

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: CV-C

DUVAL COUNTY SCHOOL BOARD,

Defendant.

FIRST AMENDED COMPLAINT

Plaintiffs, T. DOZIER, M.D., D. PHILLIPS, B.P., N. KAVANAUGH, and T.S., and the LEAGUE OF WOMEN VOTERS OF FLORIDA, INC. file this Complaint against the Defendant, Duval County School Board, and allege as follows:

INTRODUCTION

1. This is an action to protect tens of thousands of elementary school children from the serious risk of harm posed by an unlawful decision of the Duval County School Board (“the Board”). The Board adopted a program to hire inadequately trained individuals who are not law enforcement officers to carry guns while policing public schools. While perhaps a well-intended effort to comply with a new state school safety law, the program is based on an incorrect interpretation of—

amended the Act in 2019, school personnel who are not law enforcement officers—including school guardians—remain subject to Florida’s ban on carrying guns in schools.

5. Prior to the passage of SB 7026 in 2018, the Board employed law enforcement officers at middle and high schools in the district (and it continues to do so). However, the Board historically did not employ law enforcement officers in the vast majority of elementary schools. It has repeatedly asserted that the Legislature has not appropriated, and the Board does not have, enough money to hire law enforcement officers for the elementary schools where it had not traditionally posted law enforcement officers before the Legislature enacted SB 7026. So the Board concluded that the only way to comply with SB 7026 was by relying on non-law-enforcement personnel— , school guardians.

7. As noted, Florida law generally prohibits individuals other than law enforcement officers from carrying guns in schools. SSAs are not law enforcement officers. They lack the power of arrest, earn roughly half the salary of school police officers (known as School Resource Officers (“SROs”)), and receive less than one-fifth of the training that SROs receive. The Board nonetheless adopted a policy that purports to authorize SSAs to carry guns in schools. That was illegal. Florida law expressly requires local governments to follow the state’s general ban on guns in schools and prohibits them from crafting an exception to that uniform law. Local

officers have. According to the chief of the Duval County School Police Department, SSAs will have a broad but undefined mandate to patrol campuses, assist with discipline, and break up fights. Similarly, the internal SSA job description provides that SSAs are expected to spend time handling “preliminary inquiries into violations of school board policies”; “[m]onitoring students within a variety of school environments (e.g., rest rooms . . .)”; observing and referring

13. Unarmed school guardians could meaningfully contribute to these safety efforts, and the Legislature gave school districts that option in the Act. The Legislature did not authorize public schools to put inadequately trained, armed individuals in elementary schools to perform vague “security” functions, as the Board has done here. Because the SSA program is inconsistent with state law and endangers the lives of children attending Florida’s public schools, the Court should enjoin the Board’s SSA program.

JURISDICTION AND VENUE

14. This Court has jurisdiction over this action and venue is proper in this Court. Plaintiffs T. DOZIER, M.D., D. PHILLIPS, B.P., N. KAVANAUGH, and T.S. are residents of this State and County who attend or have minor children in Duval County elementary schools. The League of Women Voters of Florida is an organization in this state with members in this County who have minor relatives in Duval County elementary schools. Defendant is an institution of this County charged by law with responsibility for the public schools in this County. Defendant’s conduct took place in this County and relates to programs at public schools in this County. Defendant’s conduct will subject Plaintiffs and others to injuries in this County.

PARTIES

15. Plaintiff M.D. is enrolled in an elementary school in Duval County. He brings suit through his next friend, his father Plaintiff T. DOZIER. M.D. will start fifth grade in the fall. He likes playing baseball and science is his favorite subject. He also has hearing loss—moderate in one ear and severe in the other. He has worn a hearing aid since he was four years old. Before his hearing loss diagnosis, his teachers sometimes thought, erroneously, that he was not listening to them. While he now has a device that generally helps his disability, his hearing

aid sometimes runs out of batteries at school. Normally, his school replaces them, but sometimes he returns home with his hearing aid not working.

16. T. DOZIER is very concerned that if an SSA gives his son a command, M.D. will not be able to understand the command if his hearing aid is not functioning at that time. T. DOZIER is therefore frightened that the SSA would interpret that refusal as dangerous or threatening and potentially harm M.D.

