

IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHELLE FLORES, AN
INDIVIDUAL,

v.

LAS VEGAS-CLARK COUNTY
LIBRARY DISTRICT, A POLITICAL
SUBDIVISION OF THE STATE OF
NEVADA,

Respondent.

Supreme Court No: 72462
District Court No: A735496
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APPELLANT'S OPENING BRIEF

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I. NRAP 26.1 Disclosure Statement

The undersigned counsel of record certifies that the following are persons and entities as described in NRAP 26.1(a):

There are no corporations or entities described in NRAP 26.1 appearing in this case as an appellant.

The names of all law firms whose partners or associates have appeared in this Court, the District Court, or any administrative agency on behalf of appellant are as follows:

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These representations are made in order that the judges of this Court may evaluate possible disqualification or recusal.

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IV. Jurisdictional Statement

This Court has jurisdiction pursuant to NRAP 3A(b)(1) in that this is a timely appeal of the stipulated final order of the District Court (incorporating a previous Decision and Order of the District Court granting partial summary judgment).

The District Court issued its Order that was dispositive of all claims on February 8, 2017. The Notice of Entry of Order was timely served on February 9, 2017, and the Notice of Appeal was timely filed and served on February 17, 2017. Appellant Michelle Flores (“Ms. Flores”) was the plaintiff below who was aggrieved by the Order. Accordingly, this Court has appellate jurisdiction to hear this matter pursuant to NRAP 3A(b)(1).

V. Routing Statement

This case is presumptively retained by the Supreme Court because the principal issues are (1) a question of first impression involving the Nevada Constitution and common law; and (2) a question of statewide public importance under NRAP 17(a)(13) and (14).

Resolution of this case requires the Court to interpret a local library district’s policy regulating the possession of firearms in light of (a) a 2015 statute imposing statewide regulation over the possession of firearms which prohibits local jurisdictions from enacting such policies; (b) Article 1, §11 of the Nevada

Constitution; (c) other Nevada statutes; and (d) a common-law doctrine called, “Dillon’s Rule.”

VI. Statement of Issues Presented for Review

Does a local library district’s regulation of the possession of firearms violate SB 175 (2015), as codified in NRS 244.364, NRS 268.418, and NRS 269.222 by 2015 Nev. Stat. ch. 328, §§8(1), 9(1), and 10(1) at 1784, 1787, and 1789, where such law (1) definitively establishes “state control” over the regulation of firearms to ensure “uniform” policies and regulations “throughout the State”; (2) further mandates that such “state control” is the “exclusive domain of the Legislature”; (3) then declares that “any other law, regulation, rule or ordinance to the contrary is null and void”; and (4) expressly instructs the courts: “This section must be liberally construed to effectuate its purpose”?

In this Opening Brief, Appellant Michelle Flores respectfully seeks the following relief: (1) that the Court reverse the District Court’s judgment upholding the policy of Respondent Clark County-Las Vegas Library District’s regulating the possession of firearms; (2) that the Court declare that firearms policy illegal; and (3) that the Court direct the entry of an order enjoining the Library District’s enforcement of its firearms policy.

VII. Statement of the Case

This is an Appeal from the Eighth Judicial District Court, Case Number A-16-735496-C of a stipulated final judgment of the District Court against Appellant Michelle Flores and in favor of the Respondent Clark County-Las Vegas Library District in which the District Court upheld the validity of a library district's policy regulating the possession of firearms in derogation of the Legislature's mandate to the contrary.

VIII. Statement of the Facts Relevant to the Issues

Plaintiff/Appellant Michelle Flores ("Ms. Flores") is a citizen of the State of Nevada. [JA 3.]

Michelle is lawfully entitled to possess a firearm in Nevada. [JA 3.]

In 2015, the Legislature passed SB 175 (2015), as codified in NRS 244.364, NRS 268.418, and NRS 269.222 by 2015 Nev. Stat. ch. 328, §§8(1), 9(1), and 10(1) at 1784, 1787, and 1789 (collectively, "SB 175"). Sections 8(1), 9(1), and 10(1) of SB 175 recite, in relevant part, the following:

(a) The purpose of this section is to establish state control over the regulation of and policies concerning firearms...to ensure that such regulation and policies are uniform throughout this State...

(b) The regulation of the...possession [and] carrying...of firearms...in this State and the ability to define such terms is within the exclusive domain of the Legislature, and any other law, regulation, rule, or ordinance to the contrary is null and void.

(c) This section must be liberally construed to effectuate its purpose. (Emphasis added.) [JA 127-128.]¹

Clark County and the City of Las Vegas formed the Las Vegas-Clark County Library District (the “Library District”) pursuant to NRS 379.0221. [JA 56:6-7.]

The Library District promulgates a policy called the Dangerous Items Policy (the “DIP Rule”). [JA 56:19-21.]

The DIP Rule regulates the possession of firearms by prohibiting the carrying of an open, holstered firearm in Library District facilities. [JA 56:19-21.]

The Library District applied and enforced the DIP Rule against Ms. Flores. [JA 58:3-19.]

