

IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHELLE FLORES, AN
INDIVIDUAL,

Appellant,

v.

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

Respondent.

Electronically Filed
Supreme Court No. 72462
Sep 01 2017 03:59 p.m.
Elizabeth A. Brown
District Court No. A735496
Clerk of Supreme Court

JOINT APPENDIX

DATED this 1st day of September, 2017.

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/s/ Jeffrey F. Barr

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CERTIFICATE OF SERVICE

I hereby certify that I am an employee of ASHCRAFT & BARR LLP and that on the 1st day of September, 2017, service of the foregoing JOINT APPENEDIX AND INDEX TO JOINT APPENDIX was made by electronic service through the Nevada Supreme Court's electronic filing system and/or by depositing a true and correct copy in the U.S. Mail, first class postage prepaid, and addressed to the following at their last known addresses:

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DATED this 1sr day of September, 2017.

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DISTRICT COURT CIVIL COVER SHEET

A-16-735496-C

County, Nevada

XXXXI

Case No. _____

(Assigned by Clerk's Office)

I. Party Information (provide both home and mailing addresses if different)

Plaintiff(s) (name/address/phone):

MICHELLE FLORES, an individual

Defendant(s) (name/address/phone):

LAS VEGAS-CLARK COUNTY LIBRARY DISTRICT,
a political subdivision of the State of Nevada

Attorney (name/address/phone):

Ashcraft & Barr | LLP, Jeffrey F. Barr, Esq.
2300 W. Sahara Avenue, Suite 1130
Las Vegas, NV 89102
(702) 631-7555

Attorney (name/address/phone):

II. Nature of Controversy (please select the one most applicable filing type below)**Civil Case Filing Types**

Real Property Landlord/Tenant <input type="checkbox"/> Unlawful Detainer <input type="checkbox"/> Other Landlord/Tenant Title to Property <input type="checkbox"/> Judicial Foreclosure <input type="checkbox"/> Other Title to Property Other Real Property <input type="checkbox"/> Condemnation/Eminent Domain <input type="checkbox"/> Other Real Property	Negligence <input type="checkbox"/> Auto <input type="checkbox"/> Premises Liability <input type="checkbox"/> Other Negligence Malpractice <input type="checkbox"/> Medical/Dental <input type="checkbox"/> Legal <input type="checkbox"/> Accounting <input type="checkbox"/> Other Malpractice	Torts Other Torts <input type="checkbox"/> Product Liability <input type="checkbox"/> Intentional Misconduct <input type="checkbox"/> Employment Tort <input type="checkbox"/> Insurance Tort <input type="checkbox"/> Other Tort
Probate Probate (select case type and estate value) <input type="checkbox"/> Summary Administration <input type="checkbox"/> General Administration <input type="checkbox"/> Special Administration <input type="checkbox"/> Set Aside <input type="checkbox"/> Trust/Conservatorship <input type="checkbox"/> Other Probate Estate Value <input type="checkbox"/> Over \$200,000 <input type="checkbox"/> Between \$100,000 and \$200,000 <input type="checkbox"/> Under \$100,000 or Unknown <input type="checkbox"/> Under \$2,500	Construction Defect & Contract Construction Defect <input type="checkbox"/> Chapter 40 <input type="checkbox"/> Other Construction Defect Contract Case <input type="checkbox"/> Uniform Commercial Code <input type="checkbox"/> Building and Construction <input type="checkbox"/> Insurance Carrier <input type="checkbox"/> Commercial Instrument <input type="checkbox"/> Collection of Accounts <input type="checkbox"/> Employment Contract <input type="checkbox"/> Other Contract	Judicial Review/Appeal Judicial Review <input type="checkbox"/> Foreclosure Mediation Case <input type="checkbox"/> Petition to Seal Records <input type="checkbox"/> Mental Competency Nevada State Agency Appeal <input type="checkbox"/> Department of Motor Vehicle <input type="checkbox"/> Worker's Compensation <input type="checkbox"/> Other Nevada State Agency Appeal Other <input type="checkbox"/> Appeal from Lower Court <input type="checkbox"/> Other Judicial Review/Appeal
Civil Writ <input type="checkbox"/> Writ of Habeas Corpus <input type="checkbox"/> Writ of Mandamus <input type="checkbox"/> Writ of Quo Warrantum <input type="checkbox"/> Writ of Prohibition <input type="checkbox"/> Other Civil Writ	Other Civil Filing <input type="checkbox"/> Compromise of Minor's Claim <input type="checkbox"/> Foreign Judgment <input checked="" type="checkbox"/> Other Civil Matters	

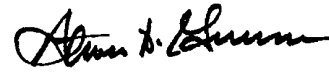
Business Court filings should be filed using the Business Court civil coversheet.

April 22, 2016

Date

Signature of initiating party or representative

See other side for family-related case filings.



CLERK OF THE COURT

COMP
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Michelle Flores

DISTRICT COURT

CLARK COUNTY, NEVADA

MICHELLE FLORES, an individual

Plaintiff,

v.

LAS VEGAS-CLARK COUNTY LIBRARY
DISTRICT, a political subdivision of the State
of Nevada; DOES I-X, inclusive; and ROES
A-Z, inclusive,

Defendants.

Case No.: A-16-735496-C

Dept. No.: XXIII

VERIFIED COMPLAINT

Plaintiff Michelle Flores complains and alleges against Defendants as follows:

SUMMARY OF THE ACTION

1. Defendant Las Vegas Clark County Library District (the "District") banned homemaker and homeschooling mother of three, Plaintiff Michelle Flores ("Michelle"), from the District's libraries after Michelle openly and responsibly carried a firearm in a secure holster while visiting the Rainbow Library with her children.

1 2. The District does not have the authority to ban Michelle because the District does
2 not have the authority to make rules relating to the open possession of firearms. Last year,
3 the Legislature made it clear in Senate Bill 175 (2015) ("SB175") that the Legislature, alone,
4 has the sole right to regulate the possession of firearms.

5 3. Nevertheless, the District insists on enforcing some arbitrary policy regulating the
6 open possession of firearms in a conscious and willful disregard of Michelle's constitutional
7 rights and the rights accruing to all Nevada citizens stemming from the broad reforms enacted
8 in SB175.

9
10 **THE PARTIES, JURISDICTION, AND VENUE**

11 4. All previous paragraphs in this Complaint are specifically incorporated herein as
12 though fully set forth.

13 5. Michelle is a resident of Clark County and a citizen of the State of Nevada.

14 6. Michelle is the mother of five-year-old minor R. Flores.

15 7. Michelle is the mother of three-year-old minor E. Flores.

16 8. Michelle is the mother of one-year-old minor H. Flores.

17 9. Michelle homeschools her three minor children and therefore the access to library
18 facilities is of great importance.

19 10. At all times relevant to this Complaint, Michelle was not the subject of any court
20 order prohibiting her possession of a firearm in the State of Nevada.

21 11. At all times relevant to this Complaint, Michelle lawfully owned and possessed a
22 .38 caliber revolver.

23 12. The District is a political subdivision of the State of Nevada.

24 13. The City of Las Vegas and Clark County formed the District.

25 14. The City of Las Vegas and Clark County derived its authority to form the District
26
27

1 from the District's enabling statute, NRS ch. 379.

2 15. The City of Las Vegas and Clark County each appoint five members to the
3 District's Board.

4 16. The District operates a facility named the Rainbow Library (the "Rainbow
5 Library").

6 17. The Rainbow Library is located at 3150 N. Buffalo Drive, Las Vegas, Nevada.

7 18. The District is, and was at all times relevant hereto, responsible for the
8 management of Rainbow Library.

9 19. Upon information and belief, the District employs the Rainbow Library staff
10 responsible for the actions complained of in this Complaint.

11 20. The District promulgates the Library Rules of Conduct (the "District Rules").

12 21. Upon information and belief, a true and correct copy of the District Rules in effect
13 as of March 16, 2016, is attached hereto as **Exhibit 1**.

14 22. The District Rules do not contain any regulation prohibiting the open carry of
15 firearms.

16 23. On or about March 16, 2016, in reliance upon an arbitrary policy or regulation, the
17 District issued a Trespass Notice to Michelle (the "Trespass Notice").

18 24. The Trespass Notice prohibits Michelle from entering any District library for a
19 period of twelve months.

20 25. A true and correct copy of the Trespass Notice is attached hereto as **Exhibit 2**.

21 26. DOE Defendants I through X, inclusive, and ROE CORPORATIONS A through
22 Z, inclusive, are fictitious names for the DOE Defendants and the ROE Defendants,
23 respectively (collectively, the "Unknown Defendants"). Michelle will seek leave to amend
24 this Complaint and proceedings herein to substitute the true names of such Unknown
25
26
27

1 Defendants. Michelle believes that each of the Defendants designated herein as Unknown
2 Defendants is responsible in some manner for the events herein referred to and negligently,
3 carelessly, recklessly, or intentionally caused damages proximately thereby to Michelle as
4 herein alleged.

5 27. The amount in controversy exceeds \$10,000.00.

6 28. Accordingly, jurisdiction and venue is proper in this Court.

7 **MARCH 16, 2016 LIBRARY VISIT**

8
9 29. All previous paragraphs in this Complaint are specifically incorporated herein as
10 though fully set forth.

11 30. On or about March 16, 2016, Michelle visited the Rainbow Library with her three
12 minor children.

13 31. During this visit Michelle visibly, openly, and obviously carried her .38 caliber
14 revolver in a side holster.

15 32. Michelle and her three minor children browsed the book stacks for approximately
16 one hour.

17 33. Michelle checked out some books and proceeded to the Rainbow Library exit.

18 34. As she was exiting with her books and three minor children, Michelle was stopped
19 between the first and second set of exit doors at Rainbow Library.

20 35. Michelle was stopped by a Rainbow Library security guard.

21 36. The Rainbow Library security guard was soon joined by another Rainbow Library
22 employee.

23 37. Michelle attempted to engage in dialogue with the Rainbow Library security guard
24 and employee regarding the reason for them stopping her.

25 38. The Rainbow Library employee summoned the police.

1 39. Police officers responded to the call.

2 40. At the instigation of the Rainbow Library security guard and employee, the police
3 placed Michelle in handcuffs between the first and second set of exit doors to the Rainbow
4 Library.

5 41. At the instigation of the Rainbow Library security guard and employee, the police
6 took Michelle's firearm and holster.

7 42. At the instigation of the Rainbow Library security guard and employee, the police
8 took five rounds of ammunition from Michelle.

9 43. The police initially proceeded to call Child Protective Services to take custody of
10 Michelle's three minor children.

11 44. At the instigation of the Rainbow Library security guard and employee, the police
12 initiated proceedings to incarcerate Michelle.

13 45. For reasons unknown and after a lengthy colloquy between the police officers,
14 Michelle was neither arrested nor incarcerated.

15 46. After the police released Michelle, the Rainbow Library employee issued the
16 Trespass Notice to Michelle.

17 47. All the actions by the police and the Rainbow Library security guard and employee
18 took place in front of Michelle's three minor children.

19 48. The District's conscious and willful disregard of the legal rights of Michelle
20 resulted in her public humiliation and emotional distress in front of her minor children and
21 the unlawful prohibition of her use of public library facilities.

