

IN THE COURT OF COMMON PLEAS FOR SCHUYLKILL COUNTY,
PENNSYLVANIA

TAMAQUA EDUCATION ASSOCIATION,

Plaintiff,

v.

TAMAQUA AREA SCHOOL DISTRICT,

Defendant.

Case No. S-2062-2018

**BRIEF OF *AMICI CURIAE* CEASEFIRE PENNSYLVANIA EDUCATION FUND,
EDUCATION LAW CENTER, PUBLIC CITIZENS FOR CHILDREN AND YOUTH,
AND THE PUBLIC INTEREST LAW CENTER IN SUPPORT OF PLAINTIFF'S
OPPOSITION TO DEFENDANT'S PRELIMINARY OBJECTIONS**

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STATEMENTS OF INTEREST

The *amici curiae* are four Pennsylvania-based nonprofit organizations with a shared interest in schoolchildren's safety and health.

CeaseFire Pennsylvania Education Fund ("CeaseFirePA") is a statewide organization working with mayors, police chiefs, faith leaders, community organizations, and individual Pennsylvanians to take a stand against gun violence in Pennsylvania. Through outreach, education, coalition building, and advocacy, CeaseFirePA works to reduce gun violence in Pennsylvania communities, stop the flow of illegal guns onto Pennsylvania streets, and keep guns out of the hands of people who should not have them. CeaseFirePA teaches Pennsylvanians that together they can raise their voices for change. CeaseFirePA holds educational programs to demystify the citizen activism process and teach the basics of advocacy. CeaseFirePA empowers partners and supporters to share their opinions and stories and make their voices heard on the issues of gun violence and gun violence prevention. CeaseFirePA has been working with concerned families in Tamaqua since the Tamaqua Area School District's plans to implement the policy at issue in this lawsuit became known. CeaseFirePA works with parents, teachers, students, and school safety experts—all of whom agree that arming non-security personnel will not improve school safety and will actually increase the risk of harm.

The Education Law Center—PA ("ELC") is a non-profit, legal advocacy organization dedicated to ensuring that all children in Pennsylvania have access to a quality public education. Through individual and impact litigation and advocacy at the local, state, and national level, ELC advances the rights of the most vulnerable and marginalized children, including children living in poverty, children of color, children in the foster care and juvenile justice systems, children with disabilities, English language learners, LGBTQ students, and children experiencing homelessness. Over its forty-plus-year history, ELC has advocated vigorously to ensure that schools are safe,

affirming, and welcoming learning environments for all children. ELC joins as *amicus* in this matter because we know the devastating harm, risks, and danger the proposed policy poses to school climate and the safety and learning of children.

Public Citizens for Children and Youth (“PCCY”) is a Pennsylvania non-profit that advocates for federal, state, and local policies that improve the lives of children. To this end, PCCY has offered research, reports, and training on key issues related to public education. PCCY also seeks to foster public support for legislative and regulatory policies that improve the quality of education for Pennsylvania’s schoolchildren.

The Public Interest Law Center (“Law Center”) is a non-profit, public interest law firm with a mission of using high-impact legal strategies to advance the civil, social, and economic rights of communities in the Philadelphia region facing discrimination, inequality, and poverty. The Law Center is an affiliate of the Lawyers’ Committee for Civil Rights Under Law, founded in 1969 in response to President Kennedy’s call for lawyers to engage in the civil rights movement. Education is a focus area for the Law Center, and it has a long history of working to ensure that all students, regardless of zip code, race, ethnicity, language, or abilities, have access to a high-quality public education. The Law Center joins as *amicus* because the proposed policy threatens the safety and wellbeing of students, teachers, and school personnel.

PRELIMINARY STATEMENT

Unless enjoined, the policy challenged by this lawsuit will endanger the teachers and students of the Tamaqua Area School District (the “School District”) by putting more guns into schools, in the hands of unlicensed and inadequately trained and supervised employees. As *amici* explain, this policy (“Policy 705,” attached as Exhibit A to Complaint) violates the text and the intent of the federal Gun-Free School Zones Act. In addition, the premise for Policy 705—that arming teachers will make schools safer—is not borne out by the relevant data. To the contrary, those data demonstrate that arming teachers and thereby introducing more guns in schools is far more likely to make schools less safe and increase the risk of gun-violence and gun-related injuries in schools.

