IN THE CIRCUIT COURT IN AND FOR DUVAL COUNTY, FLORIDA

T. DOZIER, individually

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

I. FLORIDA LAW PROHIBITS GUNS IN SCHOOLS.

7.

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

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.

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

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

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 authoriz

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

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 sc

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

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.

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 cer

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.

Respectfully submitted,

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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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