IN THE CIRCUIT COURT IN AND FOR DUVAL COUNTY, FLORIDA

T. DOZIER, individually and on behalf of his minor child, M.D.; D. PHILLIPS, individually and on behalf of his minor child, B.P.; N. KAVANAUGH, individually and on behalf of her minor child, T.S.; the LEAGUE OF WOMEN VOTERS OF FLORIDA, INC.

Plaintiffs,

V.

Case No.: 16-2018-CA-008298
Division: C V - C

DUVAL COUNTY SCHOOL BOARD,

Defendant.

OPPOSITION TO DEFENDANT'S MOTION TO DISMISS AMENDED COMPLAINT

Plaintiffs, T. DOZIER, M.D., D. PHILLIPS, B.P., N. KAVANAUGH, T.S., and the League of Women Voters of Florida, Inc., hereby oppose Defendant's Motion to Dismiss Plaintiffs' Amended Complaint with prejudice in the above-captioned matter:

INTRODUCTION

1. Plaintiffs are children in the Duval County schools, their parents, and the League of Women Voters. Florida law prohibits non-law enforcement officers from carrying guns on school grounds. *See* Section 790.115(2)(a), Fla. Stat. Plaintiffs allege that the Duval County School Board ("DCSB") has violated this law by hiring "School Safety Assistants" ("SSAs") and directing them to carry guns while patrolling all elementary schools in the County. Florida law gives Plaintiffs an express cause of action to enjoin local policies that conflict with state law, *see* Section 790.33(3)(e), Fla. Stat., and for a declaratory judgment. Accordingly, the only issue on this motion is whether DCSB has shown that some provision of law authorized DCSB to arm SSAs

notwithstanding the clear Florida statute that prohibits carrying guns in schools. The answer to that question is no, and so DCSB's motion to dismiss the Complaint should be denied.

2. DCSB argues that it had the authority to arm SSAs because Section 790.115 authorizes individuals to carry guns in schools whenever they are "authorized in support of school-sanctioned activities." This is wrong. Nothing in Section 790.115 suggests that the Legislature gave school districts the power to opt out of the prohibition on guns in schools. The statute's plain text, structure and legislative history make clear that the Legislature merely permitted razor blades and box cutters to be used in "school-sanctioned activities," such as building sets for a school play. DCSB's contrary interpretation leads to the absurd result that school districts could authorize carrying bombs, grenades, missiles, and chemical weapons as well. If the Legislature wanted to create exceptions to its prohibition on guns and other weapons in schools, then it would have said so by adding to the list of express exemptions in the statute or by exempting guardians from Section 790.115 in another statute. It has done neither.

3. DCSB argues that SB 7026, the school safety legislation passed in 2018 after the Parkland tragedy, and SB 7030, the 2019 follow-up legislation, gave it the authority to arm school guardians. This, too, is wrong. Legislators do not "hide elephants in mouseholes." *Whitman v. Am. Trucking Ass'ns*, 531 U.S. 457, 468 (2001). Given that the Legislature has clearly prohibited carrying guns in schools, if the Legislature had wanted to permit guardians to carry guns in schools, it would have clearly said so in the legislation creating or modifying the guardian program. In fact, the Legislature expressly authorized *other* kinds of school safety personnel to carry guns. And it considered companion provisions that would have authorized guardians to do so; but the Legislature never enacted those provisions. As such, no provision of law on DCSB's laundry list of snippets from SB 7026 and SB 7030 "unequivocally" authorizes SSAs to carry guns in schools

or exempts them from Florida's clear prohibition against doing so. *Contra* Mot. ¶ 2.

4. Absent such express authorization, DCSB is left to rely on a kitchen sink of statutory provisions which it claims together show that the Legislature simply *must* have intended to authorize guardians to carry guns. DCSB's argument on that score asks this Court to write an exception into Florida law that the Legislature did not. But courts interpret the law; they do not create it. They "have no function of legislation, and seek only to ascertain the will of the Legislature." *Fine v. Moran*, 77 So. 533, 536 (Fla. 1917). Section 790.115 makes it unlawful—and criminal—to carry guns in Florida schools. Unless the Legislature has exempted SSAs from that proscription or authorized them to do what would otherwise be unlawful, DCSB's plea for this Court to infer authorization to arm SSAs asks this Court to create an exception to a crime from whole cloth.

5. No Florida court has ever added words to legislation to permit what the Legislature has expressly criminalized. Courts have added words to statutes to correct clerical or ministerial errors. But that is not what DCSB asks this Court to do. DCSB does not identify any particular word that is missing from any particular statute. DCSB instead invites the Court to hold that the Legislature permitted what it otherwise expressly prohibited. That is an invitation to judicial legislation rather than interpretation.

6. Florida courts "trust that if the legislature did not intend the result mandated by the statute's plain language, the legislature itself will amend the statute at the next opportunity." *State v. Jett*, 626 So. 2d 691, 693 (Fla. 1993). The Legislature did not exempt school guardians from the proscription on carrying guns in schools in 2018 and it did not do so in 2019. Now, DCSB's motion asks the Court to amend the Legislature's handiwork. That motion should be denied.