IX. Summary of the Argument

SB 175 prohibits the Library District from adopting and enforcing the DIP Rule. Here, the District Court erroneously upheld the DIP Rule. This is an error for at least three reasons:

(A) **The Plain Meaning Analysis.** With unambiguous language in SB 175, the Legislature declared its complete control of the regulation of firearms in Nevada to the exclusion of all other political subdivisions, prospectively prohibiting local governments from enacting their own rules and retrospectively repealing all local government’s rules to the contrary.

¹ The language of Sections 8(1), 9(1), and 10(1) of SB 175 is identical. [JA 127-28; 131; and 134-35.]

(B) **The Preemption Analysis.** The comprehensive, exhaustive, constitutional and statutory scheme regulating firearms in Nevada preempts the DIP Rule.

(C) **The Dillon’s Rule Analysis.** The Legislature did not grant the Library District any specific authority to regulate firearms; neither the Library District nor the courts may imply such power under a long-standing rule in Nevada called, “Dillon’s Rule.”

X. Argument

Statutory construction is a question of law that this Court reviews *de novo*, and as a consequence, this Court gives no deference to the District Court’s interpretation. *Carson City DA v. Ryder*, 116 Nev. 502, 504-05, 998 P.2d 1186, 1188 (2000). Resolution of this appeal requires the Court to interpret SB 175 in light of the DIP Rule.

The DIP Rule attempts to regulate the possession of firearms in derogation of SB 175’s express and unambiguous language to the contrary. Thus, the District Court erred when it found that “the three statutes amended by SB 175...do not preclude the Library District from implementing and enforcing the [DIP Rule].” [JA _301:7-10.] The District Court also erred when it held that “NRS 244.364, NRS 268.418, and NRS 268.222, by their express terms, do not apply to a public library district.” [JA 300:8-9.]

The trial court's interpretation of SB 175 is thus entitled to no deference in this Court's *de novo* review for the following three reasons: (A) the plain meaning of SB 175 prohibits the DIP Rule; (B) even ignoring the unambiguous language of SB 175, Nevada law preempts local regulation of firearms; and (C) Dillon's Rule precludes the DIP Rule. Therefore, the Court should reverse the District Court's Decision and Order and remand the case to the District Court with instructions to enter judgment in favor of Ms. Flores and to enjoin enforcement of the DIP Rule.

A. The Plain Meaning Analysis: SB 175 Explicitly Prohibits the DIP Rule

The plain language of SB 175 expressly prohibits the Library District from regulating the possession of firearms. For the reasons detailed below, the Library District's reading of SB 175 (as adopted by the District Court) cannot withstand a Plain Meaning Analysis for two reasons: (1) it violates the plain meaning of SB 175 and the express intent of the Legislature; and (2) it implies an exception to SB 175 in direct opposition to that expressed legislative intent.

(1) The DIP Rule Contravenes the Explicit Words of SB 175

“When a statute's language is unambiguous, this court does not resort to the rules of construction and will give that language its plain meaning.” *Slade v. Caesars Entertainm't Corp.*, 132 Nev. Ad. Op. 36, 373 P.3d 74, 76 (2016). The courts must presume that “a legislature says in a statute what it means and means in a statute what it says there.” *RTTC Communications, LLC v. The Saratoga Flier*,

Inc., 121 Nev. 34, 37, 110 P.3d 24, 26 (2005) (internal citations and quotations omitted). Thus, “when the language of a statute is plain, its intention must be deduced from such language, and the Court has no right to go beyond it, and where the language of a statute is susceptible of a sensible interpretation, it is not to be controlled by any extraneous considerations.” *Id.*

Here, the unambiguous words of SB 175 prohibit the DIP Rule in at least four instances as detailed below, and this Court should reverse the District Court’s Order and remand the case to the District Court with instructions to enter judgment in favor of Ms. Flores.

(a) The DIP Rule Is Inconsistent With “Uniform” Regulation of Firearms Mandated By Section 8(1)(a) of SB 175

To ensure “uniform” regulation of firearms “throughout this State,” Section 8(1)(a) of SB 175 empowers the Legislature to establish “state control” over these regulations and policies, providing in relevant part: “The Legislature hereby declares that [t]he purpose of this section is to establish state control over the regulation of and policies concerning firearms...to ensure that such regulation and policies are uniform throughout this State....” (Emphasis added.) [JA 127.]

A “uniform” state regulation or policy is one that has operates equally or the same throughout the state under similar circumstances. *See State v. Cal. Mining Co.*, 15 Nev. 234, 251 (1880). Put differently, where a statute requires a “uniform” application throughout the State, an individualized, jurisdiction-by-jurisdiction

standard is not permissible. *See State Board of Equalization v. Bakst*, 122 Nev. 1403, 1416, 148 P.3d 717, 726 (2006) (holding that statute requiring “uniform” property tax appraisal standards did not permit multiple, county-by-county methodologies).