Significantly, as explained in the Complaint, Policy 705 does not require that armed employees go through the level of training required by Pennsylvania law for personnel carrying a firearm on school property. *See, e.g.*, Compl. ¶¶ 35–37. Nevertheless, once authorized by the Board, these so-called “School Resource Professionals” (“SRPs”) may carry a gun on their person during the school day. Ex. A to Compl. at 2. In addition, Policy 705 authorizes SRPs to draw their guns and use deadly force on school grounds. *Id.* at 3–4. This proliferation of firearms around students and teachers will do more harm than good for school safety.¹

In *amici*’s view, Plaintiff Tamaqua Education Association’s (“TEA”) Complaint and Opposition to the School District’s Preliminary Objections demonstrates that Policy 705 violates

¹ Indeed, school policies like Policy 705 may disproportionately impact children of color who are far more likely to experience campus gun violence—African-American students are three times more likely to experience such violence and Hispanic-American students are twice as likely. *See* J. Woodrow Cox & S. Rich, *Scarred by school shootings*, WashPost.com (Mar. 25, 2018), https://www.washingtonpost.com/graphics/2018/local/us-school-shootings-history/?utm_term=.33b895582b08 (last visited Dec. 21, 2018).

Pennsylvania law, and that this case should be permitted to continue. *Amici* are filing this brief, however, because the Court should also be aware that Policy 705 conflicts with the federal Gun-Free School Zones Act, 18 U.S.C. § 992(q), and stands as an obstacle to achieving its common-sense objective—fewer guns in schools. In passing the Gun-Free School Zones Act, Congress sought to *reduce* the “proliferation of firearms” in schools “[t]o ensure that our school grounds do not become battlegrounds.” Congressional Record, *Senate Introduction, Consideration and Passage of S. 3266* (Oct. 27, 1990) at S 17595–596. By *increasing* the number of guns in schools, and putting them in the hands of employees without the level of training mandated by Pennsylvania law, Policy 705 will do the opposite.

As a result of this conflict, Policy 705 is preempted by federal law and cannot stand.² Moreover, even if this conflict did not rise to the level of preemption, *amici* believe the Court should take into account the objectives underlying the Gun-Free Schools Zones Act. Those objectives highlight the importance of ensuring that any policies that will increase the number of guns in schools must strictly comply with Pennsylvania law. But, for the reasons discussed by Plaintiff, Policy 705 wholly fails to comply with Pennsylvania law and exceeds the power granted to the School District by the General Assembly and the School Code. *See, e.g.*, Compl. ¶¶ 32–37.

In addition, independent of the conflict with federal law, empirical evidence demonstrates that Policy 705 will not make Tamaqua Area schools safer. To the contrary, by increasing the number of guns on school grounds and failing to mandate the level of training required by Pennsylvania law, Policy 705 increases the likelihood of gun-related violence in Tamaqua Area schools, making them less-safe learning environments for children and riskier working

² *See, e.g., Werner v. Plater-Zyberk*, 799 A.2d 776, 787 (Pa. Super. Ct. 2002) (court can *sua sponte* assess preemption issues); *Penflex, Inc. v. Bryson*, 485 A.2d 359, 369 n.13 (Pa. 1984) (similar).

environments for teachers. In addition to the empirical data discussed below, the School District’s own policies acknowledge that the presence of guns in school “is a threat to the safety of students and staff.” See Tamaqua Area Sch. Dist., *Weapons Policy* at 1 (May 16, 2006), available at https://www.tamaqua.k12.pa.us/cms/lib/PA01000119/Centricity/Shared/Weapons_-_218.1.pdf. As a result, Policy 705 creates an immediate likelihood of danger and harm to Tamaqua teachers and students sufficient to provide Plaintiff with standing to pursue its challenge.

For these reasons, and the reasons discussed below, *amici* urge this Court to overrule the School District’s Preliminary Objections and allow this important case to proceed.

ARGUMENT

I. POLICY 705 IS IRRECONCILABLE WITH THE FEDERAL GUN-FREE SCHOOL ZONES ACT.

The federal Gun-Free School Zones Act strictly limits who may carry a firearm on or near school grounds. None of its exceptions are relevant here, and no state or local policy can override this federal statute. Consequently, the Gun-Free School Zones Act bars the implementation of Policy 705. And violation of the Gun-Free School Zones Act is a federal felony, to which reliance on a school district policy is no defense.