I. FLORIDA LAW PROHIBITS GUNS IN SCHOOLS.

7. Florida law generally makes it illegal to carry firearms on school property. *See, e.g.*, Amended Complaint ¶¶ 22-28. This Court must "read statutes as they are written." *Brown v. State*, 260 So. 3d 147, 150 (Fla. 2018). And the relevant statute is clear: "[a] person shall not possess any firearm, electric weapon or device, destructive device, or other weapon as defined in s. 790.001(13), including a razor blade or box cutter, except as authorized in support of school-sanctioned activities, at a school-sponsored event or on the property of any school," including an "elementary school." § 790.115(2)(a), Fla. Stat. Indeed, a person who does so "commits a felony of the third degree." § 790.115(2)(b), Fla. Stat.

8. The statute enumerates three specific exceptions to this general rule: carrying a firearm (1) "[i]n a case to a firearms program, class or function . . . approved in advance by the principal or chief administrative officer"; (2) "[i]n a case to a career center having a firearms training range"; and (3) "[i]n a vehicle pursuant to s. 790.25(5)," provided the school district has not waived this exception. § 790.115(2)(a)1-3, Fla. Stat. None of these applies here (although, as explained below, the vehicle exception supports Plaintiffs' position), and DCSB does not contend otherwise. The statute also exempts law enforcement officers. § 790.115(3), Fla. Stat. However, SSAs are not law enforcement officers. DCSB does not argue otherwise—nor could it, for the Legislature made clear that school guardians *do not* have general "authority to act in any law enforcement capacity" and *do not* possess "the power of arrest" required of a "law enforcement officer" who may carry guns in schools. § 30.15(k), Fla. Stat.; *see also* § 790.115(3), Fla. Stat. (exempting "law enforcement officer" defined in Section 943.10); § 943.10(1), Fla. Stat. ("'Law enforcement officer' means any person . . . who is vested with authority to . . . make arrests.").

II. DCSB LACKS THE POWER TO OVERRIDE STATE FIREARMS LAWS.

9. As a local government entity, DCSB lacks the power to permit SSAs to carry firearms if Florida law prohibits them from doing so. The Florida Legislature has "occup[ied] the whole field of regulation of firearms and ammunition, including the purchase, sale, transfer, taxation, manufacture, ownership, possession, storage, and transportation thereof" and expressly preempted any "regulations or rules adopted by local or state government relating thereto." § 790.33(1), Fla. Stat. Section 790.33(3)(f) expressly creates a cause of action to enforce this preemption via injunctive and declaratory relief:

> *A person or an organization whose membership is adversely affected by any ordinance, regulation, measure, directive, rule, enactment, order, or policy* promulgated or *caused to be enforced in violation of this section may file suit against any county*, agency, municipality, district, or other entity in any court of this state having jurisdiction over any defendant to the suit *for declaratory and injunctive relief* and for actual damages, as limited herein, caused by the violation.

§ 790.33(3)(f), Fla. Stat. (emphasis added). DCSB does not dispute this.

10. DCSB argues that preemption does not apply because Section 790.33 permits a municipality to "regulat[e] or prohibit[]" employees' carrying of firearms as part of their official duties. § 790.33(4)(c), Fla. Stat. That provision has no relevance here. Subsection (c)(4) permits localities to *limit* their employees' ability to carry guns if those employees could otherwise lawfully carry. This provision does not authorize localities to immunize their employees from the firearms laws that the Legislature has enacted and, more importantly, it does not create an exception to the prohibition against carrying a gun on school property or at school-sponsored events under Section 790.115.

11. "The plain meaning of the statute is always the starting point in statutory interpretation." *GTC, Inc. v. Edgar*, 967 So. 2d 781, 785 (Fla. 2007). Section 790.33 "does not

prohibit . . . any entity subject to the prohibitions of this section from regulating or prohibiting the carrying of firearms and ammunition by an employee of the entity during and in the course of the employee's official duties." § 790.33(4)(c), Fla. Stat. To "regulate" is "[t]o control (an activity or process) esp. through the implementation of rules," *Regulate,* Black's Law Dictionary (10th ed. 2014), and to "prohibit" is "[t]o forbid by law," *Prohibit*, Black's Law Dictionary (10th ed. 2014). As the Florida Supreme Court explained a century ago, "[e]very regulation is of necessity a restriction. 'Regulate' is defined by Webster to mean 'to direct by rule or restriction.'" *Ex parte Lewinsky*, 63 So. 577, 578 (Fla. 1913).

12. Accordingly, by exempting from preemption municipalities' efforts to "regulat[e] or prohibit[] the carrying of firearms," the Legislature permitted local entities to *limit* how municipal employees can carry firearms or *outright ban* them from doing so in the course of their official duties. DCSB's own dictionary definitions confirm this meaning of regulate. *E.g.*, Motion ¶ 5 ("'regulate' means to '*fix, establish, or control*; to adjust by rule, method, or established mode; *to direct by rule or restriction*; to subject to governing principles or laws.'" (emphasis added)).