17. M.D. is African American. T. DOZIER knows that because his son is a member of a racial minority group, M.D. is more likely to be viewed as older and more threatening by law enforcement and SSAs, compounding the increased risk caused by M.D.'s disability.

18. Plaintiff B.P. is enrolled in an elementary school in Duval County. She brings suit through her next friend, her father Plaintiff D. PHILLIPS. B.P. is in first grade. She enjoys rock climbing, making art, and traveling with her family in their RV. D. PHILLIPS is a decorated veteran who knows that gun violence is quick, unpredictable, and deadly, and that even the best-trained people can react to it unexpectedly poorly. He believes that the risks to B.P. from putting a gun in the hands of a poorly-trained individual in her school greatly outweigh any hypothetical security benefit.

19. Plaintiff T.S. is enrolled in an elementary school in Duval County. She brings suit through her next friend, her mother Plaintiff N. KAVANAUGH. T.S. just completed third grade. She enjoys soccer, drawing and music. She has recently expressed her fear of shootings in public places to her mother, a fear that N. KAVANAUGH fears may be worsened by armed SSAs in T.S.'s school.

20. Plaintiff LEAGUE OF WOMEN VOTERS OF FLORIDA, INC. (the “League”) is a statewide membership organization. At least one of the League’s members has a child in a Duval County elementary school and at least one has a grandchild in a Duval County elementary

employed full time by any municipality or the state or any political subdivision thereof; who is vested with authority to bear arms and make arrests; and whose primary responsibility is the prevention and detection of crime or the enforcement of the penal, criminal, traffic, or highway laws of the state.” § 943.10(1), Fla. Stat.

24. Section 943.10(6) defines a “Part-time law enforcement officer” as “any person employed or appointed less than full time, as defined by an employing agency, with or without compensation, who is vested with authority to bear arms and make arrests and whose primary responsibility is the prevention and detection of crime or the enforcement of the penal, criminal, traffic, or highway laws of the state.”

25. Section 943.10(8) defines an “Auxiliary law enforcement officer” as “any person employed or appointed, with or without compensation, who aids or assists a full-time or part-time law enforcement officer and who, while under the direct supervision of a full-time or part-time law enforcement officer, has the authority to arrest and perform law enforcement functions.”

26. Section 943.10(14) defines an “Officer” as “any person employed or appointed as a full-time, part-time, or auxiliary law enforcement officer, correctional officer, or correctional probation officer.”

27. The other law enforcement officers defined in Section 943.10 and exempted from the ban on guns in schools are correctional and probation officers.

28. The Legislature’s choices during the 2018 legislative session make clear that: (a) under this statutory scheme, further legislation would be required to authorize school employees who are not law enforcement officers within these above-enumerated categories— , school guardians—to carry concealed firearms on school grounds; and (b) the Legislature knew how to

create such an exception if it wanted to do so. Both the House and the Senate considered legislation in that session that would have changed the general prohibition on carrying a gun on a school campus in § 790.115(2)(a), Fla. Stat., so that it would “not apply to a school employee or volunteer who has been designated by his or her school principal, or, for an administration building, a district employee or volunteer who has been designated by his or her district school superintendent, as authorized to carry a concealed weapon or firearm on school property.”¹ But in the 2018 session, the Legislature did not pass that bill or any other legislation containing any such provision.

B. The Legislature’s Debate Over School Safety in Response to Parkland

29. As previously noted, SB 7026 was passed in March 2018 in response to the February 2018 mass shooting at Marjory Stoneman Douglas High School in Parkland.

30. The original version of SB 7026 was submitted to the Senate Rules Committee on February 21, 2018, just one week after the Parkland mass shooting. The original bill proposed creating a “school marshal” program, which it described as “a voluntary program to assist school districts and public schools in enhancing the safety and security of students, faculty, staff, and visitors to Florida’s public schools and campuses.” The original bill defined a “sheriff’s marshal” as “a faculty or staff member who is recommend

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background checks, drug testing, and a psychological evaluation and be

, as defined in s. 943.10(1), certified under the provisions of chapter 943 and employed
by either a law enforcement agency or by the district school board.” § 1006.12(2)(a)

D.

stating that school guardians “[m]ay carry . . . firearms,” as had initially been part of—and then removed from—SB 7026. Nor did SB 7030 include a provision designating school guardians as law enforcement officers or otherwise amend § 790.115 to exempt school guardians from its prohibition on guns in schools.