Nevada has 22 separate, individual, public library systems throughout the State.² If the DIP Rule is upheld, each of these twenty-two, individual library districts may regulate the possession of firearms. Like *Bakst*, the individualized jurisdiction-by-jurisdiction standard contemplated by the District Court’s ruling in this case completely vitiates the Legislature’s express intent to establish a “uniform” regulation of firearms “throughout the State.” It renders the term “uniform” meaningless and negates the plain language of the statute. Simply put, library districts cannot establish their own rules relating to the possession of firearms in derogation of the Legislature’s demand that such rules be “uniform.” Therefore, the DIP Rule is invalid, and the Court should reverse the District Court’s order.

(b) *The DIP Rule Invades the “Exclusive Domain” of the Legislature*

Section 8(1)(b) of SB 175 also mandates that regulation of firearms is sole province of the Legislature, declaring, “The regulation of the transfer, sale, purchase,

² See <http://nsla.nv.gov/Development/NVLibraryDirectory/> (retrieved on August 25, 2017). Pursuant to NRS 47.130 and NRS 47.150, Ms. Flores requests that the Court take judicial notice of the number of public library systems in Nevada. *See e.g., Daniels-Hall v. Nat’l Educ. Ass’n*, 629 F.3d 992, 998-99 (9th Cir. 2010) (holding that courts may take judicial notice of information on government websites).

possession, carrying, ownership, transportation, storage, registration and licensing of firearms, firearm accessories and ammunition in this State and the ability to define such terms is within the exclusive domain of the Legislature...” (Emphasis added.) [JA 128.]

The term, “exclusive,” means “singular or sole, not admitting of something else.” See <http://www.dictionary.com/browse/exclusive?s=t> (Retrieved on August 25, 2017)³; see e.g., *Ramsey v. City of North Las Vegas*, 133 Nev. Ad. Op. 16, 392 P.3d 614, 616 (2017) (judicial discipline commission was “exclusive” method to remove judge from office, foreclosing all other previously enacted methods) and *In re Estate of McKay*, 43 Nev. 114, 127, 184 P. 305, 309 (1919) (holding that policy, wisdom, or expediency of a law is within the “exclusive theater” of legislature, rendering it a “forbidden sphere” for judiciary). The term, “domain,” means the “territory over which sovereignty is exercised.” *Black’s Law Dictionary* 557 (9th ed. 2009).

By declaring that the regulation of firearms is “within the exclusive domain of the Legislature,” the Legislature plainly meant that such regulation was singularly (and to the exclusion of all others) within the sovereignty of the Legislature. The use of the words “exclusive domain” forecloses all other inferior jurisdictions from

³ This Court routinely looks to dictionaries to ascertain the plain meaning of statutory language. E.g., *LVMPD v. Blackjack Bonding, Inc.*, 131 Nev. Ad. Op. 10, 343 P.3d 608, 612 (2015).

any similar exercise of legislative power.⁴ The plain language of Section 8(1)(b) of SB 175 flatly contradicts the District Court’s conclusion that a library district possesses any authority to govern the carrying of firearms. The Court should reverse the erroneous legal conclusion of the District Court.

(c) *The DIP Rule Is “Null and Void” Per Section 8(1)(b) of SB 175*

The second-half of Section 8(1)(b) retrospectively repeals and invalidates any local government’s enactment contrary to SB 175, stating, “any other law, regulation, rule or ordinance to the contrary is null and void.” (Emphasis added.) [JA 128.]

The Legislature may enlarge, modify, diminish, or set aside the acts of one of its political subdivisions without the political subdivision’s consent. *Tonopah Sewer & Drainage Co. v. Nye County*, 50 Nev. 173, 177, 254 P.696, 697 (1927). The phrase, “null and void,” means “of no legal effect.” *See Dobson v. Dobson*, 108 Nev. 346, 350, 830 P.2d 1336, 1339 (1992) (Steffen, J., dissenting).

Section 8(1)(b) repeals all rules regulating firearms contrary to SB 175 by declaring such rules to be “null and void.” [JA 128.] The DIP Rule is one such rule abrogated by SB 175. The DIP Rule is of no legal effect as of the passage of SB

⁴ This Court has long-recognized that the Legislature possesses plenary legislative power, constrained only by the federal and state constitutions. *See Gibson v. Mason*, 5 Nev. 283, 292 (1869).

175. Put simply, the Legislature repealed it. Therefore, the District Court erred by upholding the DIP Rule, and the Court should reverse this judgment.

(d) *SB 175 Must Be Liberally Construed As Required By Section 8(1)(c)*

Section 8(1) instructs the courts: “This section must be liberally construed to effectuate its purpose.” Section 8(1)(c), SB 175. [JA 128.]