13. DCSB's policy, however, does not restrict or ban DCSB employees from using firearms. DCSB's policy purports to *authorize* municipal employees to use firearms in circumstances that the State has prohibited. The Legislature did not exempt that override of state law from preemption.

14. The rest of the preemption statute—which DCSB ignores—confirms this. Preemption applies to all "ordinances or regulations *relating* to firearms," § 790.33(2)(a), Fla. Stat. (emphasis added), but Section 790.33(4)(c)'s exemption to preemption applies only to laws "regulating or prohibiting the carrying of firearms." "The legislative use of different terms in different portions of the same statute is strong evidence that different meanings were intended."

State v. Mark Marks, P.A., 698 So. 2d 533, 541 (Fla. 1997) (citation omitted). Whether Section 790.33 preempts an ordinance turns on its subject matter—is the ordinance one "relating to firearms"? Whether Section 790.33(4)(c) exempts an ordinance regarding municipal employees from preemption turns on what the ordinance does—is the ordinance "regulating or prohibiting the carrying of firearms"? Since DCSB's policy of arming SSAs is one "relating to firearms," preemption applies. But no exemption applies because DCSB's policy is not "regulating or prohibiting the carrying of firearms."

15. DCSB's position creates plainly absurd results. It would allow municipalities to decide whether their employees have to follow state laws, including criminal statutes, that restrict the use or possession of firearms. Municipalities could authorize employees who are convicted felons to carry firearms—a criminal offense. *See* § 790.23(1)(a), Fla. Stat.

16. Florida law disfavors interpreting a statutory exemption as broadly as DCSB urges. "It is a well-recognized rule of statutory construction that exceptions or provisos should be narrowly and strictly construed." *Samara Dev. Corp. v. Marlow*, 556 So. 2d 1097, 1100 (Fla. 1990). That canon applies with particular force to a broad reading that would contravene the well-settled principle that "[a] municipality cannot forbid what the legislature has expressly licensed, authorized or required, *nor may it authorize what the legislature has expressly forbidden*." *City of Hollywood v. Mulligan*, 934 So. 2d 1238, 1247 (Fla. 2006) (citation omitted; emphasis added).

17. Where the Legislature has preempted local firearms laws, it cannot be the law that municipalities have *carte blanche* to authorize their employees to violate state gun laws while performing official duties. Section 790.33 preempts DCSB's policy authorizing SSAs to carry firearms in County elementary schools because state law prohibits guns in schools, and it gives Plaintiffs a cause of action to enjoin that policy.

18. Plaintiffs also have stated a cause of action under the Declaratory Judgment Act, which DCSB agrees "must be liberally construed." Mot. ¶ 10. Indeed, "there is almost no limit to the number and type of cases that may be heard under this statute." *May v. Holley*, 59 So. 2d 636, 639 (Fla. 1952). Just as the Third District Court of Appeal found it was error to dismiss the National Rifle Association's Declaratory Judgment Act claim challenging a local firearm regulation as *ultra vires* and preempted, this Court should not dismiss Plaintiffs' Declaratory Judgment Act challenging the legality of DCSB's policy of arming SSAs. *See National Rifle Ass'n v. City of S. Miami*, 812 So. 2d 504, 505-06 (Fla. 3d Dist. Ct. App. 2002).

III. DCSB CANNOT SHOW THAT THE LEGISLATURE OVERRODE ITS PRIOR LEGISLATION AND AUTHORIZED SSAS TO CARRY FIREARMS.

19. The foregoing makes clear that (1) Florida law generally prohibits carrying guns in schools, (2) DCSB lacks the power to override state firearms laws, and (3) Plaintiffs have a cause of action if DCSB has acted contrary to state law. Accordingly, Plaintiffs have stated a claim for relief, and DCSB's motion to dismiss must be denied—unless DCSB can show that the Legislature authorized SSAs to carry guns in schools.

20. It is important to be clear about what that means for DCSB's burden on this motion. "When there is doubt as to the legislative intent or where speculation is necessary, then the doubts should be resolved against the power of the courts to supply missing words." *Armstrong v. City of Edgewater*, 157 So. 2d 422, 425 (Fla. 1963). "Even where a court is convinced that the Legislature really meant and intended something not expressed in the phraseology of the act, it will not deem itself authorized to depart from the plain meaning of the language which is free from ambiguity." *Forsythe v. Longboat Key Beach Erosion Control Dist.*, 604 So. 2d 452, 454 (Fla. 1992) (Mem) (quoting *Van Pelt v. Hilliard*, 78 So. 693, 694-95 (Fla. 1918)).