49. SB 7030’s statement that school guardians can serve “in support of school-sanctioned activities” is certainly not such a provision. In banning the possession of various weapons on school campuses, § 790.115 includes an exception for possession “authorized in support of school-sanctioned activities,” but that exception applies only to the statute’s ban on razor blades and box cutters. Section 790.115 separately includes three enumerated exceptions

51. Asserting that it lacked funds to hire law enforcement to fulfill the Safe-School Officer Requirement, the Board claimed that its only alternative was to employ school guardians and that it was required by SB 7026 to have those school guardians carry guns.

52. The Board did not want to use existing employees as guardians. So it created a new job, the SSA position, to fulfill that function.

53. Per the Board's approved job description, SSAs earn salaries starting at \$12.50 per hour, or \$20,600 annually, and report to the school district's police department, not the county sheriff. The Board plans to hire more than 100 SSAs at an estimated total cost of \$4.1 million total.

54. At the time the Board adopted the SSA program, its policies prohibited anyone except law enforcement from carrying guns in schools. Consistent with state law, Chapter 3.40(II)(E) of the Duval County School Board Policy Manual then 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," the statute that generally prohibits firearms in Florida schools.

55. On July 9, 2018, the Board voted to amend Chapter 3.40(II)(E). It now purports to permit SSAs to carry concealed weapons in Duval County elementary schools.

B. The SSA Program Is Unlawful Under Florida Law

56. Defendant is violating Florida law's ban on guns in schools.

57. As noted above, Florida law prohibits carrying firearms in schools. Although Florida law exempts law enforcement officers from this prohibition, school guardians are not

law enforcement officers: the Act expressly provides that school guardians are “without the power of arrest” that defines a law enforcement officer under Florida law.

58. Yet, on July 9, 2018, the Board voted to amend Chapter 3.40(II)(E) of its Policy Manual to permit SSAs to carry concealed weapons in Duval County schools even though SSAs are not law enforcement officers under Florida law.

59. Defendant’s actions are illegal. Florida law does not permit local officials to decide whether to follow state laws. To the contrary, Florida law expressly requires school boards to “[d]etermine policies and programs consistent with state law,” § 1001.41(1), Fla. Stat., and demands that “[a]ll actions of district school officials shall be consistent and in harmony with state laws,” § 1001.32(1). Likewise, Florida law dictates that a school superintendent “[r]equire that all laws and rules of the State Board of Education, as well as supplementary rules of the district school board, are properly observed.” § 1001.51(14), Fla. Stat.

60. Moreover, by statute, the Legislature declared its “intent . . . to provide uniform firearms laws in the state; to declare all ordinances and regulations null and void which have been enacted by any jurisdictions other than state and federal, which regulate firearms, ammunition, or components thereof; to prohibit the enactment of any future ordinances or regulations relating to firearms, ammunition, or components thereof unless specifically authorized by this section or general law; and to require local jurisdictions to enforce state firearms laws.” § 790.33(2)(a), Fla. Stat.

61. To that end, the Legislature has “occupi[ed] the whole field of regulation of firearms and ammunition . . . to the exclusion of all existing and future county, city, town, or municipal ordinances or any administrative regulations or rules adopted by local or state

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disturbance or mental illness, including de-escalation skills to ensure student and officer safety.”

71. Florida law does not require any comparable training of school guardians. As such, SSAs will be even more likely to escalate conflicts into violence. Indeed, the 2014 School Discipline Consensus Report of the Council on State Governments has expressed “concern that [non-law-enforcement] security officers are not always trained to de-escalate incidents with

intervention, threat recognition, and emergency preparedness that experts consistently recognize as pillars of any effective school safety strategy. In so doing, unarmed guardians would “aid in the prevention or abatement of active assailant incidents on school premises,” § 30.15(k), Fla. Stat., far more than minimally trained SSAs carrying concealed guns.

D. The County’s Unlawful Conduct Endangers Its Youngest Schoolchildren

77. Defendant’s illegal decision to arm SSAs endangers tens of thousands of young children in this County.

78. Recent events in the state have demonstrated that even law enforcement officers, who have received more training than Defendant is providing SSAs, are capable of putting children at serious risk. For example, on April 30, 2019, an SRO’s gun accidentally discharged in a middle school cafeteria in Wesley Chapel.