Under the U.S. Constitution’s Supremacy Clause, U.S. Const. art. VI, cl. 2, “federal law may supersede state law through conflict preemption.” *Sikkelee v. Precision Airmotive Corp.*, 822 F.3d 680, 688 (3d Cir. 2016). Conflict preemption “occurs when a state law conflicts with federal law such that compliance with both state and federal regulations is impossible or when a challenged state law ‘stands as an obstacle to the accomplishment and execution of the full purposes and objectives of a federal law.’” *Id.* (citation omitted) (quoting *Williamson v. Mazda Motor of Am., Inc.*, 562 U.S. 323, 330 (2011)). Congress’s intent in enacting the federal law at issue is the “‘ultimate touchstone’ of a preemption analysis.” *Id.* at 687 (quoting *Wyeth v. Levine*,

555 U.S. 555, 565 (2009)). Determining the relevant congressional intent requires considering a law’s “structure and purpose,” its underlying “object and policy,” and, where relevant, legislative history. *Bruesewitz v. Wyeth, Inc.*, 561 F.3d 233, 243–44 (3d Cir. 2009); *see also Sikkelee*, 822 F.3d at 687 (“[W]hen confronted with the question of whether state claims are preempted . . . we look to the language, structure, and purpose of the relevant statutory and regulatory scheme to develop a ‘reasoned understanding of the way in which Congress intended the statute and its surrounding regulatory scheme to affect business, consumers, and the law.’” (quoting *Medtronic, Inc. v. Lohr*, 518 U.S. 470, 486 (1996))).

For the reasons explained below, Policy 705 is inconsistent with the text and intent of the Gun-Free School Zones Act and, if allowed to stand, will be an obstacle to the achievement of the Act’s objectives. Although Plaintiff’s action is based on Policy 705’s violation of Pennsylvania law, *amici* believe that it is important that the Court also be aware of the conflict between Policy 705 and the common-sense policies behind the federal law, as well as the threat Policy 705 poses to achieving congressional objectives. *See, e.g., Werner*, 799 A.2d at 787 (court can *sua sponte* assess preemption issues); *Penflex*, 485 A.2d at 369 n.13 (similar). Indeed, even if the Court decides that Policy 705 is not preempted by federal law, the policies and objectives of the Gun-Free School Zones Act emphasize the importance of ensuring strict compliance with Pennsylvania law before sending armed personnel into schools populated with children and teachers.

A. The Gun-Free School Zones Act Was Intended to Reduce the Number of Guns In Schools.

Under the Gun-Free School Zones Act, “[i]t shall be unlawful for any individual knowingly to possess a firearm . . . at a place that the individual knows, or has reasonable cause to believe, is

a school zone.” 18 U.S.C. § 922(q)(2)(A).³ The Act’s preamble reflects Congress’s intention to reduce the number of guns on school property. *See Sikkelee*, 822 F.3d at 687; *Bruesewitz*, 561 F.3d at 243–44.⁴ The preamble explains that, among other things, guns “have been found in increasing numbers in and around schools”; “the occurrence of violent crime in school zones has resulted in a decline in the quality of education in our country”; and this decline in the quality of education has an adverse impact on interstate commerce and the foreign commerce of the United States. 18 U.S.C. § 922(q)(1).

The legislative history also demonstrates that the primary purpose of the Gun-Free School Zones Act was to reduce the number of guns in schools. The Act was intended to “respond[] to a growing problem in America”: “The proliferation of firearms in our schools.” Congressional Record, *Senate Introduction, Consideration and Passage of S. 3266*, October 27, 1990 at S 17595. The Act thus sought “[t]o ensure that our school grounds do not become battlegrounds” by decreasing the number of guns brought onto school campuses. *Id.* at S 17596. Although

³ The Supreme Court ruled the 1990 version of the Gun-Free School Zones Act unconstitutional given that, as written, it “neither regulate[d] a commercial activity nor contain[ed] a requirement that the possession be connected in any way to interstate commerce.” *United States v. Lopez*, 514 U.S. 549, 551 (1995). The Act was later amended to apply only to guns that had been transported in interstate commerce. Pub. L. No. 104-208, Div. A, Tit. I, § 101(f), 110 Stat. 3009–369, 3009–372 (1996). Courts have uniformly upheld the constitutionality of the current, as-amended version of the Act. *See, e.g., United States v. Dorsey*, 418 F.3d 1038, 1045–46 (9th Cir. 2005), *abrogated on other grounds by Arizona v. Gant*, 556 U.S. 332 (2009); *United States v. Weekes*, 224 F. App’x 200 (3d Cir. 2007) (unpublished) (upholding conviction under as-amended Gun-Free School Zones Act).