“Liberally construing” a statute means to interpret that statute broadly, “so that its evident purpose and the reason for its enactment may be given full effect.” *Standard Slag Co. v. Fifth Judicial Dist. Ct.*, 62 Nev. 113, 118, 143 P.2d 467, 469 (1943). “Liberal construction is ordinarily one which makes a statute apply to more things or in more situations than would be the case under strict construction.” *Bd. of Educ. v. Ill. St. Bd. of Educ.*, 740 N.E.2d 428, 433 (Ill. Ct. App. 2000) (internal citations and quotations omitted). It means “giving the language of a statutory provision, freely and consciously, its commonly, generally accepted meaning, to the end that the most comprehensive application thereof may be accorded, without doing violence to any of its terms.” *Id.*

Here, a strict reading of Section 8(1) of SB 175 prohibits the DIP Rule. With even more convincing force then, a broad, expansive, and liberal construction of SB 175 likewise prohibits the DIP Rule. The full effect of SB 175 is the Legislature’s complete and plenary regulation of the possession of firearms, to the exclusion of all other local government’s laws and rules. Because the District Court failed to

construe SB 175 liberally in contravention the explicit instruction of the Legislature, this Court should reverse the District Court's Decision and Order.

(2) The DIP Rule Violates the Express Intent of the Legislature

The DIP Rule also contravenes the express will of the Legislature. Where the Legislature deliberately declares its intent and a statute's purpose within the legislation, the courts must consider that purpose as a factor in interpreting the legislation. *Alper v. State*, 96 Nev. 925, 928, 621 P.2d 492, 494 (1980). A court cannot imply an exception to a statute when such an implied exception would be in direct opposition to the expressed legislative intent. *McKay v. Board of County Comm'rs*, 103 Nev. 490, 492, 746 P.2d 124, 125 (1987).

In *McKay*, this Court reversed the district court's judgment which held that there was an implied attorney-client privilege exception to Nevada's Open Meeting Law despite the Legislature's explicit requirement that all public meetings be open, "except as otherwise specifically provided by statute."⁵ *Id.* In overruling the district court, the *McKay* Court held, "[I]t is not the business of this court to fill in alleged legislative omissions based on conjecture as to what the legislature would or should have done. * * * To imply an exception in the face of this straightforward language would be in direct opposition to the expressed legislative intent." *Id.*

⁵ The Legislature has since amended the law to specifically provide for an attorney-client exception to the Open Meeting Law. NRS 241.015(3)(b)(2).

Like the errant trial court in *McKay*, the District Court’s ruling untenably reads an implied exception into the expressed legislative intent of SB 175. Specifically, under the District Court’s interpretation, the regulation of firearms is “uniform throughout the State,” *except for library districts*; the regulation of firearms is the “exclusive domain of the Legislature,” *except for library districts*; and “any other law, regulation, rule or ordinance to the contrary is null and void,” *except for rules like the DIP Rule promulgated by library districts*. In the face of the straightforward language in SB 175, implying an exception for library districts is simply impermissible and violates the deliberate intent of the Legislature. Like the *McKay* Court, this Court should likewise reverse the Order of the District Court.

B. The Preemption Analysis: Nevada Law Preempts the DIP Rule

Preemption occurs when a state law supersedes a conflicting local law or rule. *See Lamb v. Mirin*, 90 Nev. 329, 332-33, 526 P.2d 80, 82 (1974).

Plainly put, Nevada law preempts the DIP Rule. The Legislature can preempt a local rule in three ways: (1) Express Preemption; (2) Conflict Preemption; or (3) Field Preemption. Here, under any iteration of the doctrine, the Legislature has preempted all local firearms regulations, including the DIP Rule. Therefore, the District Court’s Order is in error, and the Court should reverse the Decision.

(1) SB 175 Expressly Preempts the DIP Rule

Express preemption occurs when the Legislature expresses its intent to preempt local regulation by including explicit language in the statute. *See Pacificare of Nev., Inc. v. Rogers*, 127 Nev. 799, 800, 266 P.3d 596, 600 (2011) (discussing federal preemption). Here, SB 175 expressly preempts the DIP Rule because the plain language of SB 175 demonstrates the Legislature’s unambiguous intent to preempt the DIP Rule.

The plain language of a statute provides the best evidence of the Legislature’s preemptive intent. *Id.*; *see also, Chan v. City of Seattle*, 265 P.3d 169, 175 (Wash. Ct. App. 2011) (plain meaning of state firearms statute governs legislature’s preemptive intent).

In *Chan*, for example, the City of Seattle Parks Department enacted a rule banning all firearms from city parks in derogation of Washington state law. *Chan*, 265 P.3d at 174. The trial court granted plaintiff’s motion for summary judgment and issued an injunction, enjoining enforcement of the rule; the appellate court affirmed. *Id.* at 171. The state law at issue in *Chan* was broad and stripped local governments of authority to regulate firearms, stating, in part, “The state of Washington hereby fully occupies and preempts the entire field of firearms regulation within the boundaries of the state, including the...possession...of firearms.... Local laws and ordinances that are inconsistent with, more restrictive

than, or exceed the requirements of state law shall not be enacted and are preempted and repealed.” *Id.* at 175 (internal quotations and citations omitted).