21. A court can depart from the letter of the law "only under rare and exceptional circumstances" where applying the law "would lead to an unreasonable or ridiculous conclusion." *State v. Lewars*, 259 So. 3d 793, 800 (Fla. 2018) (citations omitted). But this "absurdity doctrine" "is not to be used as a freewheeling tool for courts to second-guess and supplant the policy judgments made by the Legislature." *Id.* (citation omitted). It is "not appropriate" to apply that doctrine "to rewrite the statute," rather than correct a "technical or ministerial error." *Id.* at 801 (citation omitted).

22. That rule applies with even greater force here. The Legislature has spoken in Section 790.115: individuals who are not law enforcement officers may not carry guns in Florida schools, and doing so is a crime. This Court cannot simply infer an exception to that rule for SSAs. Because the Legislature has clearly prohibited carrying guns in schools, DCSB must demonstrate that the Legislature either exempted SSAs from Section 790.115 or authorized SSAs to carry firearms in schools. DCSB has done neither. Instead, DCSB has misconstrued language in the statute prohibiting guns in schools and then improperly asked the Court to add provisions to statutes that the Legislature did not enact.

A. Section 790.115 Does Not Authorize School Districts to Make Their Own Exceptions to the Law Against Carrying Guns in Schools.

23. As noted, Section 790.115 prohibits guns in schools. DCSB argues that this statute actually empowers school districts to authorize individuals to carry guns in schools when the districts deem it "authorized in support of school-sanctioned activities." § 790.115(2)(a), Fla. Stat. Numerous well-settled canons of statutory interpretation show that DCSB's argument is wrong.

24. *First*, DCSB misreads the statute's plain text:

> A person shall not possess any firearm, electric weapon or device, destructive device, or other weapon as defined in s. 790.001(13), including a razor blade or box

> cutter, *except as authorized in support of school-sanctioned activities*, at a school-sponsored event or on the property of any school, school bus, or school bus stop.

Id. (emphasis added). The statute refers to a "a razor blade or box cutter" in a clause separate from the reference to firearms; the phrase "school-sanctioned activities" on which DCSB relies appears immediately after that separate clause. Accordingly, the rule of last antecedent applies: "relative and qualifying words, phrases and clauses are to be applied to the words or phrase immediately preceding, and are not to be construed as extending to, or including, others more remote." *Penzer v. Transportation Ins. Co.*, 29 So. 3d 1000, 1007 (Fla. 2010) (citation omitted). In other words, "a proviso usually applies to the provision or clause immediately preceding it." 2A Sutherland Statutory Construction § 47:33 (7th ed.). This rule of statutory construction requires interpreting the limiting phrase "except as authorized in support of school-sanctioned activities" to modify only the separate phrase it immediately follows—"including a razor blade or box cutter."

25. The legislative history supports that result. The Legislature added both phrases to the statute at the same time, in 1997.[1] The fact that the Legislature added these two phrases together indicates that they should be read together. And there is good reason for the Legislature to have done so. Unlike the other weapons that the statute prohibits on campuses, razor blades and box cutters have common and legitimate educational uses: *e.g.*, building theater sets, cutting materials for art classes, or opening boxes of books or school supplies. The Legislature did not intend to bar these educational uses, so it carved them it out when it generally prohibited razor blades and box cutters in schools.

26. *Second*, DCSB's interpretation would improperly render parts of Section 790.115

[1] 1997 Fla. Sess. Law Serv. ch. 97-234 at 20 (C.S.H.B. 1309, 1143, 847, 697, 1391, & 203), http://laws.flrules.org/files/Ch_1997-234.pdf.

superfluous. *Edwards v. Thomas*, 229 So. 3d 277, 284 (Fla. 2017) ("a basic rule of statutory construction provides that the Legislature does not intend to enact useless provisions, and courts should avoid readings that would render part of a statute meaningless" (quoting *Goode v. State*, 39 So. 461, 463 (Fla. 1905))). Section 790.115 expressly permits carrying firearms in connection with specific activities that schools have sanctioned. Section 790.115(2)(a)(1), for example, permits carrying a firearm "[i]n a case to a firearms program, class or function which has been approved in advance by the principal or chief administrative officer of the school as a program or class to which firearms could be carried." And Section 790.115(2)(a)(2) permits carrying a firearm "[i]n a case to a career center having a firearms training range." If the phrase "except in support of school-sanctioned activities" provided schools with general authority to sanction carrying firearms, then the specific exceptions for activities sanctioned by schools would be meaningless. Thus, DCSB's interpretation contravenes the rule that courts "are required to give effect to 'every word, phrase, sentence, and part of the statute, if possible, and words in a statute should not be construed as mere surplusage.'" *Edwards*, 229 So. 3d at 284 (quoting *Goode*, 39 So. at 463)).

27. *Third*, DCSB's interpretation is inconsistent with Section 790.115's overall structure. As noted, the Legislature enacted several express exceptions and a separate law-enforcement exemption from the general prohibition on carrying guns in schools. The Legislature enacted these exceptions and exemption in separately enumerated provisions of Section 790.115. If the Legislature intended to give schools broad authority to create their own exceptions for school-related activities, then one would have expected the Legislature to have added to the list of express exceptions by enacting another separate provision of Section 790.115. Under DCSB's theory, however, the Legislature chose to create the broadest exception of all through the most implicit and narrow means. That strongly suggests that DCSB's interpretation is wrong.