22 **FIRST CLAIM FOR RELIEF**
23 **(Violation of SB 175 and Nevada Constitution)**

24 49. All previous paragraphs in this Complaint are specifically incorporated herein as
25
26
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1 though fully set forth.

2 50. Article 1, Section 11(1) of the Nevada Constitution provides, "Every citizen has
3 the right to keep and bear arms for security and defense, for lawful hunting and recreational
4 use and for other lawful purposes."

5 51. Pursuant to SB175, the Nevada Legislature expressly preempted the entire field of
6 firearms regulation, including but not limited to, the definition, the method and place of carry,
7 the manner of use, and who may possess firearms and where they may be possessed.

8 52. The Nevada Legislature has the exclusive authority to regulate firearms in Nevada.

9 53. Nevada law prohibits the District from enacting rules or policies that contradict
10 Nevada law.

11 54. The District's arbitrary rules or policies banning the open carry of firearms in the
12 District's libraries violates Nevada law.

13 55. The District denied Michelle her constitutional right to bear arms.

14 56. The District has enacted and enforced arbitrary rules and policies that are
15 prohibited by Nevada law and the Nevada Constitution.

16 57. The District denied Michelle her constitutional right to due process of law under
17 Article 1, Section 8(5) of the Nevada Constitution.

18 58. Michelle was damaged by the District's actions.

19 59. Michelle suffered actual loss and damages as a result of the District's unlawful
20 actions.

21 60. Michelle is entitled to damages in an amount equal to three times her actual
22 damages.

23 61. Michelle is entitled to attorney's fees and costs.

SECOND CLAIM FOR RELIEF
(Declaratory Judgment)

62. All previous paragraphs in this Complaint are specifically incorporated herein as though fully set forth.

63. The District enacted and enforced arbitrary rules and policies that violate the Plaintiff's constitutional rights.

64. The District's enactment and enforcement of these arbitrary rules and policies violate Article 1, Section 11(1) and Section 8(5) of the Nevada Constitution.

65. The District's promulgation and enforcement of these arbitrary rules and policies violate Nevada law.

66. Nevada law preempts the District's arbitrary rules and policies prohibiting the open carry of a firearm in a District library, and these arbitrary rules and policies should be declared invalid.

67. The District's arbitrary rules and policies form the basis for the Trespass Notice.

68. Nevada law preempts the Trespass Notice, and it should be declared invalid.

69. Michelle is entitled to a declaratory judgment that the District's rules and policies that prohibit the open possession of firearms in libraries are unconstitutional.

70. Michelle is entitled declaratory judgment that the Trespass Notice is invalid.

71. Michelle is entitled to attorney's fees and costs.

THIRD CLAIM FOR RELIEF
(Injunctive Relief)

69. All previous paragraphs in this Complaint are specifically incorporated herein as though fully set forth.

70. Michelle has a right to carry firearms pursuant to the Nevada Constitution and

1 Nevada law.

2 71. This right is superior to any rule or regulation by any state or local entity not
3 specifically authorized by Nevada law.

4 72. The District had enacted and enforced arbitrary rules and policies that violate the
5 Michelle's rights.

6 73. The District's enforcement of these arbitrary rules and policies violates Nevada
7 law.

8 74. Nevada law preempts the District's arbitrary rules and policies prohibiting the
9 open carry of a firearm in a District library, and they are invalid.

10 75. The District's arbitrary rules and policies form the basis for the Trespass Notice.

11 76. Nevada law preempts the Trespass Notice, and it is invalid.

12 77. Michelle is entitled to a preliminary and permanent injunction to invalidate the
13 Trespass Notice and to permit her to return to the District's libraries.

14 78. Michelle is entitled to attorney's fees and costs.

15 WHEREFORE, Michelle prays for relief as follows:

16 A. For declarative relief;

17 B. For preliminary and permanent injunctive relief;

18 C. For general damages;

19 D. For damages in an amount of three times her actual damages;

20 E. For reasonable attorney's fees;

21 F. For costs of suit herein; and

22 ///

23 ///

24 ///

1 G. For such further relief as the Court may deem proper.

2 DATED this 22nd day of April, 2016.

3 ASHCRAFT & BARR | LLP

4 

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6 Nevada Bar No. 7269

7 barrj@AshcraftBarr.com

8 2300 West Sahara Avenue, Suite 1130

9 Las Vegas, NV 89102

10 Attorneys for Plaintiff Michelle Flores

VERIFICATION

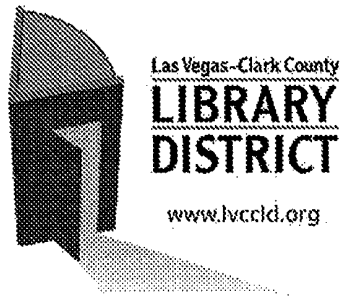
Under penalties of perjury, the undersigned declares that he is a Plaintiff named in the foregoing Verified Complaint and knows the contents thereof; that the pleading is true of her own knowledge, except as to those matters stated on information and belief, and that as to such matters she believes it to be true.

4/22/16
Date:

Michelle Flores
Name: Michelle Flores

EXHIBIT 1

EXHIBIT 1



Library Rules of Conduct

It is our intention to provide library visitors with good service in a pleasant atmosphere. In addition to obeying all applicable federal, state and local laws, each of you can help by observing the following rules of conduct.

1. Library patrons shall be engaged in normal activities associated with the use of a public library. Conduct that disturbs library users or staff, or that hinders others from using the library or library materials is prohibited.
2. Damage, destruction or theft of library property is prohibited. Parents are liable for all acts of minors. (Nevada Revised Statute 379.160)
3. Firearms are prohibited as outlined in NRS 202.3673.
4. Use of all types of tobacco is prohibited in the library. (Including e-cigarettes)
5. Food or beverages are prohibited in the library except for pre-approved events or in specified areas.
6. Sleeping is prohibited on library property.
7. Talking on cell phones or through other electronic devices is prohibited.
8. Selling or solicitation is prohibited on library property, except to gather signatures for petitions as outlined in NRS 293.127565 or in accordance with the District's meeting room use agreements.
9. Animals, except service animals, are prohibited on library property.

Adopted by the Las Vegas-Clark County Library District Board of Trustees on February 12, 1991. Revised and adopted December 10, 1991; October 10, 1996; October 9, 1997; September 9, 2004; May 16, 2006; April 10, 2008 and January 13, 2011.

10. Shoes and shirts must be worn in the library.
11. All children under the age of 10 must be supervised by an adult who assumes responsibility. Adult patrons must monitor all activities and behavior of their children on library property. Anyone under the age of 18 who does not follow the *Library Rules of Conduct*, has an emergency or is left at closing, will be subject to staff contacting a caregiver. If a caregiver cannot be contacted, staff will notify the police.
12. Patrons are not permitted to bring any large bags or shopping carts into the library.
13. Any person creating or emanating an odor that can be detected from six feet away will be asked to leave the library until the situation can be corrected. Before ejecting any patron who creates such a disturbance, the acting librarian shall contact by telephone appointed representatives to act in an advisory capacity. If the representative determines that the person is not making a disturbance, the patron shall not be ejected. In the event the representative does not arrive within 30 minutes, the patron can be evicted.
14. Library materials may not be taken into restrooms.
15. The library is not responsible for personal items that are lost, stolen or damaged on library property.
16. The Library District reserves the right to inspect an individual's personal belongings to prevent unauthorized removal of library materials and equipment or for the health and safety of staff and other patrons.

Depending on the seriousness of the infraction, any patron who violates any of these Rules of Conduct may be trespassed from the Library District for a period of up to one year. Any patron who is trespassed is prohibited from use of all Las Vegas-Clark County Library District facilities and services. Trespassed patrons returning to a Las Vegas-Clark County Library District branch during a period of trespass will be issued a new one-year trespass.

A patron who has been trespassed may have the decision reviewed by appealing via written request to the Library Director within fourteen (14) days of when the trespass was issued.

EXHIBIT 2

EXHIBIT 2

Notice of Trespass

Please note that in accordance with NRS 207.200 you have been officially trespassed from the Las Vegas-Clark County Library District on 3/16/16 for the following infraction: (month, day, year)

firearms in the library

You may not visit any branch of the Las Vegas-Clark County Library District for a period of one (1) year from the date indicated above. Failure to comply will result in staff contacting local law enforcement.

If you wish to appeal this decision, you must do so by written request to the Library Director within fourteen (14) days of the above date:

Executive Director
833 Las Vegas Blvd. N.
Las Vegas, NV 89101



LAS VEGAS METROPOLITAN POLICE DEPARTMENT			
<input type="checkbox"/> Apt. Notification	<input type="checkbox"/> Disturbance	<input checked="" type="checkbox"/> Trespassing	
<input type="checkbox"/> Garage Door	<input type="checkbox"/> Drug Activity	<input type="checkbox"/> Domestic Violence	
<input type="checkbox"/> Curfew Notification	<input type="checkbox"/> Theft	<input type="checkbox"/> Civil Stand-by	
<input type="checkbox"/> Other	<input type="checkbox"/> Vandalism	<input type="checkbox"/>	
Address <u>3150 N. Rainbow</u>		Event # <u>160316-1602</u>	
Apt. # <u>8 Rainbow Library</u>		Message <u>Trespass DUE</u>	
<u>TO NOT CARRYING A GUN INSIDE</u>			
<u>HO/STOCK</u>			
Date <u>3-16-16</u>	Time <u>1255</u>	Officer Name <u>Ashe</u>	PP# <u>7302</u>
<small>EX-100 210 (REV. 10-14) DISTRIBUTION: WHITE - SUBSTATION CARDS/PO/1 - CITIZEN</small>			

1 **MPRI**

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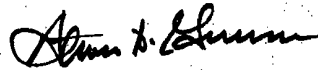
16 Las Vegas, NV 89102

17 Telephone: (702) 425-5366

18 Attorneys for Plaintiff

19 Michelle Flores

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04/29/2016 11:17:59 AM



CLERK OF THE COURT

12 **EIGHTH JUDICIAL DISTRICT COURT**

13 **CLARK COUNTY, NEVADA**

14 MICHELLE FLORES, an individual

15 Plaintiff,

16 v.

17 LAS VEGAS-CLARK COUNTY LIBRARY
18 DISTRICT, a political subdivision of the State
19 of Nevada; DOES I-X, inclusive; and ROES
20 A-Z, inclusive,

21 Defendants.

Case No.: A-16-735496-C

Dept. No.: XXIII

**MOTION FOR PRELIMINARY
INJUNCTION**

22 ///

23 ///

24 ///

1 Plaintiff Michelle Flores files the Motion for Preliminary Injunction. This Motion is made
2 and based upon the attached points and authorities, the papers and pleadings on file herein,
3 and any oral argument the Court may entertain at any hearing of this matter.

4 DATED this 29th day of April, 2016.

5 ASHCRAFT & BARR | LLP



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Attorneys for Plaintiff Michelle Flores

13 **NOTICE OF MOTION**

14 TO: LAS VEGAS-CLARK COUNTY LIBRARY DISTRICT, Defendant; and

15 TO: Its Counsel of Record and all other interested parties.

16 PLEASE TAKE NOTICE that the undersigned will bring the above-referenced Motion
17 for Preliminary Judgment on for hearing in the Eighth Judicial District Court, Department
18 _____ on the 21 day of June, 2016 at 9:30a ____m.