The *Chan* court examined the broad language in the first sentence of the statute and concluded that the words, “fully occupies and preempts the entire field of firearms regulation,” demonstrated the Washington legislature’s intent to expressly preempt local gun regulations, including the policy issued by the Parks Department. *Id.* at 176. The appellate court also examined the last sentence to hold that the statute’s retrospective repeal and prospective preemption of local laws also demonstrated the Washington legislature’s intent to preempt local regulations, including the policy at issue in the case. *Id.* In upholding the trial court’s injunction, the appellate court affirmed the preemption of the policy, stating, “We hold that under the plain language of [the Washington state statute], the City’s attempt to regulate the possession of firearms...by adopting the Firearms Rule is preempted by state law.” *Id.*

Here, even more compelling than the Washington statute in *Chan*, the plain, unambiguous language of SB 175 explicitly preempts the DIP Rule. For example, Sections 8, 9, and 10 of SB 175 explicitly set out the purpose of SB 175, “to establish state control over regulation and policies concerning firearms” so as “to ensure that such regulation and policies are uniform throughout this State.” (Emphasis added.) [JA 127.]

Similar to the words “fully occupies and preempts the entire field of firearms regulation” in *Chan*, Sections 8, 9, and 10 of SB 175, likewise, broadly preempt all local regulation of firearms by providing, “The regulation of the...possession [and]...carrying...of firearms...in this State and the ability to define such terms is within the exclusive domain of the Legislature...” (Emphasis added.) [JA 128.] Indeed, the Legislature has stripped local governments of even the ability to define the terms, “possession and carrying of firearms.”

Like the retrospective repeal and prospective preemption of all local regulations in the Washington statute, SB 175 similarly declares “any other law, regulation, rule, or ordinance to the contrary is null and void.” (Emphasis added.) [JA 128.]

In conclusion, the plain language of SB 175 deliberately establishes “state control” over the “possession and carrying of firearms,” and any rule to the contrary, including the DIP Rule, is “null and void.” There are few expressions of Legislative intent more explicit than the preemption language in SB 175. Nevada law expressly preempts the DIP Rule. The District Court was wrong to conclude, “SB 175 does not contemplate express preemption of certain local rules.” [JA 299:1-2.] Therefore, the Court should overturn the District Court’s Order.

(2) Implied Conflict Preemption Preempts the DIP Rule

Implied conflict preemption occurs in two ways: (a) where the local regulation directly conflicts with state law or (b) where the local regulation frustrates the purposes and objectives of state law. *See Lamb v. Mirin*, 90 Nev. 329, 333, 526 P.2d 80, 82 (1974) and *Crowley v. Duffrin*, 109 Nev. 597, 604-05, 855 P.2d 536, 541 (1993). Both forms of implied conflict preemption are present here.

(a) *The Dip Rule Directly Conflicts with Nevada Law*

A local regulation directly conflicts with state law if, among other things, the local regulation prohibits an activity which state law allows. *Lamb*, 90 Nev. at 333. In *Lamb*, for instance, a county prohibited certain taxicab practices that a Nevada statute permitted. The district court granted plaintiff's motion for an injunction, holding that State law preempted the county's ordinance. *Id.* The *Lamb* Court affirmed, declaring, "In no event may a [local government] enforce regulations which are in conflict with the clear mandate of the legislature." *Id.*

Like *Lamb*, the DIP Rule in this case directly conflicts with the clear mandate of the Legislature and Nevada law. Article 1, Section 11(1) of the Nevada Constitution guarantees the rights of Nevada citizens "to keep and bear arms" for security, defense, hunting, recreation, and other lawful purposes.⁶ SB 175 makes it

⁶ The term, "bear," means to "carry." *Dist. of Columbia v. Heller*, 554 U.S. 570, 584 (2008). Here, the DIP Rule also infringes on Michelle's constitutional right to bear arms. Michelle is a citizen of Nevada. She is lawfully entitled to possess a firearm.

exclusively the domain of the Legislature to regulate the “carrying” of firearms, and “any other law, regulation, rule, or ordinance to the contrary is null and void.” In short, SB 175 makes it the sole province of the Legislature to regulate the carrying of firearms in this State.

The DIP Rule denies Nevada citizens the constitutional right to openly carry firearms. Moreover, the District arrogates the authority to regulate the “possession” or “carrying” of firearms in the District’s libraries to itself in complete derogation of the Legislature’s authority. But SB 175 take away this power (and even the power to define “possession and carrying of firearms”). Like *Lamb*, the District seeks to prohibit what the Legislature and the Constitution permit. This cannot be countenanced. Like *Lamb*, the DIP Rule is thus preempted under the doctrine of conflict preemption. Therefore, the District Court’s Order cannot stand.

(b) The DIP Rule Frustrates Legislative Purpose

A local regulation frustrates the purposes of a state law where the local regulation stands as an obstacle to the accomplishment of the full objectives of the Legislature. *See Ray v. Atlantic Richfield Co.*, 435 U.S. 151, 158 (1978); *see also*,

The DIP Rule prohibits Michelle from “bearing” or carrying an openly-holstered firearm in Library District facilities. As such, the DIP Rule also contravenes Article 1, Section 11(1) of the Nevada Constitution. The District Court declined to rule on the constitutionality of the DIP Rule. [JA 305:17-18.] This, too, was in error.