28. *Fourth*, DCSB's interpretation contradicts presumptions about the basic structure of state government. As noted, the general rule is that "[a] municipality cannot forbid what the legislature has expressly licensed, authorized or required, nor may it authorize what the legislature has expressly forbidden." *City of Hollywood*, 934 So. 2d at 1247 (citation omitted). DCSB's position implies that the Legislature overrode this default rule, and empowered school districts to authorize otherwise criminal gun possession, by inserting a phrase into the middle of a statute creating the crime—even though it had expressly preempted all "regulations or rules adopted by local or state government relating" to firearms. Section 790.33(1), Fla. Stat.

29. *Fifth*, DCSB's interpretation would lead to absurd results. *See Campbell v. State*, 125 So. 3d 733, 741 (Fla. 2013) ("[A]nother applicable maxim of statutory construction is that statutes will not be construed so as to reach an absurd result." (citation omitted)). Section 790.115 prohibits possessing numerous other weapons in addition to firearms on school grounds. The statute provides that "[a] person shall not possess any firearm, *electric weapon or device, destructive device, or other weapon as defined in s. 790.001(13).*" § 790.115(2)(a), Fla. Stat. (emphasis added). Florida law, in turn, defines a "destructive device" as "any bomb, grenade, mine, rocket, missile, pipebomb, or similar device containing an explosive, incendiary, or poison gas." § 790.001(4), Fla. Stat. And any "other weapon as defined in s. 790.001(13)" includes "tear gas gun[s]" and "chemical weapon[s] or device[s]." § 790.001(13), Fla. Stat.

30. Thus, if the phrase "except as authorized in support of school-sanctioned activities" permits school officials to sanction carrying of firearms, then it also would allow school officials to sanction carrying all the other weapons that the statute generally prohibits in support of school-sanctioned activities: bombs, grenades, rockets, missiles, tear gas, poison gas and chemical weapons, among others. Nothing in the statute suggests that the Legislature intended to give

DCSB the sweeping power to authorize these weapons in Duval County schools by inserting a phrase into the middle of the statutory text. That would turn on its head the "well-recognized rule of statutory construction that exceptions or provisos should be narrowly and strictly construed." *Samara Dev. Corp.*, 556 So. 2d at 1100.

31. *Sixth*, the legislative history of the phrase "except as authorized in support of school-sanctioned activities" refutes DCSB's interpretation.

32. The Committee report on the legislation that added this phrase makes clear that the Legislature intended that the exception for "school-sanctioned activities" would apply only to razor blades, box cutters, and knives that the Legislature was prohibiting in schools for the first time, not to those weapons such as guns that Florida law already prohibited in schools:

> **10. Possessing or Discharging Weapons or Firearms on School Property**
> The bill specifically prohibits the possession or exhibition of a razor blade, box cutter, or knife with a blade length greater than 4 inches, except as authorized in support of school-sanctioned activities, on or near school property, a school bus, or a school bus stop. The bill provides that school districts may adopt written and published policies that prohibit, for purposes of student and campus parking privileges, the carrying of a firearm in a vehicle pursuant to s. 790.115(2)(a)3. and s. 790.25(5), F.S.[2]

33. For all of these reasons, DCSB is wrong that Section 790.115 itself gives school districts the power to authorize possession of firearms in schools.

34. The Attorney General's 2014 opinion on which DCSB relies (at ¶ 6) does not affect this conclusion. That opinion does not bind the Court and courts do not follow Attorney General opinions that do "not represent legislative intent." *Lowry v. Parole & Prob. Comm'n*, 473 So. 2d 1248, 1250 (Fla. 1985) (rejecting Attorney General's statutory interpretation). Indeed, it is well-

[2] Staff of Fla. H. Comm. Committee on Education K-12, HB 1309 Bill Research & Economic Impact Statement 12 (Apr. 4, 1997) ("1997 Bill Research").

settled that "where a department's construction of a statute is inconsistent with clear statutory language it must be rejected, notwithstanding how laudable the goals of that department." *Fla. Dep't of Children & Family Servs. v. McKim*, 869 So. 2d 760, 762 (Fla. 1st Dist. Ct. App. 2004).

35. For the reasons discussed above, the Attorney General's 2014 opinion that Section 790.115 authorizes arming security personnel who are not law enforcement does not reflect the Legislature's intent in amending that statute. Indeed, the opinion does not analyze Section 790.115's text, apply canons of construction, or consult legislative history. The opinion simply assumes, without explanation and contrary to well-settled rules of statutory interpretation, that the phrase "school-sanctioned activities" applies to firearms.