19 DATED this 29th day of April, 2016.

21 ASHCRAFT & BARR | LLP



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Attorneys for Plaintiff Michelle Flores

MEMORANDUM OF POINTS AND AUTHORITIES**I. INTRODUCTION**

Defendant Las Vegas-Clark County Library District (the "District") arbitrarily banned homemaker Michelle Flores ("Michelle") from the District's libraries for 12 months because Michelle exercised her constitutional right to openly and responsibly carry a secure, holstered firearm in the Rainbow Library. The District has no rule or regulation prohibiting this conduct. In short, Michelle's ban is based upon a non-existent rule that the District has never, and could never, lawfully promulgate. An injunction is necessary, therefore, to restore this homeschooling mother's library privileges.

II. FACTS

The following facts are based on the Verified Complaint on file attached as Exhibit I to this Motion, and they are incorporated by reference:

Michelle is a resident and citizen of Clark County, Nevada. [Complaint ¶5.]

The District was formed by the City of Las Vegas and Clark County pursuant to NRS ch. 379. [Complaint ¶14.] It operates the Rainbow Library. [Complaint ¶16.] The District promulgates the Library Rules of Conduct (the "District Rules"). A true and correct copy of the District Rules in effect as of March 16, 2016, is attached as Exhibit 1 to the Complaint. [Complaint ¶¶20-22, Exhibit 1.]

In March 2016, Michelle visited the Rainbow Library with her three minor children while visibly, openly, and obviously carrying a firearm secured in a holster. [Complaint ¶30-31.] After browsing the library stacks for approximately an hour, Michelle and her children checked out their selection of books and proceeded to exit the library but were stopped by Rainbow Library staff between the first and second set of exit doors. [Complaint ¶32-36.]

The Rainbow Library staff summoned police. [Complaint ¶38.] Police officers responded

1 and in front of her children, the police took Michelle's firearm, holster, and ammunition,
2 handcuffing her between the first and second set of exit doors. [Complaint ¶39-42.] Police
3 officers also initially called Child Protective Services to take custody of Michelle's children.
4 [Complaint ¶43.] For reasons unknown and after a lengthy colloquy between the officers,
5 Michelle was neither arrested nor incarcerated. [Complaint ¶45.]

6
7 After the police released Michelle, the District, in reliance upon some unwritten, arbitrary
8 policy or regulation, issued a Trespass Notice to Michelle (the "Trespass Notice"). [Complaint
9 ¶23.] A true and correct copy of the Trespass Notice is attached as Exhibit 2 to the Complaint.
10 [Complaint ¶24-25, Exhibit 2.]

11 The Trespass Notice prohibits Michelle from entering any District library facility for 12
12 months, and it was issued to Michelle on the basis of her visible, open and obvious possession
13 of a firearm, stating, in part, "[Y]ou have been officially trespassed from the Las Vegas-Clark
14 County Library District...for the following infraction: firearms in the library." [Complaint
15 ¶31.]

16
17 The District Rules do not contain any regulation prohibiting the open carry of "firearms
18 in the library." [Complaint ¶22.]

19 III. LEGAL ANALYSIS

20 For the reasons detailed below, Michelle is entitled to a preliminary injunction lifting
21 the ban on her visits to the District's libraries. Nevada courts employ a two-part test to
22 determine when an injunction should issue, and a party must demonstrate (A) that "it enjoys
23 a reasonable probability of success on the merits," and (B) that "the non-moving party's
24 conduct, if allowed to continue, will result in irreparable harm for which compensatory
25

1 damage is an inadequate remedy.”¹ *Dixon v. Thatcher*, 103 Nev. 414, 415, 742 P.2d 1029,
2 1029 (1987).

3 Here, Michelle is entitled to a preliminary injunction because she easily satisfies both
4 factors. First, Michelle enjoys a strong probability of success for at least one, overwhelming
5 reason: The District has promulgated no rule or regulation prohibiting “firearms in the
6 library.” To the extent that the District is enforcing an arbitrary, unwritten, ad hoc rule, the
7 District is violating Michelle’s procedural due process rights and her fundamental right to
8 keep and bear arms.

10 Next, Michelle can easily establish irreparable harm: All citizens enjoy a fundamental,
11 constitutional right to due process; the Trespass Notice bans Michelle from libraries because
12 of a non-existent, unwritten rule. The Trespass Notice also punishes Michelle for the lawful
13 exercise of her constitutional right to keep and bear arms. Constitutional injury is irreparable
14 harm. In short, for the reasons below, Michelle is entitled to a preliminary injunction lifting
15 the ban on her visiting libraries.

17 **A. MICHELLE WILL LIKELY SUCCEED ON THE MERITS**

18 Michelle is likely to succeed because no District rule or regulation prohibits “firearms in
19 the library,” contrary to what was stated in the Trespass Notice.²

20 Article I, Section 8(5) of the Nevada Constitution guarantees “due process of law.” A
21 regulation of a local government violates due process of law where it provides no notice of
22

23
24 ¹ A court may also weigh two other factors in considering an injunction: the potential, relative
25 hardships to the parties and the public interest when considering an injunction. *See University
and Community College System of Nevada v. Nevadans for Sound Government*, 120 Nev. 712,
721, 100 P.3d 179, 187 (2004).

26 ² To the extent the District somehow makes a showing of some alleged “rule,” Michelle is still
27 likely to succeed. Any purported “rule” prohibiting open carry in the library is expressly
preempted by Senate Bill No. 175 (2015), and to the extent that such a “rule” is not contained
in the District Rules, it violates NRS ch. 241, Nevada’s Open Meeting Law.

1 prohibited conduct. *See Silvar v. Eighth Judicial Dist. Court*, 122 Nev. 289, 293, 129 P.3d
2 682, 685 (2006); *see also, State v. Castaneda*, 126 Nev. 478, 482, 245 P.3d 550, 553 (2010)
3 (“the law must, at a minimum, delineate the boundaries of unlawful conduct”). Article I,
4 Section 11(1) of the Nevada Constitution guarantees the fundamental right of citizens to keep
5 and bear arms. *See Pohlabel v. State*, 128 Nev. Adv. Op. 1, 268 P.3d 1264, 1270 (2012).

6
7 Here, the Trespass Notice bans Michelle for “firearms in the library.” But there is no such
8 infraction in the District Rules. The District banned Michelle (and effectively her children)
9 from the library without giving any notice that her lawful conduct was in any way prohibited.
10 This is the epitome of a due process violation. Likewise, the District’s ban for Michelle’s
11 lawful exercise of her constitutional right to keep and bear arms without any authority to do
12 so also violates the Nevada Constitution. As such, Michelle is likely to succeed on the merits
13 of this litigation, and an injunction is warranted. The Court should overturn the District’s ban.

14 **B. MICHELLE IS SUFFERING IRREPARABLE HARM**

15
16 A constitutional violation may be difficult to remedy with monetary damages; therefore,
17 constitutional injury constitutes irreparable harm for purposes of an injunction. *See City of*
18 *Sparks v. Sparks Mun. Court*, 129 Nev. Adv. Op. 38, 302 P.3d 1118, 1124 (2013); *Eaves v.*
19 *Bd. of Clark Cnty. Comm’rs*, 96 Nev. 921, 924-25, 620 P.2d 1248 (1980) (finding local
20 government ordinance unconstitutional and, thus, ordering trial court to impose preliminary
21 injunction without reaching irreparable harm requirement).

22
23 Here, Michelle is the victim of an arbitrary action by the District that is not supported by
24 any of the District Rules. This is a violation of her due process rights. Moreover, she was
25 issued a trespass notice for the lawful exercise of her fundamental right to bear arms. This,
26 too, is a second constitutional violation. These constitutional injuries may be difficult to
27 quantify. Therefore, Michelle easily satisfies the second factor in Nevada’s test for a

1 preliminary injunction. In sum, because Michelle is continuing to suffer irreparable harm
2 because of the District's constitutional violations, she is entitled to a preliminary injunction
3 lifting the District's ban on her visits to the library.

4 IV. CONCLUSION

5 For the reasons detailed above, Michelle respectfully requests that this Court issue an
6 injunction overturning the District's unlawful ban on her library privileges.
7

8 DATED this 29th day of April, 2016.

9 ASHCRAFT & BARR | LLP



11 JEFFREY F. BARR, ESQ.

12 Nevada Bar No. 7269

13 barrj@AshcraftBarr.com

14 2300 West Sahara Avenue, Suite 1130

15 Las Vegas, NV 89102

16 Telephone: (702) 631.7555

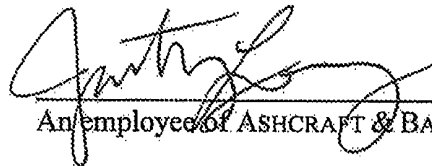
17 Facsimile: (702) 631.7556

18 Attorneys for Plaintiff Michelle Flores

19 CERTIFICATE OF SERVICE

20 I certify that on this 29th day of April, 2016, I electronically filed and
21 served the foregoing Motion for Preliminary Injunction by using the Eighth Judicial District
22 Court E-File & Serve System, and if necessary, by first class mail, postage pre-paid to the
23 following:

24 Las Vegas-Clark County Library District
25 Administrative Office
26 7060 W. Windmill Lane
27 Las Vegas, NV 89113



An employee of ASHCRAFT & BARR | LLP

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-

6 LEE I. IGLODY, ESQ
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2300 West Sahara Avenue, Suite 1130
9 Las Vegas, NV 89102
Telephone: (702) 425-5366
10 Attorneys for Plaintiff
Michelle Flores
11

12 **EIGHTH JUDICIAL DISTRICT COURT**

13 **CLARK COUNTY, NEVADA**

14 MICHELLE FLORES, an individual

15 Plaintiff,

16 v.

