after this ruling, "[P]arents will at least know that the teachers who carry firearms in our schools are properly trained."[271]

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264. Bettman, *supra* note 13.

265. *Id*.

266. *See generally Should Ohio Teachers Go Armed into Classrooms, per House Bill 99?* CLEVELAND.COM (Nov. 20, 2021), https://www.cleveland.com/opinion/2021/11/should-ohio-teachers-go-armed-into-classrooms-per-house-bill-99-editorial-board-roundtable.html.

267. *Gabbard*, 179 N.E.3d at 1182.

268. *Id*.

269. *Id*.

270. *Id*.

271. Tebben, *supra* note 5.