36. If that were correct, then DCSB would have had no reason to adopt the policy that it now defends on that basis. Until recently, Chapter 3.40(II)(E) of the Duval County School Board Policy Manual provided that "no person except law enforcement may have in his/her possession while on school property, during any school-sponsored transportation, or at school events, any firearm or weapon except as may be expressly permitted pursuant to section 790.115, Florida Statutes."[3] If Section 790.115 itself permits DCSB to arm SSAs, then it would have had no reason to insert the phrase "or school safety assistants" after "law enforcement," as it did in July 2018. DCSB's amendment suggests that it never believed the argument it now advances that Section 790.115 standing alone authorizes schools to sanction gun possession in schools.

B. Recent Legislation Did Not Override Section 790.115 or Authorize SSAs to Carry Guns in Schools.

37. Unable to ground its authority to arm SSAs in Section 790.115 itself, DCSB argues

[3] *See* Duval County School Board Policy Manual, ch. 3.40(II)(E). https://dcps.duvalschools.org/site/handlers/filedownload.ashx?moduleinstanceid=12486&dataid=9210&FileName=Board%20Policy%20Chp%203%20August%208%202018.pdf.

that the Legislature recently changed the law. But neither SB 7026 nor SB 7030 created an exemption to Section 790.115 for SSAs or expressly authorized SSAs to carry firearms in schools.

1. SB 7026 Did Not Override Section 790.115 or Authorize SSAs to Carry Guns in Schools.

38. DCSB argues that the Legislature authorized SSAs to carry firearms in schools in 2018 when it passed SB 7026, the Marjory Stoneman Douglas High School Public Safety Act. Three facts fatally undermine that argument.

39. *First*, the Legislature expressly authorized certain safety officials to carry guns in schools but did not include any provision authorizing school guardians to do so. SB 7026 required districts to have one or more "safe-school officers" in each school. § 1006.12, Fla. Stat. These may be either School Resource Officers (law enforcement officers employed by existing agencies), "school safety officers" (law enforcement officers employed by districts), or school guardians. § 1006.12(1)-(3), Fla. Stat. ("School safety officers," despite the similar title, were hence only one of three kinds of "safe-school officer.") The portion of the statute concerning school safety officers explicitly provides that "[a] school safety officer has the authority to carry weapons when performing his or her official duties." § 1006.12(2)(b), Fla. Stat. The statute contains no similar provision for school guardians such as the SSAs that DCSB seeks to arm. § 1006.12(3), Fla. Stat. That is powerful evidence that the Legislature did not intend to give school districts the power to arm those individuals.

40. *Second*, the Legislature considered two identical bills (HB 621 and SB 1236) that would have given school districts the power to authorize school personnel to carry guns as DCSB has done. Those bills would have created an express exception to Section 790.115, making clear that the prohibition "does not apply to a school employee or volunteer who has been designated

by his or her school principal . . . as authorized to carry a concealed weapon or firearm on school property."[4] The Legislature, however, did not pass either bill.

41. *Third*, the Legislature actually considered expressly authorizing school guardians to carry guns in schools when it debated SB 7026. *See* Amended Complaint ¶¶ 31-32. The original bill would have provided that guardians "[m]ay carry concealed, approved firearms on campus" subject to certain limitations: "The firearms must be specifically purchased and issued for the sole purpose of the program. Only concealed carry safety holsters and firearms approved by the sheriff may be used under the program." The original bill also would have made a guardian "a law enforcement officer" exempt from the prohibition on carrying guns in schools. But the Legislature did not enact these provisions in SB 7026.

42. All of this makes clear that the Legislature knew how to empower school districts to arm individuals responsible for school safety. If the Legislature wanted Section 790.115 not to apply to school guardians or to have authorized them to carry guns in schools, then it could have just said so. But DCSB cannot point to any provision of SB 7026 that actually says this. Instead, DCSB attempts to divine an exception to Section 790.115's clear, criminal prohibition on guns in schools from snippets of statutory text.

43. **Section 30.15(1)(k).** DCSB notes that Section 30.15(1)(k) provides that school guardians cannot "act in any law enforcement capacity except to the extent necessary to prevent or abate an active assailant incident." Section 30.15(1)(k), Fla. Stat. *See* Mot. 3 at ¶ 2(c). That provision says nothing about firearms at all. Moreover, as Plaintiffs have alleged, there are numerous ways that *unarmed* school guardians could play a critical role in "prevent[ing] or

[4] HB 621 at 3, https://www.flsenate.gov/Session/Bill/2018/621/BillText/Filed/PDF; SB 1236 at 3, https://www.flsenate.gov/Session/Bill/2018/1236/BillText/Filed/PDF.

abat[ing] an active assailant incident." *See, e.g.*, Amended Complaint ¶¶ 64, 73-76; Plaintiffs' Supplemental Memorandum in Response to Defendants' Amended Motion to Dismiss ¶¶ 35-37.