17 LAS VEGAS-CLARK COUNTY LIBRARY
DISTRICT, a political subdivision of the State
18 of Nevada; DOES I-X, inclusive; and ROES
A-Z, inclusive,
19

20 Defendants.

Case No.: A-16-735496-C

Dept. No.: XXIII

**EXHIBIT I TO
MOTION FOR PRELIMINARY
INJUNCTION**

21 **EXHIBIT I**
22
23
24
25
26
27

DISTRICT COURT CIVIL COVER SHEET

A-16-735496-C

County, Nevada

X X I I I

Case No. _____

(Assigned by Clerk's Office)

I. Party Information (provide both home and mailing addresses if different)

Plaintiff(s) (name/address/phone): MICHELLE FLORES, an individual	Defendant(s) (name/address/phone): LAS VEGAS-CLARK COUNTY LIBRARY DISTRICT, a political subdivision of the State of Nevada
Attorney (name/address/phone): Ashcraft & Barr LLP, Jeffrey F. Barr, Esq. 2300 W. Sahara Avenue, Suite 1130 Las Vegas, NV 89102 (702) 631-7555	Attorney (name/address/phone):

II. Nature of Controversy (please select the one most applicable filing type below)**Civil Case Filing Types**

Real Property Landlord/Tenant <input type="checkbox"/> Unlawful Detainer <input type="checkbox"/> Other Landlord/Tenant Title to Property <input type="checkbox"/> Judicial Foreclosure <input type="checkbox"/> Other Title to Property Other Real Property <input type="checkbox"/> Condemnation/Eminent Domain <input type="checkbox"/> Other Real Property	Negligence <input type="checkbox"/> Auto <input type="checkbox"/> Premises Liability <input type="checkbox"/> Other Negligence Malpractice <input type="checkbox"/> Medical/Dental <input type="checkbox"/> Legal <input type="checkbox"/> Accounting <input type="checkbox"/> Other Malpractice	Torts Other Torts <input type="checkbox"/> Product Liability <input type="checkbox"/> Intentional Misconduct <input type="checkbox"/> Employment Tort <input type="checkbox"/> Insurance Tort <input type="checkbox"/> Other Tort
Probate <i>(select case type and estate value)</i> <input type="checkbox"/> Summary Administration <input type="checkbox"/> General Administration <input type="checkbox"/> Special Administration <input type="checkbox"/> Set Aside <input type="checkbox"/> Trust/Conservatorship <input type="checkbox"/> Other Probate Estate Value <input type="checkbox"/> Over \$200,000 <input type="checkbox"/> Between \$100,000 and \$200,000 <input type="checkbox"/> Under \$100,000 or Unknown <input type="checkbox"/> Under \$2,500	Construction Defect & Contract Construction Defect <input type="checkbox"/> Chapter 40 <input type="checkbox"/> Other Construction Defect Contract Case <input type="checkbox"/> Uniform Commercial Code <input type="checkbox"/> Building and Construction <input type="checkbox"/> Insurance Carrier <input type="checkbox"/> Commercial Instrument <input type="checkbox"/> Collection of Accounts <input type="checkbox"/> Employment Contract <input type="checkbox"/> Other Contract	Judicial Review/Appeal Judicial Review <input type="checkbox"/> Foreclosure Mediation Case <input type="checkbox"/> Petition to Seal Records <input type="checkbox"/> Mental Competency Nevada State Agency Appeal <input type="checkbox"/> Department of Motor Vehicle <input type="checkbox"/> Worker's Compensation <input type="checkbox"/> Other Nevada State Agency Appeal Other <input type="checkbox"/> Appeal from Lower Court <input type="checkbox"/> Other Judicial Review/Appeal
Civil Writ Civil Writ <input type="checkbox"/> Writ of Habeas Corpus <input type="checkbox"/> Writ of Mandamus <input type="checkbox"/> Writ of Quo Warrant <input type="checkbox"/> Writ of Prohibition <input type="checkbox"/> Other Civil Writ		Other Civil Filing Other Civil Filing <input type="checkbox"/> Compromise of Minor's Claim <input type="checkbox"/> Foreign Judgment <input checked="" type="checkbox"/> Other Civil Matters

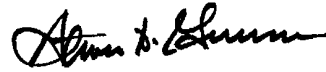
Business Court filings should be filed using the Business Court civil coversheet

April 22, 2016

Date

Signature of initiating party or representative

See other side for family-related case filings.


CLERK OF THE COURT

COMP

JEFFREY F. BARR, ESQ

Nevada Bar No. 7269

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-

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Las Vegas, NV 89102

Telephone: (702) 425-5366

Attorneys for Plaintiff

Michelle Flores

DISTRICT COURT

CLARK COUNTY, NEVADA

MICHELLE FLORES, an individual

Plaintiff,

v.

LAS VEGAS-CLARK COUNTY LIBRARY
DISTRICT, a political subdivision of the State
of Nevada; DOES I-X, inclusive; and ROES
A-Z, inclusive,

Defendants.

Case No.: A-16-735496-C

Dept. No.: XXIII

VERIFIED COMPLAINT

Plaintiff Michelle Flores complains and alleges against Defendants as follows:

SUMMARY OF THE ACTION

1. Defendant Las Vegas Clark County Library District (the "District") banned homemaker and homeschooling mother of three, Plaintiff Michelle Flores ("Michelle"), from the District's libraries after Michelle openly and responsibly carried a firearm in a secure holster while visiting the Rainbow Library with her children.

1 2. The District does not have the authority to ban Michelle because the District does
2 not have the authority to make rules relating to the open possession of firearms. Last year,
3 the Legislature made it clear in Senate Bill 175 (2015) ("SB175") that the Legislature, alone,
4 has the sole right to regulate the possession of firearms.

5 3. Nevertheless, the District insists on enforcing some arbitrary policy regulating the
6 open possession of firearms in a conscious and willful disregard of Michelle's constitutional
7 rights and the rights accruing to all Nevada citizens stemming from the broad reforms enacted
8 in SB175.
9

10 **THE PARTIES, JURISDICTION, AND VENUE**

11 4. All previous paragraphs in this Complaint are specifically incorporated herein as
12 though fully set forth.

13 5. Michelle is a resident of Clark County and a citizen of the State of Nevada.

14 6. Michelle is the mother of five-year-old minor R. Flores.

15 7. Michelle is the mother of three-year-old minor E. Flores.

16 8. Michelle is the mother of one-year-old minor H. Flores.

17 9. Michelle homeschools her three minor children and therefore the access to library
18 facilities is of great importance.
19

20 10. At all times relevant to this Complaint, Michelle was not the subject of any court
21 order prohibiting her possession of a firearm in the State of Nevada.

22 11. At all times relevant to this Complaint, Michelle lawfully owned and possessed a
23 .38 caliber revolver.
24

25 12. The District is a political subdivision of the State of Nevada.

26 13. The City of Las Vegas and Clark County formed the District.

27 14. The City of Las Vegas and Clark County derived its authority to form the District

1 from the District's enabling statute, NRS ch. 379.

2 15. The City of Las Vegas and Clark County each appoint five members to the
3 District's Board.

4 16. The District operates a facility named the Rainbow Library (the "Rainbow
5 Library").

6 17. The Rainbow Library is located at 3150 N. Buffalo Drive, Las Vegas, Nevada.

7 18. The District is, and was at all times relevant hereto, responsible for the
8 management of Rainbow Library.

9 19. Upon information and belief, the District employs the Rainbow Library staff
10 responsible for the actions complained of in this Complaint.

11 20. The District promulgates the Library Rules of Conduct (the "District Rules").

12 21. Upon information and belief, a true and correct copy of the District Rules in effect
13 as of March 16, 2016, is attached hereto as **Exhibit 1**.

14 22. The District Rules do not contain any regulation prohibiting the open carry of
15 firearms.

16 23. On or about March 16, 2016, in reliance upon an arbitrary policy or regulation, the
17 District issued a Trespass Notice to Michelle (the "Trespass Notice").

18 24. The Trespass Notice prohibits Michelle from entering any District library for a
19 period of twelve months.

20 25. A true and correct copy of the Trespass Notice is attached hereto as **Exhibit 2**.

21 26. DOE Defendants I through X, inclusive, and ROE CORPORATIONS A through
22 Z, inclusive, are fictitious names for the DOE Defendants and the ROE Defendants,
23 respectively (collectively, the "Unknown Defendants"). Michelle will seek leave to amend
24 this Complaint and proceedings herein to substitute the true names of such Unknown
25
26
27

1 Defendants. Michelle believes that each of the Defendants designated herein as Unknown
2 Defendants is responsible in some manner for the events herein referred to and negligently,
3 carelessly, recklessly, or intentionally caused damages proximately thereby to Michelle as
4 herein alleged.

5 27. The amount in controversy exceeds \$10,000.00.

6 28. Accordingly, jurisdiction and venue is proper in this Court.

7
8 **MARCH 16, 2016 LIBRARY VISIT**

9 29. All previous paragraphs in this Complaint are specifically incorporated herein as
10 though fully set forth.

11 30. On or about March 16, 2016, Michelle visited the Rainbow Library with her three
12 minor children.

13 31. During this visit Michelle visibly, openly, and obviously carried her .38 caliber
14 revolver in a side holster.

15 32. Michelle and her three minor children browsed the book stacks for approximately
16 one hour.

17 33. Michelle checked out some books and proceeded to the Rainbow Library exit.

18 34. As she was exiting with her books and three minor children, Michelle was stopped
19 between the first and second set of exit doors at Rainbow Library.

20 35. Michelle was stopped by a Rainbow Library security guard.

21 36. The Rainbow Library security guard was soon joined by another Rainbow Library
22 employee.

23 37. Michelle attempted to engage in dialogue with the Rainbow Library security guard
24 and employee regarding the reason for them stopping her.

25 38. The Rainbow Library employee summoned the police.
26
27

1 39. Police officers responded to the call.

2 40. At the instigation of the Rainbow Library security guard and employee, the police
3 placed Michelle in handcuffs between the first and second set of exit doors to the Rainbow
4 Library.

5 41. At the instigation of the Rainbow Library security guard and employee, the police
6 took Michelle's firearm and holster.

7 42. At the instigation of the Rainbow Library security guard and employee, the police
8 took five rounds of ammunition from Michelle.

9 43. The police initially proceeded to call Child Protective Services to take custody of
10 Michelle's three minor children.

11 44. At the instigation of the Rainbow Library security guard and employee, the police
12 initiated proceedings to incarcerate Michelle.

13 45. For reasons unknown and after a lengthy colloquy between the police officers,
14 Michelle was neither arrested nor incarcerated.

15 46. After the police released Michelle, the Rainbow Library employee issued the
16 Trespass Notice to Michelle.

17 47. All the actions by the police and the Rainbow Library security guard and employee
18 took place in front of Michelle's three minor children.

19 48. The District's conscious and willful disregard of the legal rights of Michelle
20 resulted in her public humiliation and emotional distress in front of her minor children and
21 the unlawful prohibition of her use of public library facilities.

22 **FIRST CLAIM FOR RELIEF**
23 **(Violation of SB 175 and Nevada Constitution)**

24 49. All previous paragraphs in this Complaint are specifically incorporated herein as
25
26
27

1 though fully set forth.

2 50. Article 1, Section 11(1) of the Nevada Constitution provides, "Every citizen has
3 the right to keep and bear arms for security and defense, for lawful hunting and recreational
4 use and for other lawful purposes."
5

6 51. Pursuant to SB175, the Nevada Legislature expressly preempted the entire field of
7 firearms regulation, including but not limited to, the definition, the method and place of carry,
8 the manner of use, and who may possess firearms and where they may be possessed.

9 52. The Nevada Legislature has the exclusive authority to regulate firearms in Nevada.

10 53. Nevada law prohibits the District from enacting rules or policies that contradict
11 Nevada law.

12 54. The District's arbitrary rules or policies banning the open carry of firearms in the
13 District's libraries violates Nevada law.

14 55. The District denied Michelle her constitutional right to bear arms.

15 56. The District has enacted and enforced arbitrary rules and policies that are
16 prohibited by Nevada law and the Nevada Constitution.
17

18 57. The District denied Michelle her constitutional right to due process of law under
19 Article 1, Section 8(5) of the Nevada Constitution.

20 58. Michelle was damaged by the District's actions.

21 59. Michelle suffered actual loss and damages as a result of the District's unlawful
22 actions.
23

24 60. Michelle is entitled to damages in an amount equal to three times her actual
25 damages.