⁴ *See also* J. Story, *Commentaries on the Constitution of the United States* § 459, at 326 (2d. 1858) (“[T]he preamble of a statute is a key to open the mind of the makers, as to the mischiefs, which are to be remedied, and the objects, which are to be accomplished by the provisions of the statute”); A. Scalia & B. Garner, *Reading Law* (2012) § 34 at 219 (“It is well settled that the preamble to a regulation should be considered in construing the regulation and determining the meaning of the regulation.” (ellipses omitted) (quoting *Wiggins Bros., Inc. v. Dep’t of Energy*, 667 F.2d 77, 88 (Temp. Emer. Ct. App. 1981))).

acknowledging the Act would not resolve every issue of school gun-violence, Senator Herb Kohl, a sponsor of the Act, stressed that “[g]un-free schools zones . . . are an important step toward fighting gun violence and keeping our teachers and children safe.” *Id.*

B. Policy 705 Conflicts with the Policies Behind the Gun-Free School Zones Act and Will Put Students and Teachers at Greater Risk for Gun-Violence and Gun-Related Injuries.

Policy 705 dramatically conflicts with the policy underlying the Gun-Free School Zones Act, standing as “an obstacle to the accomplishment and execution of the full purposes and objectives” of the Act. *Sikkelee*, 822 F.3d at 688. As explained above, the object and purpose of the Act is to make schools safer for students and teachers by decreasing—not increasing—the number of guns on school campuses. *See, e.g.*, 18 U.S.C. § 922(q)(1) (explaining Congress enacted Gun-Free School Zones Act “to ensure the integrity and safety of the Nation’s schools”); Congressional Record, *Senate Introduction, Consideration and Passage of S. 3266*, October 27, 1990 at S 17595 (primary purpose of Act was to “respond[] to a growing problem in America”: “The proliferation of firearms in our schools”).⁵

⁵ Policy 705 does not fall into any of the Gun-Free School Zones Act’s exceptions, 18 U.S.C. § 922(q)(2)(B), which must be read in accord with the Act’s intended purpose—decreasing rather than increasing the number of guns in schools, *see* Story, *supra* § 459, at 326; Scalia & Garner, *supra*, § 34 at 219. For example, possession of a firearm in a school zone is not unlawful if the person possessing the gun “is licensed to do so by the State in which the school zone is located or a political subdivision” thereof. 18 U.S.C. § 922(q)(2)(B)(ii). Policy 705, however, does not require that SRPs possess a license to carry firearms prior to possessing guns on school grounds. *See* Ex. A to Compl. Policy 705 requires only that SRPs be “properly *certified* in accordance with the laws of the Commonwealth of Pennsylvania.” Ex. A to Compl. at 1 (emphasis added). But certification is not equivalent to licensure. *See Commonwealth v. Anderson*, 169 A.3d 1092, 1103 (Pa. Super. Ct. 2017) (ACT 235 certification “is not a substitution for a valid license to carry a firearm” and “do[es] not supersede the licensing requirement” (internal quotation marks omitted); accord Pa. State Police, *Lethal Weapons Training Program*, <https://www.psp.pa.gov/lethalweapons/pages/default.aspx> (last accessed Dec. 21, 2018). And Policy 705 is not the type of “program approved by a school in the school zone” that the Act contemplates. 18 U.S.C. § 922(q)(2)(B)(iv) Specifically, that exception (and the others) should be read only to eliminate criminal liability for guns used in school-sponsored programs (like

Policy 705, however, achieves the opposite result. Its very purpose is to *increase* the number of guns in schools, regardless of Congress’s clear choice to legislate to the contrary. And, making matters worse, Policy 705 will allow the School District to put those guns in the hands of employees who do not receive the level of training required by Pennsylvania law and who need not even hold licenses under the Pennsylvania Uniform Firearms Act. *See, e.g.*, Compl. ¶¶ 35–37. Empirical evidence demonstrates that, as a result, Policy 705 will make schools, students, and teachers less safe and will increase the likelihood of gun-related violence and injuries in Tamaqua Area schools.