44. **Section 30.15(1)(k)(2).** DCSB notes that Section 30.15 requires school guardians to have a concealed firearms permit and to complete specified firearm training, suggesting that this is evidence that the Legislature must have authorized guardians to carry firearms in schools and asking the Court to add this authorization to the statute by implication. Mot. ¶ 2(f). But courts "cannot correct supposed errors, omissions, or defects in legislation." *Fine*, 77 So. at 536. Indeed, the Florida Supreme Court "has been extremely reluctant . . . to reword statutes enacted by the Legislature, and has in general limited such corrections to cases where the legislative intent was clear from a reading of the statute itself, or where the statute was absurd on its face without the addition of the word or phrase." *Sebesta v. Miklas*, 272 So. 2d 141, 145 (Fla. 1972).

45. That is not this case because this Court is not writing on a blank canvas. Section 790.115 provides that "[a] person shall not possess any firearm" in a school. § 790.115(2)(a), Fla. Stat. Violating that statute is a felony. § 790.115(1), Fla. Stat. Thus, by asking the Court to infer what the Legislature must have meant, DCSB is asking the Court to infer that the Legislature authorized conduct that it criminalized.

46. This Court would be the first in the history of the State to draw an inference that directly contravenes the plain language of a criminal statute. To date, courts have supplied a single missing word where doing so would have no implications for existing prohibitions on conduct. *Compare, e.g.*, *Armstrong v. City of Edgewater*, 157 So. 2d 422, 425 (Fla. 1963) (supplying word "mayor" which was "omitted from [a] provision which requires a petition to be filed for the purpose of placing the name of a candidate on a primary or general election ballot"); *City of Opa-Locka v. Trustees of Plumbing Indus. Promotion Fund*, 193 So. 2d 29, 31 (Fla. 3d Dist. Ct. App.

1966) (replacing "on" with "or"). But here, DCSB does not ask the Court to add any word to any particular statute. Rather, DCSB asks the Court to weave an exception to a criminal statute out of whole cloth even though the Legislature left that exception on the cutting room floor.

47. Regardless, even if this Court had the power to infer an exception to a criminal statute to avoid absurdity, it could not do so here. There is nothing inherently absurd about requiring safety officials to be trained in how to use firearms even though they are not authorized to carry them. The State Officer Certification Exam for correctional officers includes training in "CMS Criminal Justice Firearms."[5] This is so even though "corrections officers . . . do not typically carry [firearms] during their professional duties."[6]

48. Moreover, even where the Legislature's enactments appear "anomalous," the Court must apply them as written as long as they "make[] some sense." *Lewars*, 259 So. 3d at 801. And there is a reasonable construction of Section 30.15's training requirements that does not require adding language to the statute.

49. Section 790.115(2)(a)(3) provides that individuals other than law enforcement officers "may carry a firearm . . . [i]n a vehicle" if their school district permits it. § 790.115(2)(a)(3), Fla. Stat. Thus, even if SB 7026 did not authorize guardians generally to carry firearms, guardians could keep firearms in their vehicles for use in a shooting incident, and it would make good sense to train them to do so. Indeed, given the risks of intended or unintended

[5] Fla. Dept. of Law Enforcement, *SOCE Exam Content and Preparation*, http://www.fdle.state.fl.us/CJSTC/Exam/Content-and-Prep.aspx.

[6] *Corrections Officer Training*, CorrectionalOfficerEDU.org, https://www.correctionalofficeredu.org/training/.

discharges of guns within school buildings, Amended Complaint ¶¶ 78-87,[7] it makes sense to keep guns secured away from the school building. Texas, for example, requires certain school marshals to keep their firearms locked in safes. Tex. Educ. Code Ann. § 37.0811(d).

50. It certainly is not "ridiculous," *Lewars*, 259 So. 3d at 800, to construe Florida law to permit school guardians to keep firearms in a vehicle. The fact that DCSB does not permit guns in vehicles on school grounds (*see* Chapter 3.40(II)(E) of the Duval County School Board Policy Manual), is of no moment. The point is that Plaintiffs' construction of SB 7026 is not absurd, so the Court must apply the laws that the Legislature wrote.

2. SB 7030 Did Not Override Section 790.115 or Authorize SSAs to Carry Guns in Schools.

51. DCSB asserts that the Legislature's 2019 amendments to the school guardian program, SB 7030,"unequivocally authorize School Guardians to carry guns in schools." Mot. ¶ 2. But DCSB cannot point to any provision of SB 7030 that says that school guardians are authorized to carry guns in schools.

52. **Sections 1001.212(15), 1006.12(5):** DCSB points to various provisions of SB 7030 that require the Florida Office of State Schools to annually publish certain information relating to discipline and misconduct by safe-school officers. Mot. ¶¶ 2(a), (b). Section 1001.212(15), Fla. Stat., requires publishing "the number of incidents in which a safe-school officer discharged his or her firearm outside of a training situation or in the exercise of his or her duties as a safe-school officer." Section 1006.12(5), Fla. Stat., requires similar reporting by a school district to the Office

[7] *See, e.g.*, https://giffords.org/2019/04/every-incident-of-mishandled-guns-in-schools/. For example, in April of this year, a Florida school resource officer's gun discharged in a middle school cafeteria. *See* https://www.tampabay.com/blogs/gradebook/2019/04/30/deputys-gun-fires-in-pasco-middle-school-cafeteria/.

of Safe Schools and the county sheriff.