26 61. Michelle is entitled to attorney's fees and costs.
27

SECOND CLAIM FOR RELIEF
(Declaratory Judgment)

62. All previous paragraphs in this Complaint are specifically incorporated herein as though fully set forth.

63. The District enacted and enforced arbitrary rules and policies that violate the Plaintiff's constitutional rights.

64. The District's enactment and enforcement of these arbitrary rules and policies violate Article 1, Section 11(1) and Section 8(5) of the Nevada Constitution.

65. The District's promulgation and enforcement of these arbitrary rules and policies violate Nevada law.

66. Nevada law preempts the District's arbitrary rules and policies prohibiting the open carry of a firearm in a District library, and these arbitrary rules and policies should be declared invalid.

67. The District's arbitrary rules and policies form the basis for the Trespass Notice.

68. Nevada law preempts the Trespass Notice, and it should be declared invalid.

69. Michelle is entitled to a declaratory judgment that the District's rules and policies that prohibit the open possession of firearms in libraries are unconstitutional.

70. Michelle is entitled declaratory judgment that the Trespass Notice is invalid.

71. Michelle is entitled to attorney's fees and costs.

THIRD CLAIM FOR RELIEF
(Injunctive Relief)

69. All previous paragraphs in this Complaint are specifically incorporated herein as though fully set forth.

70. Michelle has a right to carry firearms pursuant to the Nevada Constitution and

1 Nevada law.

2 71. This right is superior to any rule or regulation by any state or local entity not
3 specifically authorized by Nevada law.

4 72. The District had enacted and enforced arbitrary rules and policies that violate the
5 Michelle's rights.

6 73. The District's enforcement of these arbitrary rules and policies violates Nevada
7 law.

8 74. Nevada law preempts the District's arbitrary rules and policies prohibiting the
9 open carry of a firearm in a District library, and they are invalid.

10 75. The District's arbitrary rules and policies form the basis for the Trespass Notice.

11 76. Nevada law preempts the Trespass Notice, and it is invalid.

12 77. Michelle is entitled to a preliminary and permanent injunction to invalidate the
13 Trespass Notice and to permit her to return to the District's libraries.

14 78. Michelle is entitled to attorney's fees and costs.

15 WHEREFORE, Michelle prays for relief as follows:

16 A. For declarative relief;

17 B. For preliminary and permanent injunctive relief;

18 C. For general damages;

19 D. For damages in an amount of three times her actual damages;

20 E. For reasonable attorney's fees;

21 F. For costs of suit herein; and

22 ///

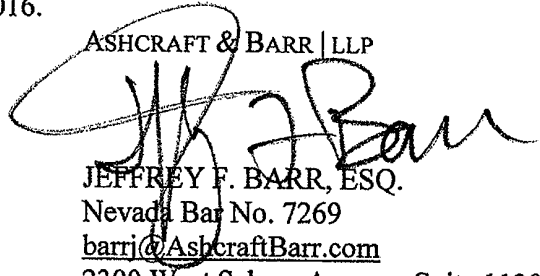
23 ///

24 ///

1 G. For such further relief as the Court may deem proper.

2 DATED this 22nd day of April, 2016.

3 ASHCRAFT & BARR | LLP

4 

5 JEFFREY F. BARR, ESQ.

6 Nevada Bar No. 7269

7 barrj@AshcraftBarr.com

8 2300 West Sahara Avenue, Suite 1130

9 Las Vegas, NV 89102

10 Attorneys for Plaintiff Michelle Flores

VERIFICATION

Under penalties of perjury, the undersigned declares that he is a Plaintiff named in the foregoing Verified Complaint and knows the contents thereof; that the pleading is true of her own knowledge, except as to those matters stated on information and belief, and that as to such matters she believes it to be true.

4/22/16

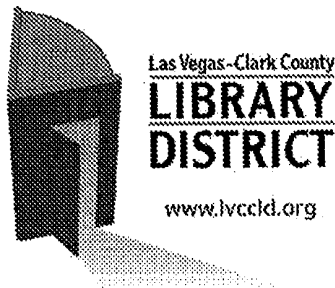
Date:

Michelle Flores

Name: Michelle Flores

EXHIBIT 1

EXHIBIT 1



Library Rules of Conduct

It is our intention to provide library visitors with good service in a pleasant atmosphere. In addition to obeying all applicable federal, state and local laws, each of you can help by observing the following rules of conduct.

1. Library patrons shall be engaged in normal activities associated with the use of a public library. Conduct that disturbs library users or staff, or that hinders others from using the library or library materials is prohibited.
2. Damage, destruction or theft of library property is prohibited. Parents are liable for all acts of minors. (Nevada Revised Statute 379.160)
3. Firearms are prohibited as outlined in NRS 202.3673.
4. Use of all types of tobacco is prohibited in the library. (Including e-cigarettes)
5. Food or beverages are prohibited in the library except for pre-approved events or in specified areas.
6. Sleeping is prohibited on library property.
7. Talking on cell phones or through other electronic devices is prohibited.
8. Selling or solicitation is prohibited on library property, except to gather signatures for petitions as outlined in NRS 293.127565 or in accordance with the District's meeting room use agreements.
9. Animals, except service animals, are prohibited on library property.

Adopted by the Las Vegas-Clark County Library District Board of Trustees on February 12, 1991. Revised and adopted December 10, 1991; October 10, 1996; October 9, 1997; September 9, 2004; May 16, 2006; April 10, 2008 and January 13, 2011.

10. Shoes and shirts must be worn in the library.
11. All children under the age of 10 must be supervised by an adult who assumes responsibility. Adult patrons must monitor all activities and behavior of their children on library property. Anyone under the age of 18 who does not follow the *Library Rules of Conduct*, has an emergency or is left at closing, will be subject to staff contacting a caregiver. If a caregiver cannot be contacted, staff will notify the police.
12. Patrons are not permitted to bring any large bags or shopping carts into the library.
13. Any person creating or emanating an odor that can be detected from six feet away will be asked to leave the library until the situation can be corrected. Before ejecting any patron who creates such a disturbance, the acting librarian shall contact by telephone appointed representatives to act in an advisory capacity. If the representative determines that the person is not making a disturbance, the patron shall not be ejected. In the event the representative does not arrive within 30 minutes, the patron can be evicted.
14. Library materials may not be taken into restrooms.
15. The library is not responsible for personal items that are lost, stolen or damaged on library property.
16. The Library District reserves the right to inspect an individual's personal belongings to prevent unauthorized removal of library materials and equipment or for the health and safety of staff and other patrons.

Depending on the seriousness of the infraction, any patron who violates any of these Rules of Conduct may be trespassed from the Library District for a period of up to one year. Any patron who is trespassed is prohibited from use of all Las Vegas-Clark County Library District facilities and services. Trespassed patrons returning to a Las Vegas-Clark County Library District branch during a period of trespass will be issued a new one-year trespass.

A patron who has been trespassed may have the decision reviewed by appealing via written request to the Library Director within fourteen (14) days of when the trespass was issued.

EXHIBIT 2

EXHIBIT 2

Notice of Trespass

Please note that in accordance with NRS 207.200 you have been officially trespassed from the Las Vegas-Clark County Library District on 3/16/16
for the following infraction: (month, day, year)

firearms in the library

You may not visit any branch of the Las Vegas-Clark County Library District for a period of one (1) year from the date indicated above. Failure to comply will result in staff contacting local law enforcement.

If you wish to appeal this decision, you must do so by written request to the Library Director within fourteen (14) days of the above date:

Executive Director
833 Las Vegas Blvd. N.
Las Vegas, NV 89101



LAS VEGAS METROPOLITAN POLICE DEPARTMENT			
<input type="checkbox"/> Apt. Notification	<input type="checkbox"/> Disturbance	<input checked="" type="checkbox"/> Trespassing	
<input type="checkbox"/> Garage Door	<input type="checkbox"/> Drug Activity	<input type="checkbox"/> Domestic Violence	
<input type="checkbox"/> Curfew Notification	<input type="checkbox"/> Theft	<input type="checkbox"/> Civil Stand-by	
<input type="checkbox"/> Other:	<input type="checkbox"/> Vandalism		
Address <u>3150 N. Rainbow</u>		Event # <u>160316-1602</u>	
Apt. No. <u>RAINBOW LIBRARY</u>		Message <u>Trespass DUE</u>	
<u>TO NOT CARRYING WHEN ASKED</u>			
<u>DUE TO CARRYING A GUN INSIDE</u>			
<u>HQ/STATION</u>			
Date <u>3-16-16</u>	Time <u>1255</u>	Officer Name <u>Ashe</u>	PR <u>7302</u>

LSMPD 273 (REV. 10-14) DISTRIBUTION: OFFICE - SUBSTATION CARDS/BOOK - CITIZEN



PSER
ASHCRAFT & BARR, LLP
2300 W. SAHARA Ave. * Ste. #1130
Las Vegas, NV 89102
702-631-7555
Attorney for: Plaintiff


CLERK OF THE COURT

DISTRICT COURT
CLARK COUNTY NEVADA

MICHELLE FLORES, AN INDIVIDUAL

Plaintiff

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

Defendant

Case Number: **A-16-735496-C**

Dept/Div: **XXIII**

PROOF OF SERVICE

Donald Edward Bradbury, being duly sworn deposes and says: that at all times herein affiant was and is a citizen of the United States, over 18 years of age, licensed to serve civil process in the state of Nevada under license #389, and not a party to or interested in the proceeding in which this affidavit is made. The affiant received on Wednesday April 27 2016; 1 copy(ies) of the:

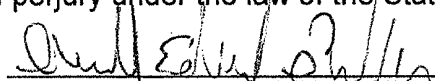
SUMMONS; VERIFIED COMPLAINT; CIVL COVER SHEET

I served the same on Thursday April 28 2016 at 12:51PM by:

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

Substituted Service, by leaving the copies with or in the presence of: ALLISON P. BOYER, MANAGER
Authorized Agent. at the Defendant's Business located at 7060 W WINDMILL LN, LAS VEGAS, NV
89113.

Pursuant to NRS 53.045, I declare under the penalty of perjury under the law of the State of Nevada
that the foregoing is true and correct.
Executed: Friday April 29 2016


Affiant: Donald Edward Bradbury #R-065600
LEGAL WINGS, INC. - NV LIC #389
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Michelle Flores

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

MICHELLE FLORES, an individual

Plaintiff,

v.

LAS VEGAS-CLARK COUNTY LIBRARY
DISTRICT, a political subdivision of the State
of Nevada; DOES I-X, inclusive; and ROES
1-X, inclusive,

Defendants.

Case No.: A 735496

Dept. No.:

SUMMONS – CIVIL

**NOTICE! YOU HAVE BEEN SUED. THE COURT MAY DECIDE AGAINST YOU
WITHOUT YOUR BEING HEARD UNLESS YOU RESPOND WITHIN 20 DAYS.
READ THE INFORMATION BELOW.**

TO THE DEFENDANT(S): A civil Complaint has been filed by the Plaintiff against you
for the relief set forth in the Complaint.