In fact, Policy 705 threatens to reverse gains that have been made in achieving the objectives of the Gun-Free School Zones Act. Since passage of the Act, the number of guns on school campuses has dropped, as has the number of gun-related injuries and deaths on school campuses. From 1992 to 2006, “school-associated homicide” declined “significantly,” from .07 homicides per 100,000 students to .03 homicides per 100,000 students.⁶ From 1990 to 2012, the incidence of school shootings was “relatively stable”: the annual rate of “random” or “rampage” shootings varied from 0 to only 3 incidents per year.⁷ Mass shootings still are “incredibly rare

shooting clubs or biathlon teams) or to protect otherwise lawful and incidental gun possession on school grounds. Those exceptions plainly do not authorize or endorse Policy 705, the specific purpose of which is to increase the number of guns in schools held by persons not employed as law enforcement officers or possessing the training required by Pennsylvania law.

⁶ Center for Disease Control & Prevention, *School-Associated Student Homicides – United States, 1992–2006*, MMWR Weekly (Jan 18, 2008), <https://www.cdc.gov/mmwr/preview/mmwrhtml/mm5702a1.htm> (last accessed Dec. 21, 2018).

⁷ J.M. Shultz et al., *Fatal school shootings and the epidemiological context of firearm mortality in the United States*, Nat’l Ctr. for Biotech. Info., Vol. 1, No. 2 (Apr. 1, 2013), available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5314897/>.

events.”⁸ The Gun-Free School Zones Act has thus generally achieved its primary goal: “Ensur[ing] that our school grounds do not become battlegrounds.” Congressional Record, *Senate Introduction, Consideration and Passage of S. 3266*, October 27, 1990 at S 17596.

Policy 705, should it be permitted to stand, threatens to reverse these trends, at least in the Tamaqua Area School District, by increasing the number of guns in Tamaqua Area schools and failing to require that armed school personnel receive the level of training mandated by Pennsylvania law. By doing so, it will also increase the likelihood of gun-related violence, which will harm both students and teachers.

Policy 705, for example, will increase the potential for students to gain access to firearms, which will not only be carried, but also stored, on school property. Arming school teachers creates “more than a casual risk” that students will gain access to guns in the classroom.⁹ Incidents from Pennsylvania and around the nation confirm these suspicions. In Chambersburg, Pennsylvania—only a two-hour drive from Tamaqua—four students between the ages of 6 and 8 found their teacher’s loaded gun sitting on a school toilet unattended.¹⁰ In Shepard, Michigan, a middle-

⁸ A. Nicodemo and L. Petronio, *Schools are safer than they were in the 90s, and school shootings are not more common than they used to be, researchers say*, News@Northeastern (Feb. 26, 2018), <https://news.northeastern.edu/2018/02/26/schools-are-still-one-of-the-safest-places-for-children-researcher-says/> (last accessed Dec. 21, 2018).

⁹ S. Greenberg, *Arming Teachers as a Means to Prevent and Mitigate School Shootings: Assumptions, Readiness, and Contrast to Law Enforcement Officers Involved in Encounters with Armed Assailants* at 8 (unpublished manuscript), available at <https://kycss.org/pdfs-docs/Arming%20Teachers%20to%20Mitigate%20School%20Shootings%20-%204-2013.docx>.

¹⁰ B. Metrick, *Teacher charged after students find her loaded gun in bathroom*, PublicOpinionNew.com (Sept. 13, 2016), <https://www.publicopiniononline.com/story/news/2016/09/12/teacher-resigns-after-child-finds-her-loaded-gun-school/90280916/> (last accessed Dec. 21, 2018).

schooler found a sheriff's misplaced gun in the school locker room.¹¹ And in Duluth, Minnesota, a third-grader reached into a visiting police officer's gun-holster and pulled the trigger—the gun's safety was not engaged (thankfully, no one was injured).¹²