79. On April 18, 2019 a Broward County Sheriff’s Deputy was video recorded body-slaming a fifteen-year old student, punching and slamming his head into the ground, and pepper-spraying him. He was later reassigned to administrative duties pending an investigation.

80. Last year, a former Jacksonville police officer training as a Duval County School Resource Officer resigned during a misconduct investigation following a physical altercation with a student.

81. In August 2017, an officer at Atlantic West Elementary School in Margate, Florida was suspended for using excessive force against a fourth-grade student.

82. On February 5, 2018, a School Resource Officer at Elliott Point Elementary School in Fort Walton Beach, Florida left a loaded handgun in a school restroom. A parent of a student found the gun while looking for paper towels.

83. On May 6, 2016, at Patterson Elementary School in Panama City, Florida, a corrections officer accidentally shot himself in the leg while replacing a spent round as he waited for a job interview to be a janitor.

84. These incidents are not limited to Florida schools. Since 2014, there have been over 70 publicly reported incidents where a gun was fired or negligently handled by armed adults at schools, including some where a police officer unintentionally discharged the weapon.

85. For example, a court document related to the shooting at STEM School Highlands Ranch in Colorado last month indicates that a private security guard responding to the incident fired two rounds at a responding sheriff's deputy. The document states that the guard's shots missed the officer but one shot injured a student.

86. On May 18, 2015, a police officer doing a K-9 demonstration at Mount Carmel Elementary School in Douglasville, Georgia left a .22 caliber pistol on the school playground. Two students discovered the pistol, which led officials to put the school on lockdown.

87. On February 5, 2018, at the Harmony Learning Center in Saint Paul, Minnesota, a third-grade student sitting next to a school liaison officer pulled the trigger on the officer's gun in its holster, causing it to discharge.

88. SSAs are less well trained than law enforcement officers who the foregoing incidents show nonetheless can mishandle their guns. Less experienced gun carriers are even more likely to mishandle their firearms than law enforcement. The unlawful SSA program therefore increases the risk of these incidents for the County's youngest schoolchildren and, in turn, the dangers of physical harm to those children and trauma to both students and their families as they contemplate that risk each day.

89. Indeed, just months after the SSA program went into effect, evidence already has emerged that SSAs are not properly safeguarding their firearms. In October 2018, an SSA was arrested and charged in connection with pawning his County-issued firearm on two separate occasions while falsely claiming that he owned the weapon. Two other SSAs also resigned after an investigation found that they knew about the pawning incidents and failed to report them to their supervisors.

90. The dangers of armed SSAs using their weapons improperly will affect children even if they are not immediate physical victims. Exposure to violence-related trauma in a place where children should expect to be safe puts them at significantly increased risk for post-traumatic stress disorder and other mental health disorders, all of which are strongly correlated with reduced academic performance. Such exposure to violence has been shown to significantly lower first-graders' IQ and reading ability scores.

91. The risks posed by armed SSAs go far beyond the kinds of firearm incidents that kill tens of thousands of Americans every year. SSAs are working in elementary schools full of young children who are still learning social skills and acclimating to a social environment away from their homes and families. SSAs do not receive adequate training to work in this environment at all, let alone while armed.

92. Defendant is not providing SSAs with training remotely equivalent to what law enforcement officers receive. Unlike law enforcement officers who typically undergo lengthy training (a minimum of 770 hours for full-time police officers), Defendant has represented that SSAs will get only 144 hours, or under four weeks, of training—less than one-fifth as much.

93. Law enforcement officers in the Basic Recruiting Training Program undergo 44 hours of “Critical Incidents” training in which they learn to “understand local emergency

response plans, law enforcement duty-to-act requirements, and the role of law enforcement officers as first responders” as well as “how to respond to an active shooter incident.” Further, Florida law requires School Resource Officers (who are all law enforcement officers) to also “[c]omplete mental health crisis intervention training using a curriculum developed by a national organization with expertise in mental health crisis intervention.” § 1006.12(1)(c), Fla. Stat. By contrast, Defendant has only represented that SSAs will receive eight hours of training regarding active shooter or assailant scenarios, and six hours of “youth mental health” training.