Crowley, 109 Nev. 597, at 604-05 and *Fiscal v. City and County of San Francisco*, 70 Cal. Rptr.3d 324, 335 (Cal. Ct. App. 2011).

In *Fiscal*, the City of San Francisco passed an ordinance prohibiting most residents from possessing handguns, even those licensed to do so by other state statutes. *Fiscal*, 70 Cal. Rptr.3d at 327. The trial court held that a state firearm licensing statute preempted the city's ban. *Id.* at 328. In affirming the trial court's order, the appellate court determined that the ordinance frustrated the state-wide purpose of permitting certain-licensed California citizens to possess handguns, stating, "If the preemption doctrine means anything, it means that a local entity may not pass an ordinance, the effect of which is to completely frustrate a broad, evolutionary statutory regime enacted by the Legislature." *Id.* at 335.

Here, like the firearms statutes in California in *Fiscal*, Nevada firearms law has undergone a broad, constitutional and statutory evolution, the hallmark of which has been preemption. The history of the regulation of firearms in Nevada law unambiguously demonstrates the intent to preempt government's ability to regulate the possession of firearms.

In contrast to many states, Nevada has a relatively recent history of protecting the fundamental right to bear arms. The voters overwhelmingly added Article 1, Section 11(1) of the Nevada Constitution in 1982. *See Pohlbel v. State*, 128 Nev. Ad. Op. 1, 268 P.3d 1264, 1269-70 (2012). Article 1, Section 11(1) of the Nevada

Constitution guarantees Nevada citizens the right to carry a firearm for security, defense, lawful hunting, recreational uses, and other lawful purposes. Indeed, the objective of this amendment was to set constitutional boundaries for the entire government of Nevada “so that a future Legislature could not come in and easily change the law to allow some type of control over firearms.” *Pohl*, 268 P.3d at 1269-70. That is, Article 1, Section 11(1) preempts all governmental power (even the Legislature’s otherwise plenary power) to restrict the carrying of firearms among the enumerated categories in the amendment.

In 1989, the Legislature then preempted all local regulation of firearms passed after 1989 by amending NRS chs. 244, 268, and 269 and providing, “Except as otherwise provided by specific statute, the legislature reserves for itself such rights and powers as are necessary to regulate the...possession...of firearms and ammunition in Nevada....” AB 147 (1989) codified by 1989 Nev. Stat. ch. 308 at 652-53 (“AB 147”). [JA 183-84.]

The preemptive intent of AB 147 was confirmed by Assemblyman Danny Thompson, sponsor of AB 147, in his remarks in committee, “The existing situation in Nevada, whereby conflicting and restrictive ordinances enacted by various governmental entities, have resulted in a confusing maze. * * * AB 147 would give

Nevada uniformity in regulations, eliminating confusion and enhancing enforcement of any statute the Legislature enacts.”⁷ [JA 202.]

To remove all doubt as to the Legislature’s preemptive intent when regulating firearms, the Legislature passed SB 175, again by amending NRS chs. 244, 268, and 269. [JA 127-28; 131; and 134-35.]

The Legislative Counsel’s Digest summarized the expansive preemptive effects of SB 175.⁸ [JA 122-23.] The Digest first describes the then-state of Nevada law, expounding, “Existing law provides that, except as otherwise provided by specific statute, the Legislature reserves for itself such rights and powers as are necessary to regulate the...possession...of firearms....” [JA 122.]

⁷ Even where the language of a statute is unambiguous, the legislative history is appropriate to determine the Legislature’s preemptive intent. *E.g., So. Nev. Homebuilders Ass’n v. City of North Las Vegas*, 112 Nev. 297, 301, 913 P.2d 1276, 1279 (1996), *overruled on other grounds by, Sandy Valley Assoc’s v. Sky Ranch Estates Owners Ass’n*, 117 Nev. 948, 35 P.3d 964 (2001).

A court can take judicial notice of a legislative history. *Fierle v. Perez*, 125 Nev. 728, 737, 219 P.3d 906, 912 n.6 (2009), *overruled on other grounds by, Egan v. Chambers*, 129 Nev. Adv. Op. 25, 299 P.3d, 364, 365 (2013).

⁸ A Legislative Counsel Digest is required of every bill introduced in the Legislature. NRS 218D.290. A Digest may provide evidence of legislative intent. *See Sandpointe Apts., LLC v. Eighth Jud. Dist.*, 129 Nev. Adv. Op. 87, 313 P.3d 849, 858 (2013); *see also, Badger v. Eighth Jud. Dist.*, 132 Nev. Adv. Op. 39, 373 P.3d 89, 97 (May 26, 2016) (Pickering, J. dissenting) (Legislative Counsel’s Digest “settles the point” of interpretation of statute).

The Digest further explained how SB 175 altered then-existing law by providing, “Sections 8-10 of [SB 175] expand such rights and powers of the Legislature to: (1) regulate the carrying and storage of firearms...; and (2) define all such terms. Sections 8-10 provide that certain ordinances or regulations which are inconsistent with these rights and powers of the Legislature are null and void....” [JA 123.]