These are not isolated incidents. *See, e.g., AP: More than 30 mishaps from armed adults at schools*, CBSNews.com (May 6, 2018) <https://www.cbsnews.com/news/armed-adults-schools-mishaps-analysis-2018-05-06/> (last accessed Dec. 21, 2018); B. Wilson & H. King, *Teacher charged after loaded gun found in classroom*, WITN.com (Dec. 5, 2014), <https://www.witn.com/home/headlines/Teacher-charged-after-loaded-gun-found-in-classroom-284881001.html> (last accessed Dec. 21, 2018) (student found high school teacher's loaded gun in unattended laptop bag in a classroom); *High Island ISD super who left gun in van still on leave, district won't comment on possible action*, 12Newsnow.com (May 24, 2017), <https://www.12newsnow.com/article/news/local/high-island-isd-super-who-left-gun-in-van-still-on-leave-district-wont-comment-on-possible-action/442522240> (last accessed Dec. 21, 2018) (school superintendent left loaded gun on school van; gun was found by student when van was used during next athletic event); C. Park, *Teacher shoots self at Lithia Springs High School*, 11Alive.com (Aug. 17, 2017), <https://www.11alive.com/article/news/local/teacher-shoots-self-at-lithia-springs-high-school/85-465045529> (last

¹¹ B. Johnson, *Sheriff apologizes for leaving gun found by student at middle school*, MLive.com (Mar. 14, 2018), https://www.mlive.com/news/saginaw/index.ssf/2018/03/she-riff_apologizes_for_leaving.html (last accessed Dec. 21, 2018).

¹² *Third-grader fires Minnesota cop's holstered gun; no one hurt*, Duluth News Tribune (Feb. 5, 2018), <https://www.duluthnewstribune.com/news/crime-and-courts/4399076-third-grader-fires-minnesota-cops-holstered-gun-no-one-hurt> (last accessed Dec. 21, 2018). The officer's gun was in a police-department-approved holster containing a trigger-guard that typically prevents such misfires. But “the child's small finger was able to reach inside” and pull the trigger. *Id.*

accessed Dec. 21, 2018) (teacher injured from self-inflicted gunshot while carrying firearm in classroom).

Moreover, many of these incidents involved seasoned law enforcement officials, who have received far more training than Policy 705 requires.¹³ Policy 705 makes it more likely that such incidents will occur in the future, particularly given its failure to require SRPs to obtain the level of training required by Pennsylvania law.

In addition, guns will not only be present in the classrooms and hallways of the school, but they will be stored on school premises, further increasing the chance they will be accessed by students. Data related to guns stored in homes demonstrate this risk. A 2002 study confirmed that 3 out of 4 children surveyed knew exactly where their parents stored their firearms in their home.¹⁴ This often came as a surprise to their parents.¹⁵ And in that same study, 1 out of 3 children admitted that if they came across their household gun, they had (or would) handle or play with that gun.¹⁶

Aside from the potential for students to gain access to guns, the increase in the number of guns in Tamaqua Area schools will also increase the risk of accidents, misfires, or bystander injury—bystanders who, in this context, would be schoolchildren and teachers. These accidents occur even without the stress and trauma of a school shooting event. In a Northern California high

¹³ See *AP: More than 30 mishaps from armed adults at schools*, CBSNews.com (May 6, 2018), <https://www.cbsnews.com/news/armed-adults-schools-mishaps-analysis-2018-05-06/> (last accessed Dec. 21, 2018)

¹⁴ See Brady Center, *The Truth About Kids & Guns at 21*, available at https://www.bradycampaign.org/sites/default/files/Kids-and-Guns-Report%202016_final.pdf.

¹⁵ *Id.* (“Of the parents who reported that their child did not know the storage location of the household’s guns, 39% were contradicted by their child’s report.”).

¹⁶ *Id.* (reporting that 36% of children surveyed “had handled the household gun” and 22% “of parents who reported that their children have never handled a household gun were contradicted by their children’s reports”).

school, for example, a reserve police officer teaching a public safety class accidentally discharged his gun; one student was struck in the neck by bullet fragments.¹⁷

Of course, the risks of injury increase dramatically in an actual school shooting, or other armed encounter. The fundamental problem is that live, armed encounters are traumatic and terrifying events. “[T]he stress and chaos” of such a situation “combined with a lack of physical, mental, and emotional preparedness to engage in a shooting” will increase the risk that a teacher will unnecessarily fire his or her weapon or hit an unintended target.¹⁸ Evidence demonstrates that even veteran police officers who are specifically trained to deal with crises and life-or-death situations shoot poorly and inaccurately in armed encounters.¹⁹

If law enforcement officers struggle to deal adequately with highly-charged armed encounters, it is too much to expect teachers to do so. The risks that arise from arming teachers were reflected in the December 2013 Joint State Government Commission report on Violence Prevention in Pennsylvania, which found:

¹⁷ M. Kirk, *What Research Says About Arming Teachers*, CityLab.com (Mar. 14, 2018), <https://www.citylab.com/life/2018/03/what-the-research-says-about-arming-teachers/555545/> (last accessed Dec. 21, 2018)

¹⁸ See Greenberg, *supra* note 9, at 18.