1. If you intend to defend this lawsuit, within 20 days after this Summons is served on
you, exclusive of the day of service, you must do the following:
 - a) File with the Clerk of this Court, whose address is shown below, a formal
written response to the Complaint in accordance with the rules of the Court,
with the appropriate filing fee.
 - b) Serve a copy of your response upon the attorney whose name and address is
shown below.

- 1 2. Unless you respond, your default will be entered upon application of the Plaintiff and
2 failure to so respond will result in a judgment of default against you for the relief
3 demanded in the Complaint, which could result in the taking of money or property or
4 other relief requested in the Complaint.
5 3. If you intend to seek the advice of an attorney in this matter, you should do so
6 promptly so that your response may be filed on time.
7 4. The State of Nevada, its political subdivisions, agencies, officers, employees, board
8 members, commission members and legislators each have 45 days after service of this
9 Summons within which to file an Answer or other responsive pleading to the
10 Complaint.

STEVEN D. GREIRSON
CLERK OF COURT

By: 

APR 26 2016


Deputy Clerk
JANEL WASHINGTON

Date

Regional Justice Center
200 Lewis Avenue
Las Vegas, NV 89155

Submitted by:

ASHCRAFT & BARR | LLP


JEFFREY F. BARR, ESQ.

Nevada Bar No. 7269

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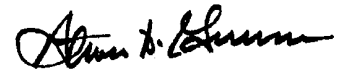
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CLERK OF THE COURT

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Las Vegas-Clark County Library District

13
14 **DISTRICT COURT**

15 **CLARK COUNTY, NEVADA**

16 MICHELLE FLORES, an individual,

17 Plaintiff,

18 vs.

19 LAS VEGAS-CLARK COUNTY LIBRARY
DISTRICT, a political subdivision of the State of
20 Nevada; DOES 1-X, inclusive, and ROES A-Z,
inclusive,

21 Defendants.

Case No. A-16-735496-C
Dept. No. XXIII

22
23 **DEFENDANT LAS VEGAS-CLARK COUNTY LIBRARY DISTRICT'S**
ANSWER TO PLAINTIFF MICHELLE FLORES' VERIFIED COMPLAINT
24 **AND COUNTERCLAIM**

25 Defendant Las Vegas-Clark County Library District (the "Library District" or "Defendant")
26 by and through its counsel of record, Bailey ♦ Kennedy, answers Plaintiff Michelle Flores' ("Ms.
27 Flores" or "Plaintiff") Verified Complaint (the "Complaint") as follows:

28 ///

SUMMARY OF THE ACTION

1
2 1. Answering Paragraph 1, the Library District admits that it issued a Notice of Trespass
3 to Ms. Flores and banned Ms. Flores from visiting any branch of the Library District for a period of
4 one year. The Library District further admits that the Notice of Trespass arose out of an incident
5 during which Ms. Flores was carrying a firearm on Library District property. The Library District is
6 without knowledge or information sufficient to form a belief as to the truth or falsity of the
7 remaining allegations, and, on that basis, denies them.

8 2. Answering Paragraph 2, the Library District states that Senate Bill 175, 2015 Leg.,
9 78th Sess. (Nev. 2015) speaks for itself. To the extent that the allegations in Paragraph 2 are
10 inconsistent with Senate Bill 175, the Library District denies those inconsistent allegations. The
11 Library District further states that the remaining allegations in Paragraph 2 contain legal conclusions
12 rather than factual allegations to which no response is required; to the extent the allegations require a
13 response, the Library District denies the allegations. The Library District denies any remaining
14 and/or inconsistent allegations contained in Paragraph 2.

15 3. Answering Paragraph 3, the Library District denies that its policy relating the open
16 possession of firearms on Library District property is arbitrary. The Library District further states
17 that Senate Bill 175, 2015 Leg., 78th Sess. (Nev. 2015) speaks for itself. To the extent that the
18 allegations in Paragraph 3 are inconsistent with Senate Bill 175, the Library District denies those
19 inconsistent allegations. The Library District further states that the remaining allegations in
20 Paragraph 3 contain legal conclusions rather than factual allegations to which no response is
21 required; to the extent the allegations require a response, the Library District denies the allegations.
22 The Library District denies any remaining and/or inconsistent allegations contained in Paragraph 3.

THE PARTIES, JURISDICTION, AND VENUE

24 4. Answering Paragraph 4, the Library District reasserts and incorporates by reference
25 the previous Paragraphs, inclusive, as though fully set forth herein.

26 5. Answering Paragraph 5, the Library District is without knowledge or information
27 sufficient to form a belief as to the truth or falsity of the allegations, and, on that basis, denies them.

28 ///

1 6. Answering Paragraph 6, the Library District is without knowledge or information
2 sufficient to form a belief as to the truth or falsity of the allegations, and, on that basis, denies them.

3 7. Answering Paragraph 7, the Library District is without knowledge or information
4 sufficient to form a belief as to the truth or falsity of the allegations, and, on that basis, denies them.

5 8. Answering Paragraph 8, the Library District is without knowledge or information
6 sufficient to form a belief as to the truth or falsity of the allegations, and, on that basis, denies them.

7 9. Answering Paragraph 9, the Library District is without knowledge or information
8 sufficient to form a belief as to the truth or falsity of the allegations, and, on that basis, denies them.

9 10. Answering Paragraph 10, the Library District is without knowledge or information
10 sufficient to form a belief as to the truth or falsity of the allegations, and, on that basis, denies them.

11 11. Answering Paragraph 11, the Library District is without knowledge or information
12 sufficient to form a belief as to the truth or falsity of the allegations, and, on that basis, denies them.

13 12. Answering Paragraph 12, the Library District admits that it is a “political
14 subdivision” as defined in NRS 379.142. The Library District states that the allegations contained in
15 Paragraph 12 do not require a response to the extent that they assert legal conclusions rather than
16 factual allegations; to the extent a response is required, the Library District denies the allegations.
17 The Library District denies any remaining and/or inconsistent allegations contained in Paragraph 12.

18 13. Answering Paragraph 13, the Library District states that it was formed pursuant to
19 NRS 379.010. The Library District further states that the allegations contained in Paragraph 13 do
20 not require a response to the extent that they assert legal conclusions rather than factual allegations;
21 to the extent a response is required, the Library District denies the allegations. The Library District
22 denies any remaining and/or inconsistent allegations contained in Paragraph 13.

23 14. Answering Paragraph 14, the Library District states that the allegations contained in
24 Paragraph 14 do not require a response to the extent that they assert legal conclusions rather than
25 factual allegations; to the extent a response is required, the Library District denies the allegations.

26 15. Answering Paragraph 15, the Library District states that the allegations contained in
27 Paragraph 15 do not require a response to the extent that they assert legal conclusions rather than
28 factual allegations; to the extent a response is required, the Library District denies the allegations.

1 16. Answering Paragraph 16, the Library District admits it operates a branch facility that
2 is referred to as the Rainbow Library.

3 17. Answering Paragraph 17, the Library District admits the Rainbow Library is located
4 at 3150 North Buffalo Drive, Las Vegas, Nevada.

5 18. Answering Paragraph 18, the Library District admits that, by and through its trustees,
6 it is responsible for the management of the Rainbow Library. The Library District denies any
7 remaining and/or inconsistent allegations contained in Paragraph 18.

8 19. Answering Paragraph 19, the Library District admits that the workforce at the
9 Rainbow Library includes several categories of workers, which includes, but is not limited to
10 volunteers, independent contractors, and employees of the Library District. The Library District
11 denies all remaining and/or inconsistent allegations contained in Paragraph 19.

12 20. Answering Paragraph 20, the Library District admits that it promulgates the Library
13 Rules of Conduct.

14 21. Answering Paragraph 21, the Library District admits Exhibit 1 to the Complaint is a
15 true and correct copy of the Library Rules of Conduct that were in effect on March 16, 2016.

16 22. Answering Paragraph 22, the Library District denies the allegations.

17 23. Answering Paragraph 23, the Library District denies that its policy relating to the
18 open possession of firearms on Library District property is arbitrary. The Library District further
19 admits that it issued a Notice of Trespass to Ms. Flores on or about March 16, 2016. The Library
20 District denies all remaining and/or inconsistent allegations contained in Paragraph 23.

21 24. Answering Paragraph 24, the Library District admits the Notice of Trespass prohibits
22 Ms. Flores from entering any branch of the Library District for a period of one year.

23 25. Answering Paragraph 25, the Library District is without knowledge or information
24 sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 26.

25 26. Answering Paragraph 26, the Library District is without knowledge or information
26 sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 26 as it
27 purports to apply to third-party fictitious defendants, and, on that basis, denies them.

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28. Answering Paragraph 28, the Library District states that the allegations contain legal conclusions rather than factual allegations to which no response is required; to the extent the allegations require a response, the Library District denies the allegations.

MARCH 16, 2016 LIBRARY VISIT

29. Answering Paragraph 29, the Library District reasserts and incorporates by reference the previous Paragraphs, inclusive, as though fully set forth herein.

30. Answering Paragraph 30, the Library District admits that Ms. Flores was present at the Rainbow Library with three minors on March 16, 2016. The Library District is without knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations in Paragraph 30, and on that basis, denies all remaining allegations.

31. Answering Paragraph 31, the Library District admits that Ms. Flores was in possession of a handgun while present at the Rainbow Library. The Library District denies any remaining and/or inconsistent allegations contained in Paragraph 31.

32. Answering Paragraph 32, the Library District is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations, and, on that basis, denies them.

33. Answering Paragraph 33, the Library District is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations, and, on that basis, denies them.

34. Answering Paragraph 34, the Library District denies the allegations.

35. Answering Paragraph 35, the Library District admits that its security guard stopped Ms. Flores on March 16, 2016, while she was exiting the Rainbow Library. The Library District denies any remaining and/or inconsistent allegations contained in Paragraph 35.

36. Answering Paragraph 36, the Library District admits that another Rainbow Library employee joined Ms. Flores and the Security Guard to speak to Ms. Flores. The Library District denies all remaining and/or inconsistent allegations.

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1 37. Answering Paragraph 37, the Library District is without knowledge or information
2 sufficient to form a belief as to the truth or falsity of the allegations, and, on that basis, denies them.

3 38. Answering Paragraph 38, the Library District admits that a Rainbow Library
4 employee called the police because Ms. Flores refused to peacefully leave the Rainbow Library.

5 39. Answering Paragraph 39, the Library District admits that Las Vegas Metropolitan
6 police officers responded to the Library District's call for officer assistance at the Rainbow Library.

7 40. Answering Paragraph 40, the Library District admits that the police placed Ms. Flores
8 in handcuffs. The Library District denies all remaining allegations.

9 41. Answering Paragraph 41, the Library District is without knowledge or information
10 sufficient to form a belief as to the truth or falsity of the allegations, and, on that basis, denies them.

11 42. Answering Paragraph 42, the Library District is without knowledge or information
12 sufficient to form a belief as to the truth or falsity of the allegations, and, on that basis, denies them.

13 43. Answering Paragraph 43, the Library District is without knowledge or information
14 sufficient to form a belief as to the truth or falsity of the allegations, and, on that basis, denies them.

15 44. Answering Paragraph 44, the Library District is without knowledge or information
16 sufficient to form a belief as to the truth or falsity of the allegations, and, on that basis, denies them.