Senator Greg Brower, a sponsor of SB 175, confirmed this preemptive purpose at a committee hearing considering SB 175, stating, “I will close by stating that our goals are simply these:...(3) to ensure that our Second Amendment rights [i.e., the right to bear arms] are administered in a fair and uniform way across the state, and to provide a means of redress when that is not the case.” [JA 229-30.]

Similar to the city ordinance in *Fiscal*, the DIP Rule frustrates the broad purpose of the Legislature, namely, (1) to ensure “state control” over firearm regulation and (2) to ensure that firearm “regulation and policies are uniform throughout this State.” This preemptive purpose is in keeping with the evolution of firearms regulation in Nevada history. In short, the doctrine of implied conflict preemption therefore preempts the DIP Rule.

(3) Field Preemption Preempts the DIP Rule

The final iteration of preemption is field preemption. If the Legislature occupies an entire regulatory field by enacting a comprehensive regulatory scheme,

state law preempts all local regulation within that field. *See Douglas County Contractors Ass'n v. Douglas County*, 112 Nev. 1452, 1463-64, 929 P.2d 253, 260 (1996); *see also, Capital Area Dist. Library v. Mich. Open Carry, Inc.*, 826 N.W.2d 736, 746 (Mich. Ct. App. 2012) (state's enactment of comprehensive firearms regulation preempted local library's firearms policy).

In *Capital Area*, a library district banned firearms in its libraries in contravention to a state law. *Capital Area*, 826 N.W.2d at 738. The trial court upheld the ban, and the Michigan Court of Appeals reversed holding that Michigan law preempted the regulation under the doctrine of field preemption. *Id.* at 747. The Michigan law stated, in relevant part, "A local unit of government shall not...enact or enforce any ordinance or regulation pertaining to, or regulate in any other manner...possession of pistols...except as otherwise provided by federal law or a law of this state." *Id.* at 740 (internal citations and quotations omitted).

Although the appeals court found that the term, "local unit of government" did not expressly include a library district, it surveyed dozens of provisions of Michigan law and reluctantly concluded that field preemption preempted the policy, declaring, "The extent and specificity of this statutory scheme, coupled with the Legislature's clear policy choice,...demonstrates that the Legislature has occupied the field of firearm regulation that the library's weapons policy attempts to regulate: the possession of firearms." *Id.* at 746 (internal citations and quotations omitted).

Here, like *Capital Area*, field preemption preempts the DIP Rule, even (for argument’s sake) if SB 175 does not expressly include library districts. Similar to the Michigan law in *Capital Area*, SB 175 is the latest in a long-litany of Legislative enactments designed comprehensively to regulate firearms in this State. The Legislature’s regulation of firearms spans across the Nevada Constitution and dozens of chapters and hundreds of sections of the Nevada Revised Statutes, just like Michigan’s comprehensive regulatory scheme in *Capital Area*. *See e.g.*, NV Const. Art. 1, § 11; NRS 12.107; NRS 41.0395; NRS 118B.200; NRS 171.146; NRS 179.121; NRS 193.165; NRS 202.300; NRS 202.310; NRS 202.3673; NRS 205.060; NRS 212.160; NRS 213.090; NRS 244.364; NRS 268.418; NRS 269.222; NRS 393.410; NRS 396.110; NRS 403.560; NRS 407.0475; NRS 412.088; NRS 414.155; NRS 501.375; NRS 503.150; NRS 503.165; NRS 503.175; NRS 647.105; and NRS 706.1517.

Finally, Senator Greg Brower, a sponsor of SB 175, made it abundantly clear that SB 175’s purpose was to occupy the entire field of firearm regulation, stating, “What [SB 175] seeks to do in those sections is to say the state is going to preempt the field with respect to the regulation of firearms for most purposes.” (Emphasis added). [JA 229.]

In short, similar to the court in *Capital Area*, this Court should likewise conclude that SB 175 is one more law in an exhaustive, decades-long Legislative

scheme to regulate firearms in Nevada which preempts the District's DIP Rule under the doctrine of field preemption.

C. The Dillon's Rule Analysis: Dillon's Rule Prohibits the DIP Rule

The DIP Rule violates a long-standing, common-law rule called, "Dillon's Rule." For the reasons detailed below, the DIP Rule cannot withstand a Dillon's Rule Analysis.

Dillon's Rule provides that a local government or a special district "possesses and can exercise such powers only as are expressly conferred by the law of its creation, or such as are necessary to the exercise of its corporate powers, the performance of its corporate duties and the accomplishment of the purposes for which it was created." *Truckee-Carson Irr. Distr.*, 80 Nev. 263, 266, 392 P.2d 46, 47 (1964), *quoting*, *In re Walker River Irr. Dist.*, 44 Nev. 321, 338, 195 P. 327, 331 (1921);⁹ *see also*, NRS 244.137 and NRS 268.001. "The Legislature's plenary authority operates to restrict and limit the exercise of all municipal powers, whether public or governmental, proprietary or private." *Crowley*, 109 Nev. at 605 (internal citations and quotations omitted).