¹⁹ See *id.* at 17–18; M. White, *Hitting the Target (or Not): Comparing Characteristics of Fatal, Injurious, and Noninjurious Police Shootings*, *Police Quarterly*, Vol. 9, No. 3 (Sept. 2006) at 304, available at <http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.881.673&rep=rep1&type=pdf> (“[P]rior research consistently indicates that police officers who use deadly force *miss* their intended targets far more often than they hit them.” (emphasis in original)); cf. *UPDATE: School board releases report after patrol officer’s gun found in school*, 12wrw.com (Apr. 29, 2015), <https://www.wrdw.com/home/headlines/Student-brings-RCBOE-officers-gun-into-Hephzibah-Middle-School-301464461.html> (last accessed Dec. 21, 2018) (eight grade student stole unloaded gun from police cruiser; gun was found in school cafeteria); R. Elliot, *Deputies apologize for leaving starter pistol at elementary school*, WSB-TV.com (May 19, 2015), <https://www.wsbtv.com/news/local/douglas-county-sheriffs-office-apologizes-leaving-/53858352> (last accessed Dec. 21, 2018) (two students found gun left on playground by police officer after demonstration).

[I]t is unreasonable to expect a teacher to have the same firearms competency as a law enforcement officer, and not sound policy to assign such responsibility to a teacher. . . . [S]ome law enforcement personnel have expressed concerns that if an armed teacher or administrator is in a school building during an active shooter incident and law enforcement enters the building and sees an armed person running down a hallway, they may take action to stop the person before the person can identify himself. In the confusion and mayhem of such an incident, it would be all too easy for the teacher or administrator to become a casualty of the police.

Joint State Gov't Comm'n, Violence Prevention in Pa., Report on the Advisory Comm. on Violence Prevention, at 113–14. Simply put, in a high-stress, chaotic event like a school shooting, teachers with guns—even trained teachers—risk causing more harm than good.²⁰

In addition, arming teachers will make it more difficult for law enforcement personnel who are responding to a situation in which there is an active shooter in a school. In other contexts, law enforcement officers have stated that armed civilians can inject confusion into ongoing crises, slow down investigations, and lead to costly mistakes, especially where law enforcement officers cannot tell the difference between the good-guys-with-guns versus the bad-guys-with-guns. *See, e.g., Dallas police chief: Open carry makes things confusing during mass shootings*, LaTimes.com (July 11, 2016), <https://www.latimes.com/nation/la-na-dallas-chief-20160711-snap-story.html> (last accessed Dec. 21, 2018) (quoting then-Dallas Police Chief David Brown as stating “We don’t know who the good guy is versus the bad guy when everyone starts shooting.”); K. Simpson, *Shoppers pulled guns in response to Thornton Walmart shooting, but police say that slowed*

²⁰ Cf. *FBI Releases Study on Active Shooter Incidents: Covers 2000–2013 Timeframe*, FBI.gov (Sept. 24, 2014) <https://www.fbi.gov/news/stories/fbi-releases-study-on-active-shooter-incidents> (last accessed Dec. 21, 2018) (FBI statistics from 2000 to 2013 show that more than half of active shooter incidents ended “on the shooter’s initiative (i.e., suicide, fleeing),” and, in almost half of those incidents where law enforcement officer engaged with the active shooter, nine officers were killed and twenty eight were wounded); G. Kelen et al., *Hospital-Based Shootings in the United States: 2000 to 2011*, *Annals of Emerg. Med.*, Vol. 60, No. 6 (Dec. 2012), available at [https://www.annemergmed.com/article/S0196-0644\(12\)01408-4/fulltext](https://www.annemergmed.com/article/S0196-0644(12)01408-4/fulltext) (nearly 25% of all hospital emergency department shootings involved a gun that the shooter forcibly took from a security officer).

investigation, TheDenverPost.com (Nov. 2, 2017), <https://www.denverpost.com/2017/11/02/shop-pers-pulled-weapons-walmart-shooting/> (last accessed Dec. 21, 2018) (quoting police spokesperson Victor Avila who said armed citizens returning fire on shooter “absolutely” slowed down police investigation). As a result, among other problems, arming teachers increases the chances that a police officer who first arrives on the scene will mistake an armed teacher for the active shooter.