53. These reporting requirements do not authorize school guardians to carry guns in schools. SB 7026 and SB 7030 created several different kinds of "safe-school officers." As noted, SB 7026 expressly authorized some of those officers to carry guns—"school resource officers" (police officers assigned to schools) and "school safety officers" (officers in school police departments). The reporting mandate requires reports about when the kinds of "safe-school officers" who can carry guns misuse them. That hardly implies that all "safe-school officers," including school guardians, can carry guns.

54. **Section 1006.12(4):** DCSB notes that SB 7030 imposed certain requirements related to school security guards in Section 1006.12(4). Mot. ¶ 2(e). But DCSB itself repeatedly describes SSAs as school guardians who are DCSB employees, not third party school security guards retained through a licensed firm. *Compare* § 1006.12(3), Fla. Stat. *with* § 1006.12(4), Fla. Stat. Florida law regarding a different statutory category has no bearing on school guardians' authority to carry firearms.

55. **Section 1006.12(3)**: The Motion identifies prefatory language to a provision laying out different individuals who can serve as school guardians, which indicates that those individuals can serve "in support of school-sanctioned activities." Section 1006.12(3). As explained above (at ¶¶ 23-36, *supra*), that language has nothing to do with firearms and thus provides no authority for DCSB's SSA program.

* * * *

56. DCSB cannot point to any provision of any statute in which the Legislature stated that Section 790.115 does not apply to SSAs or authorized them to carry guns in schools. DCSB's resort to citing the report of the Marjory Stoneman Douglas High School Public Safety

Commission, Mot. ¶ 2, which is not law, simply underscores that the Legislature did not give DCSB the power to arm SSAs and DCSB lacks the power to do so.

IV. THE LEGISLATURE HAS WAIVED SOVEREIGN IMMUNITY.

57. Sovereign immunity does not save DCSB's illegal policy. Article X, section 13 of the Florida Constitution authorizes the Legislature to provide "by general law for bringing suit against the state," and the Legislature waived sovereign immunity for both of Plaintiffs' causes of action.

58. Section 790.33(3)(f) provides that a "person or an organization whose membership is adversely affected . . . may file suit against any county, agency, municipality, district, or other entity in any court of this state . . . for declaratory and injunctive relief." Courts have held that the Legislature waived immunity by creating this cause of action. *See Fla. Carry, Inc. v. Univ. of Fla.*, 180 So. 3d 137, 150 (Fla. 1st Dist. Ct. App. 2015); *Fla. Carry, Inc. v. Thrasher*, 248 So. 3d 253, 258 (Fla. 1st Dist. Ct. App. 2018).

59. The Florida Supreme Court likewise has held that a suit under the Declaratory Judgment Act "is not a suit against the State prohibited by the State Constitution." *McInerney v. Ervin*, 46 So. 2d 458, 460 (Fla. 1950).[8]

V. ENFORCING FLORIDA'S CLEAR PROHIBITION ON GUNS IN SCHOOLS WOULD NOT VIOLATE THE SEPARATION OF POWERS.

60. Finally, DCSB asserts that this Court's "intervention would violate the separation of powers requirement." Mot. ¶ 11. DCSB, however, offers no explanation or citation in support

[8] Section 768.28 has no relevance here. *Contra* Mot. ¶ 10 n.8. Section 768.28 "waives sovereign immunity for liability for torts," Section 768.28(1), Fla. Stat., and "applies only when the governmental entity is being sued in tort," *Provident Mgmt. Corp. v. City of Treasure Island*, 796 So. 2d 481, 486 (Fla. 2001). *See Fla. Carry, Inc. v. Univ. of Fla.*, 180 So. 3d at 150 (section 768.28 did not apply in action brought under Section 790.33).

of this baseless argument. Plaintiffs are not asking the Court "to question the merit of a policy preference or to substitute its preference for the legislature's judgment." *Fast Tract Framing, Inc. v. Caraballo*, 994 So. 2d 355, 357 (Fla. 1st Dist. Ct. App. 2008). Just the opposite is true: Plaintiffs ask the Court to enforce a statute that by its plain terms embodies the Legislature's judgment that only law enforcement officers may carry guns in schools.

61. "After the legislature has delineated public policy, the court has the duty to enforce it." *Griffin v. Stonewall Ins. Co.*, 346 So. 2d 97, 98 (Fla. 3d Dist. Ct. App. 1977). DCSB overrode the Legislature's prohibition on guns in schools when it authorized SSAs to carry guns even though they are not law enforcement officers. Plaintiffs' claims that DCSB's policy is illegal implicate this Court's core function of enforcing Florida law and should proceed.

CONCLUSION

For all of the foregoing reasons, Defendant's Motion to Dismiss should be denied.

Respectfully submitted,

October 14, 2019

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was e-filed in the Florida Courts E-Filing Portal on this 14th day of October, 2019, which will serve the following counsel of record:

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