94. Defendant’s own public job descriptions for the SSA program, compared to the job descriptions for SROs, make clear that SSAs’ training will be inadequate for the tasks they are assigned. Defendant has indicated that SSAs will “[m]aintain calm, deter[] crime, and handle[] preliminary inquiries into violations of school board policies, on school property or at school-sponsored events.” Similarly, Defendant’s advertisement for the SROs who are employed at Duval County middle and high schools states that they will be “responsible for campus patrol” and “initial case investigations.” The internal job description similarly shows that SSAs are

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year, black students in Duval County were 2.7 times as likely as white students to receive an in-school suspension, 4.1 times as likely to receive an out of school suspension, and 2.4 times as likely to be referred to law enforcement. According to the same data, disabled students were 1.3 times as likely to receive an in-school suspension, 2.1 times as likely to receive an out-of-school suspension, and 2.1 times as likely to be referred to law enforcement as students who were not disabled.

101. In their Basic Recruiting Training Program, law enforcement officers undergo 40 hours of training on “Interactions in a Diverse Community,” a program that includes training on, among other things, how to “recognize potential emotional triggers, and recommend available resources”; how to “interact with juveniles, assess their behavioral characteristics, and provide the most appropriate response to a call involving a juvenile”; and how to “recognize an officer’s duty to recognize, respond and intervene safely and professionally and understand the options available to the officer, and provide the most appropriate intervention.”

102. Defendant does not require SSAs to attend this program or obtain any equivalent training. Instead, Defendant has represented that SSAs will get only 12 hours of “diversity training.” Defendant has not indicated that it will provide SSAs with any training about how to interact with children or de-escalate conflicts.

103. Students of color like M.D. will likely bear a disproportionate brunt of interactions with armed SSAs. SSAs are authorized to make “inquiries into violations of school board policies,” monitor students in “rest rooms, grounds, hallways, library, cafeteria, parking lots, etc.” and conduct “administrative searches.” Data indicate that law enforcement officials use firearms more frequently and dangerously against young people of color. It stands to reason that SSAs with even less training and experience will be even more likely to act in a manner that

disproportionately harms students of color. As such, each of these potential SSA interactions is

Act commitments or otherwise appropriately respond to children experiencing mental health crises in ways that are safe for those children and others in the school community.

FIRST CAUSE OF ACTION

DECLARATORY JUDGMENT ACT, § 86.011 *et seq.*, FLA. STAT.

107. All allegations in paragraphs 1-106 are incorporated by reference.

108. Under Florida law, a school board must “[d]etermine policies and programs consistent with state law,” § 1001.41(1), Fla. Stat., and “[a]ll actions of district school officials shall be consistent and in harmony with state laws.” § 1001.32(1).

109. Florida law requires a school superintendent to “[r]equire that all laws and rules of the State Board of Education, as well as supplementary rules of the district school board, are properly observed.” § 1001.51(14), Fla. Stat.

110. Under § 790.33(1), Fla. Stat., local measures relating to firearms are null and void.

111. Florida law makes it unlawful to carry firearms in schools. § 790.115(2)(a), Fla. Stat.

112. Florida law exempts specific categories of law enforcement officers from this prohibition. § 790.115(3), Fla. Stat.

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115. No provision of law gives Defendant authority to permit SSAs, individuals who

enforcing Chapter 3.40(II)(E) of the Duval County School Board Policy to the extent it authorizes School Safety Assistants to carry firearms in schools in this County; (c) prohibiting Defendant from taking any action to authorize or facilitate School Safety Assistants to carry firearms in, or on the property of, any school in this County; and (d) prohibiting Defendant from taking any action to carry out or execute the School Safety Assistant program or any school guardian program in which anyone other than law enforcement officers exempt from the ban on guns in schools under Section 790.115(3) is permitted to carry firearms in, or on the property of, any school in this County, including authorizing or expending funds for such a program.

3. An award of attorney's fees.
4. Other relief as the Court may find necessary and proper.

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 25th day of June, 2019, which will serve the following counsel of record:

Stephen J. Powell
Jon R. Phillips
Office of General Counsel
City of Jacksonville