For these reasons, this Court should overrule the School District’s Preliminary Objections and allow Plaintiff’s challenge to Policy 705 to proceed.

II. TEA WILL SUFFER AN INCREASED LIKELIHOOD OF HARM SHOULD POLICY 705 TAKE EFFECT.

In its Preliminary Objections, the School District argues that the TEA lacks associational standing because none of its members will suffer an immediate risk of threatened injury. *See* Def.’s Mem. in Supp. of Prelim. at 3–8. The empirical data discussed above, however, demonstrate that Policy 705 will likely increase the risk of gun-related injuries to students and teachers. *See supra* Part I.B. Policy 705 thus unquestionably creates an immediate risk of threatened injury to members of TEA. *See, e.g., Wm. Penn Parking Garage, Inc. v. City of Pittsburgh*, 346 A.2d 269, 286 (Pa. 1975).

Moreover, the School District’s own policies demonstrate that it recognizes the risk to teachers and students arising from guns on schools grounds. *See* Tamaqua Area Sch. Dist., *Weapons Policy* at 1 (May 16, 2006), *available at* https://www.tamaqua.k12.pa.us/cms/lib/PA01000119/Centricity/Shared/Weapons_-_218.1.pdf (“Possession of weapons in the school setting is a threat to the safety of students and staff and is prohibited by law.”). *Accord* Tamaqua Area Sch. Dist., 2016–2017 *Faculty Handbook* at 20, *available at* <https://www.tamaqua.k12.pa.us/cms/lib07/PA01000119/Centricity/Domain/240/MS%20FACULTY%20HANDBOOK16-17.pdf> (“No

person is permitted a weapon in school or on school property at any time.”); Tamaqua Area Sch. Dist., *K–12 Handbook*, at 22, available at <https://www.tamaqua.k12.pa.us/cms/lib/PA01000119/Centricity/Shared/K-12%20HANDBOOK.pdf> (“A student is forbidden to possess, handle, or transfer in school, or on school property, any object, which can reasonably be considered a weapon. . . . includ[ing] . . . firearms, air rifles and pistols . . .”). Thus, the School District should not now be permitted to escape Plaintiff’s challenge to Policy 705 by arguing that increasing the number of guns in school does not create—in the words of its own policy—“a threat to the safety of students and staff.”

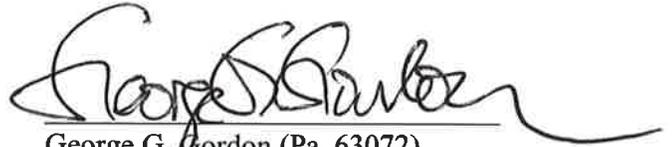
What is more, studies show that “any exposure to gun violence”—hearing gunshots, witnessing gunfire, or suffering or witnessing a gun-related injury—“can adversely affect a child’s health and development.” S. Rajan, *Arming Teachers: What are the Implications* (Feb. 23, 2018), <https://www.tc.columbia.edu/articles/2018/february/arming-teachers-arming-teachers-what-are-the-implications/> (last accessed Dec. 21, 2018). Arming teachers only increases the risk of this exposure. *Id.* Even the anticipation of gun-violence “can lead to increased anxiety, fear, and depression.” *Id.* Arming teachers thus “would heighten levels of anxiety and negatively affect a school’s climate for teaching and learning.” *Id.*

CONCLUSION

For the foregoing reasons and those discussed in Plaintiff’s Opposition to Defendant’s Preliminary Objections, this Court should overrule Defendant’s Preliminary Objections and permit this important case to proceed.

Dated: December 21, 2018

Respectfully submitted,

A handwritten signature in black ink, appearing to read "George G. Gordon", written over a horizontal line.

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CERTIFICATE OF COMPLIANCE

I hereby certify that this filing complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.

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