⁹ This Court has applied Dillon's Rule to special districts since at least 1921, contrary to the District Court's erroneous assertion that "no case law...can be found in which the Nevada Supreme Court applied Dillon's Rule to Library Districts or any type of political subdivision other than counties, cities, and towns." [JA 304:1-3.] Indeed, NRS 244.137(2) and NRS 268.001(2) specifically recite, "In Nevada jurisprudence, the Nevada Supreme Court has adopted and applied Dillon's Rule to county, city and other local governments." (Emphasis added.)

If there is any doubt about a public agency's authority to exercise a power, Dillon's Rule resolves that doubt against the local government. *See Ronnow v. City of Las Vegas*, 57 Nev. 332, 343, 65 P.2d 133, 136 (1937). That is, the court must deny that power. *See e.g., Ronnow v. City of Las Vegas*, 57 Nev. 332, 342-43, 65 P.2d 133, 136 (1937); *First Nat'l Bank v. Nye County*, 38 Nev. 123, 135-36, 145 P. 932, 936-37 (1914); *Lyon County v. Ross*, 24 Nev. 102, 111-12, 50 P. 1, 3 (1897); *Rosenstock v. Swift*, 11 Nev. 128, 140 (1876); *Tucker v. Virginia*, 4 Nev. 20, 26 (1868); and *Waitz v. Ormsby County*, 1 Nev. 370, 377 (1865); *see also*, NRS 244.137(4) and NRS 268.001(4) *See generally*, B. Chally, *Dillon's Rule in Nevada*, 21 Nev. L. 6 (2013).

By statute, the Legislature has made the strict common-law rule applicable to all local governments. NRS 244.137(7)(a) and NRS 268.001(7)(a) respectively provide, "The provisions of [NRS 244.137 to 244.146, inclusive, and NRS 268.001 to 268.0035, inclusive] must not be interpreted to modify Dillon's Rule with regard to [a]ny local governing body other than the governing body of [a county or an incorporated city].

In Nevada law, the Legislature has exclusively retained the power to regulate the possession of firearms. *See* SB 175 (2015) and AB 147 (1989). When the Legislature chooses to delegate that authority to "special districts" or administrative agencies, it does so with very specific statutes:

- NRS 202.265 confers the authority on principals, child care facility proprietors, and university presidents to allow the possession of firearms on their campuses.¹⁰
- NRS 392.466(6) permits a school board to establish regulations governing when a pupil may possess a firearm at school.
- NRS 407.0475 delegates to the Administrator of the Division of State Parks the authority to promulgate regulations on the possession of firearms in a State park.
- NRS 503.150 delegates to the Wildlife Commission the authority to regulate the caliber of firearms that hunters may possess.
- Sections 8(8), 9(8), and 10(8) of SB 175 delegates specific authority to regulate the possession of firearms to, among others, the following: (a) law enforcement and correctional institutions to regulate weapons issued to peace officers; (b) public employers to regulate the carrying of firearms during the course of an employee's official duties; and (c) a political subdivision to conduct and establish rules for participation in firearm-related competitions or educational programs.

¹⁰ On the recent legislative history of regulating firearms on university campuses, *see* B. Vasek, "Rethinking the Nevada Campus Protection Act," 15 *Nev. L.J.* 389, 411-19 (2014).

- SB 115 (2017) was an attempt to delegate the authority to regulate firearms to a public library.¹¹ It did not pass.

Here, the Legislature has not conferred any explicit power to regulate the possession of firearms to the Library District. Indeed, in the 2017 Session, the Legislature specifically considered delegating such authority to library districts with SB 115 (2017); this legislation failed to pass and would not have been necessary for the Legislature to consider had library districts possessed the power to regulate firearms. The Library District can point to no specific statute which grants it this authority. Without an express delegation of this power, Dillon's Rule holds that the Library District does not possess it, and if there is any doubt as to whether the Library District possesses such authority, Dillon's Rule resolves this doubt against the Library District. In short, the DIP Rule is illegal because it violates Dillon's Rule. The Court should reverse the District Court's Decision and Order.

XI. Conclusion

In conclusion, the DIP Rule violates the express language and intent of the Legislature found in SB 175. The District Court erred in upholding the DIP Rule. Ms. Flores respectfully seeks the following relief: (1) that the Court reverse the District Court's judgment upholding DIP Rule; (2) that the Court declare that the

¹¹ Ms. Flores requests that the Court take judicial notice of the legislative history of SB 115 (2017).

DIP Rule is illegal; and (3) that the Court direct the entry of an order enjoining the Library District's enforcement of the DIP Rule.

XII. Attorney's NRAP 28.2 Certification

I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2013 in 14-point Times New Roman font.

I further certify that this brief complies with the page-or type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it does not exceed **26** pages.

Finally, I hereby certify that I have read this appellate brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter

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relied on is to be found. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

DATED this 1st day of September, 2017.

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