17 45. Answering Paragraph 45, the Library District is without knowledge or information
18 sufficient to form a belief as to the truth or falsity of the allegations, and, on that basis, denies them.

19 46. Answering Paragraph 46, the Library District admits that Ms. Flores was issued a
20 Notice of Trespass. The Library District denies all remaining allegations.

21 47. Answering Paragraph 47, the Library District denies the allegations.

22 48. Answering Paragraph 48, the Library District is without knowledge or information
23 sufficient to form a belief as to the truth or falsity of the allegations, and, on that basis, denies them.
24 The Library District further states that the allegations contain legal conclusions rather than factual
25 allegations to which no response is required; to the extent the allegations require a response, the
26 Library District denies the allegations.

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FIRST CLAIM FOR RELIEF
(Violation of SB 175 and Nevada Constitution)

49. Answering Paragraph 49, the Library District reasserts and incorporates by reference the previous Paragraphs, inclusive, as though fully set forth herein.

50. Answering Paragraph 50, the Library District states that the Nevada Constitution speaks for itself and denies the allegations contained in Paragraph 50 to the extent that they contradict or are inconsistent with said document.

51. Answering Paragraph 51, the Library District states that the allegations contain legal conclusions rather than factual allegations to which no response is required; to the extent the allegations require a response, the Library District denies the allegations. The Library District further states that Senate Bill 175, 2015 Leg., 78th Sess. (Nev. 2015) speaks for itself. To the extent that the allegations in Paragraph 51 are inconsistent with Senate Bill 175, the Library District denies those inconsistent allegations.

52. Answering Paragraph 52, the Library District states that the allegations contain legal conclusions rather than factual allegations to which no response is required; to the extent the allegations require a response, the Library District denies the allegations.

53. Answering Paragraph 53, the Library District states that the allegations contain legal conclusions rather than factual allegations to which no response is required; to the extent the allegations require a response, the Library District denies the allegations.

54. Answering Paragraph 54, the Library District denies that its policy relating to the open possession of firearms on Library District property is arbitrary. The Library District further states that the allegations contain legal conclusions rather than factual allegations to which no response is required; to the extent the allegations require a response, the Library District denies the allegations.

55. Answering Paragraph 55, the Library District denies the allegations.

56. Answering Paragraph 56, the Library District denies that any of its policies and/or rules is arbitrary. The Library District further states that the allegations contain legal conclusions

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1 rather than factual allegations to which no response is required; to the extent the allegations require a
2 response, the Library District denies the allegations.

3 57. Answering Paragraph 57, the Library District states that the allegations contain legal
4 conclusions rather than factual allegations to which no response is required; to the extent the
5 allegations require a response, the Library District denies the allegations.

6 58. Answering Paragraph 58, the Library District denies the allegations.

7 59. Answering Paragraph 59, the Library District denies that its behavior was unlawful.
8 Consequently, the Library District denies that it caused Ms. Flores any loss or damage. The Library
9 District denies any remaining and/or inconsistent allegations.

10 60. Answering Paragraph 60, the Library District states that the allegations contain legal
11 conclusions rather than factual allegations to which no response is required; to the extent the
12 allegations require a response, the Library District denies the allegations.

13 61. Answering Paragraph 61, the Library District states that the allegations contain legal
14 conclusions rather than factual allegations to which no response is required; to the extent the
15 allegations require a response, the Library District denies the allegations.

16 **SECOND CLAIM FOR RELIEF**
17 **(Declaratory Judgment)**

18 62. Answering Paragraph 62, the Library District reasserts and incorporates by reference
19 the previous Paragraphs, inclusive, as though fully set forth herein.

20 63. Answering Paragraph 63, the Library District denies that any of its policies and/or
21 rules is arbitrary. The Library District further states that the allegations contain legal conclusions
22 rather than factual allegations to which no response is required; to the extent the allegations require a
23 response, the Library District denies the allegations.

24 64. Answering Paragraph 64, the Library District denies that any of its policies and/or
25 rules is arbitrary. The Library District further states that the allegations contain legal conclusions
26 rather than factual allegations to which no response is required; to the extent the allegations require a
27 response, the Library District denies the allegations.

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1 65. Answering Paragraph 65, the Library District denies that any of its policies and/or
2 rules is arbitrary. The Library District further states that the allegations contain legal conclusions
3 rather than factual allegations to which no response is required; to the extent the allegations require a
4 response, the Library District denies the allegations.

5 66. Answering Paragraph 66, the Library District denies that any of its policies and/or
6 rules is arbitrary. The Library District further states that the allegations contain legal conclusions
7 rather than factual allegations to which no response is required; to the extent the allegations require a
8 response, the Library District denies the allegations.

9 67. Answering Paragraph 67, the Library District denies that any of its policies and/or
10 rules is arbitrary. The Library District further admits that the Notice of Trespass arose out of an
11 incident during which Ms. Flores was carrying a firearm on Library District property. The Library
12 District denies all remaining and/or inconsistent allegations.

13 68. Answering Paragraph 68, the Library District states that the allegations contain legal
14 conclusions rather than factual allegations to which no response is required; to the extent the
15 allegations require a response, the Library District denies the allegations.

16 69. Answering Paragraph 69, the Library District states that the allegations contain legal
17 conclusions rather than factual allegations to which no response is required; to the extent the
18 allegations require a response, the Library District denies the allegations.

19 70. Answering Paragraph 70, the Library District states that the allegations contain legal
20 conclusions rather than factual allegations to which no response is required; to the extent the
21 allegations require a response, the Library District denies the allegations.

22 71. Answering Paragraph 71, the Library District states that the allegations contain legal
23 conclusions rather than factual allegations to which no response is required; to the extent the
24 allegations require a response, the Library District denies the allegations.

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THIRD CLAIM FOR RELIEF
(Injunctive Relief)

69. Answering second Paragraph 69,¹ the Library District reasserts and incorporates by reference the previous Paragraphs, inclusive, as though fully set forth herein.

70. Answering second Paragraph 70, the Library District states that the allegations contain legal conclusions rather than factual allegations to which no response is required; to the extent the allegations require a response, the Library District denies the allegations.

71. Answering second Paragraph 71, the Library District states that the allegations contain legal conclusions rather than factual allegations to which no response is required; to the extent the allegations require a response, the Library District denies the allegations.

72. Answering Paragraph 72, the Library District denies that any of its policies and/or rules is arbitrary. The Library District further states that the allegations contain legal conclusions rather than factual allegations to which no response is required; to the extent the allegations require a response, the Library District denies the allegations.

73. Answering Paragraph 73, the Library District denies that any of its policies and/or rules is arbitrary. The Library District further states that the allegations contain legal conclusions rather than factual allegations to which no response is required; to the extent the allegations require a response, the Library District denies the allegations.

74. Answering Paragraph 74, the Library District denies that any of its policies and/or rules is arbitrary. The Library District further states that the allegations contain legal conclusions rather than factual allegations to which no response is required; to the extent the allegations require a response, the Library District denies the allegations.

75. Answering Paragraph 75, the Library District denies that any of its policies and/or rules is arbitrary. The Library District further admits that the Notice of Trespass arose out of an incident during which Ms. Flores was carrying a firearm on Library District property. The Library District denies all remaining and/or inconsistent allegations.

¹ Ms. Flores has inadvertently repeated paragraph numbers 69, 70, and 71. For the sake of clarity, the Library District adopts Ms. Flores' errant numbering system.

1 76. Answering Paragraph 76, the Library District states that the allegations contain legal
2 conclusions rather than factual allegations to which no response is required; to the extent the
3 allegations require a response, the Library District denies the allegations.

4 77. Answering Paragraph 77, the Library District states that the allegations contain legal
5 conclusions rather than factual allegations to which no response is required; to the extent the
6 allegations require a response, the Library District denies the allegations.

7 78. Answering Paragraph 78, the Library District states that the allegations contain legal
8 conclusions rather than factual allegations to which no response is required; to the extent the
9 allegations require a response, the Library District denies the allegations.

10 **AFFIRMATIVE DEFENSES**

11 1. Ms. Flores' Complaint fails to set forth facts sufficient to state a claim upon which
12 relief may be granted against the Library District and further fails to entitle Ms. Flores to the relief
13 sought, or to any relief whatsoever from Defendant.

14 2. Ms. Flores' claims against the Library District are barred, in whole or in part, by a
15 lack of standing.

16 3. Ms. Flores' claims against the Library District are barred, in whole or in part, for lack
17 of ripeness.

18 4. Ms. Flores' claims are barred, in whole or in part, by her failure to exhaust
19 administrative remedies.

20 5. Ms. Flores' claims are barred, in whole or in part, by the applicable statute of
21 limitations and/or statutes of repose, including, but not limited to, NRS 379.040.

22 6. Ms. Flores' claims are barred, in whole or in part, to the extent that any applicable
23 law prohibits her from lawfully carrying and/or owning a handgun. This includes, but is not limited
24 to, the following laws: NRS 202.300, NRS 202.360, and NRS 159.0593.

25 7. Ms. Flores' claims against the Library District are barred, in whole or in part, by Ms.
26 Flores' own acts, omissions, and other unlawful conduct.

27 8. Ms. Flores' claims against the Library District are barred, in whole or in part, by Ms.
28 Flores' own intentional and/or negligent conduct.

1 9. Ms. Flores' claims against the Library District are barred, in whole or in part,
2 because, at all times and places mentioned in the Complaint, the Library District's actions were
3 justified.

4 10. Ms. Flores' claims against the Library District are barred, in whole or in part,
5 because, at all times and places mentioned in the Complaint, Defendant acted in a manner authorized
6 by law.

7 11. While the Library District denies any liability to Ms. Flores whatsoever, to the extent
8 that Ms. Flores seeks equitable relief, Ms. Flores' claims for such relief are barred as she has an
9 adequate remedy at law.

10 12. Pursuant to the Nevada Rules of Civil Procedure, the Library District reserves the
11 right to assert, and gives notice that it intends to rely upon, any other affirmative defenses that may
12 become available or appear during discovery proceedings or otherwise in this case, and reserves the
13 right to amend its Answer to assert any such additional affirmative defenses.

14 13. The Library District has not yet completed a thorough investigation and study of all
15 facts and circumstances of the subject matter of the Complaint, and accordingly, reserves the right to
16 amend, modify, revise, or supplement its Answer, and to plead such further defenses and take such
17 further actions as it deems proper and necessary in its defense upon the completion of said
18 investigation and study.

19 DATED this 27th day of May 2016.

20 BAILEY ♦ KENNEDY

21 By: /s/ Dennis L. Kennedy

22 JOHN R. BAILEY

23 DENNIS L. KENNEDY

24 JOSEPH A. LIEBMAN

25 KELLY B. STOUT

26 AMANDA L. STEVENS

27 Attorneys for Defendant

28 Las Vegas-Clark County Library District

COUNTERCLAIM

Counterclaimant Las Vegas-Clark County Library District (the “Library District” or “Counterclaimant”) by and through its counsel of record, Bailey ♦ Kennedy, complains against Counterdefendant Michelle Flores (“Ms. Flores” or “Counterdefendant”) as follows:

I. THE PARTIES

1. The Library District is a political subdivision created pursuant to Nevada Revised Statute Chapter 379.

2. Upon information and belief, Counterdefendant Michelle Flores is and was, at all times relevant, a resident of Clark County, Nevada and a citizen of the State of Nevada.

II. JURISDICTION AND VENUE

3. Pursuant to NRS 30.030, this Court has jurisdiction over a case seeking a declaratory judgment.

4. Pursuant to NRS 13.040, venue is proper in the Eighth Judicial District Court, Clark County, Nevada.

III. FACTS

5. NRS 379.040 states that the Library District must ensure that “[t]he library and reading room of any consolidated, county, district or town library must forever be and remain free and accessible to the public.”

6. In accordance with its statutory obligations, values, and operating principals, the Library District has adopted Rules of Conduct and a policy prohibiting dangerous weapons (the “Dangerous Items Policy”).

7. The Library District’s Rules of Conduct includes a requirement that “[l]ibrary patrons shall be engaged in normal activities associated with the use of a public library. Conduct that disturbs library users or staff, or that hinders others from using the library or library materials is prohibited.”

8. The Rules of Conduct provides for consequences up to and including a one-year suspension of library privileges.

///

- 1 9. The Library District's Dangerous Items Policy states as follows:
2 NRS 379.040 (quoted below) requires the Trustees of the Las Vegas-Clark
3 County Library District to guarantee that libraries are free and accessible
4 to the public. The Library District bans bringing or possessing on Library
5 District owned premises any dangerous item, including, without
6 limitation, a deadly or dangerous weapon, loaded or unloaded, or
7 ammunition or material for a weapon.

8 NRS 379.040 Library to be free and accessible to public;
9 regulations of trustees. The library and reading room of any
10 consolidated, county, district or town library must forever be and
11 remain free and accessible to the public, subject to such reasonable
12 regulations as the trustees of the library may adopt.

13 A "no firearms" sign is posted at all public entrances to libraries. The "no
14 firearms" policy protects the health and safety of the Library District's
15 patrons, which include young children. The Library District will
16 reasonably enforce its "no firearms" policy by asserting trespass claims
17 against violators.

18 Patrons wishing to use Library District services while in possession of any
19 dangerous item, including without limitation, a deadly or dangerous
20 weapon, or ammunition or material for a weapon may consult with Library
21 District Administration at 702.507.4400 and/or administration@lvccld.org
22 about alternative sources of library services provided within Clark County
23 by the Library District or others.

- 24 10. Pursuant to the Dangerous Items Policy, the Library District has posted a notice on all
25 public entrances which consists of a silhouette of a pistol in a circle with a line through it, next to the
26 words: "No Firearms Allowed (Violators Subject to Prosecution)"

- 27 11. The Library District has arranged for its staff to provide alternative services to
28 patrons who, if they entered the building, would be in violation of the Dangerous Items Policy. Staff
29 is prepared to:

- 30 a. Assist patrons with online services;
31 b. Allow patrons to check out materials without having to enter the facility; and
32 c. Discuss any other services requested and provide any reasonable accommodation.

- 33 12. On March 16, 2016, Ms. Flores entered the Rainbow Branch with three young
34 children.

- 35 13. Ms. Flores and the children proceeded to use the Library District facilities for
36 approximately one hour before proceeding towards the exit.

37 ///

1 14. As Ms. Flores was exiting the building, the Library District's security guard observed
2 that she was carrying a handgun in a holster on her hip.

3 15. Because carrying a firearm violates the Library District's policy prohibiting
4 dangerous weapons, the security guard approached Ms. Flores and informed her that during future
5 visits, she could not bring a handgun into the building.

6 16. When Ms. Flores began to argue with the security guard, he called for a librarian.

7 17. Ms. Tinsler, an Adult Services Librarian, spoke with Ms. Flores and explained that
8 the Library District's Dangerous Items Policy does not allow patrons to carry firearms on Library
9 District property, and directed Ms. Flores' attention to the notice posted on the front doors, which
10 consists of a silhouette of a pistol in a circle with a line through it, next to the words: "No Firearms
11 Allowed (Violators Subject to Prosecution)."

12 18. Ms. Tinsler also read Ms. Flores the Library District's Dangerous Items Policy
13 prohibiting dangerous weapons.

14 19. When Ms. Flores questioned the Library District's statutory authority to adopt this
15 policy, Ms. Tinsler explained that NRS 379.040 requires that the Library District Trustees are
16 obligated to ensure that "[t]he library and reading room of any consolidated, county, district or town
17 library must forever be and remain free and accessible to the public, subject to such reasonable
18 regulations as the trustees of the library may adopt."

19 20. Ms. Tinsler informed Ms. Flores that she was charged with enforcing the policy, but
20 would not debate the policy's merits.

21 21. Ms. Tinsler provided Ms. Flores with the phone number for the Library District's
22 Administrative Offices and explained that it was the proper department if Ms. Flores wanted to
23 further discuss the issue.

24 22. Since Ms. Flores' business at the Library District was completed, Ms. Tinsler asked
25 Ms. Flores to leave and not return with a firearm.

26 23. Ms. Flores refused to leave.

27 ///

28 ///

1 24. Although Ms. Flores had been in the process of departing when she was approached
2 by the Library District's security guard, Ms. Flores refused to vacate the premises.

3 25. Instead, she and the three children (now crying) sat down on the floor in the entryway
4 between the two sets of glass doors (immediately below the notice regarding the Library District's
5 Dangerous Items Policy) and instructed Ms. Tinsler to "go ahead and call Metro."

6 26. During the fifty minutes that it took the police to arrive, Ms. Flores was repeatedly
7 informed that she could leave at any time.

8 27. Ms. Flores refused to leave until Las Vegas Metro police officers arrived.

9 28. Ms. Flores did not make any demands, did not explain why she had decided to sit in
10 the Library's main entrance, and did not state what she hoped to obtain by her behavior.

11 29. When police officers arrived, Ms. Tinsler explained that the Library District merely
12 wanted Ms. Tinsler to leave peacefully.

13 30. If Ms. Flores agreed to leave peacefully, the Library District was not interested in
14 imposing any punishment or consequences.

15 31. However, Ms. Flores would not leave.

16 32. The police officers had to issue Ms. Flores a citation for trespassing and escorted her
17 off the Library District's property.

18 33. Before Ms. Flores left, Ms. Tinsler gave one of the officers a Notice of Trespass,
19 which informed Ms. Flores of her suspension, and a form for submitting an appeal of her suspension.

20 34. Ms. Flores never submitted an appeal.

21 **A. FIRST CAUSE OF ACTION**
22 **(Declaratory Relief)**

23 35. The Library District realleges and incorporates by reference the averments contained
24 in all previous Paragraphs, inclusive, as though fully set forth herein.

25 36. The parties disagree over the interpretation of NRS 244.364, 268.418, and NRS
26 269.222.

27 37. The parties disagree over the enforceability of the Library District's Dangerous Items
28 Policy.

39. Pursuant to NRS 30.100, the Library District also requests that the Court award the Library District its attorneys' fees and any other supplemental relief that the Court deems appropriate.

9 WHEREFORE, Counterclaimant prays for the following relief:

- 10 1. For an award of costs and attorneys' fees reasonably incurred by Counterclaimant;
11 2. For declaratory relief; and
12 3. For such other and further relief as the Court deems just and proper.

13 DATED this 27th day of May 2016.

BAILEY ♦ KENNEDY

By: /s/ Dennis L. Kennedy

JOHN R. BAILEY
DENNIS L. KENNEDY
JOSEPH A. LIEBMAN
KELLY B. STOUT
AMANDA L. STEVENS

Attorneys for Defendant
Las Vegas-Clark County Library District

CERTIFICATE OF SERVICE

I certify that I am an employee of BAILEY ♦ KENNEDY and that on the 27th day of May, 2016, service of the foregoing DEFENDANT LAS VEGAS-CLARK COUNTY LIBRARY DISTRICT'S ANSWER TO PLAINTIFF MICHELLE FLORES' VERIFIED COMPLAINT AND COUNTERCLAIM was made by mandatory electronic service through the Eighth Judicial District Court's electronic filing system and/or by depositing a true and correct copy in the U.S. Mail, first class postage prepaid, and addressed to the following at their last known address:

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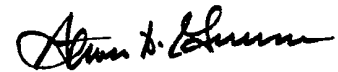
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MICHELLE FLORES

/s/ Jennifer Kennedy

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CLERK OF THE COURT

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Las Vegas-Clark County Library District

DISTRICT COURT

CLARK COUNTY, NEVADA

MICHELLE FLORES, an individual,

Plaintiff,

vs.

LAS VEGAS-CLARK COUNTY LIBRARY
DISTRICT, a political subdivision of the State of
Nevada; DOES 1-X, inclusive, and ROES A-Z,
inclusive,

Defendants.

Case No. A-16-735496-C

Dept. No. XXIII

**LAS VEGAS-CLARK COUNTY LIBRARY DISTRICT'S OPPOSITION TO
MICHELLE FLORES' MOTION FOR PRELIMINARY INJUNCTION**

HEARING DATE: JUNE 21, 2016

HEARING TIME: 9:30 A.M.

Defendant Las Vegas-Clark County Library District ("Library District") opposes Plaintiff Michelle Flores' ("Ms. Flores") Motion for Preliminary Injunction ("Motion"). Ms. Flores seeks a preliminary injunction requiring the Library District to reinstate her library privileges. As set forth

1 below, Ms. Flores's library privileges were suspended pursuant to the Library District's Rules of
2 Conduct for engaging in disruptive conduct, hindering other patrons' use of the library.
3 Accordingly, Ms. Flores cannot demonstrate a likelihood of success on the merits. Moreover, Ms.
4 Flores cannot establish irreparable harm justifying the extraordinary relief she seeks. Finally, public
5 policy and the equities both weigh against granting the requested injunction. Consequently, Ms.
6 Flores has not met her burden of proof, and the Motion must be denied.

7 This Opposition is made and based on the papers and pleadings on file, the following
8 Memorandum of Points and Authorities and exhibits attached hereto, and any oral argument heard
9 by the Court.

10 DATED this 27th day of May 2016.

11 BAILEY ♦ KENNEDY

12
13 By: /s/ Dennis L Kennedy

14 JOHN R. BAILEY
15 DENNIS L. KENNEDY
16 JOSEPH A. LIEBMAN
17 KELLY B. STOUT
18 AMANDA L. STEVENS

19 *Attorneys for Defendant*
20 Las Vegas-Clark County Library District
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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Ms. Flores has sought a preliminary injunction to lift a one-year suspension of her library privileges. However, Ms. Flores has mischaracterized the basis of her suspension. Ms. Flores claims that she was suspended because of her violation of the Library District's policy that prohibits possession of a firearm on Library District property ("Dangerous Items Policy "). However, Ms. Flores' suspension was based on her violation of the Library District's Rules of Conduct, which prohibits "[c]onduct that disturbs library users or staff, or that hinders others from using the library or library materials." As shown below, this mistake is fatal to Ms. Flores' Motion.

On March 16, 2016, Ms. Flores violated the policy by open carrying a holstered .38 caliber revolver¹ to the Rainbow Branch of the Library District (the "Rainbow Library"²). As Ms. Flores was exiting the Rainbow Library, a Library District security officer approached her, explained the Dangerous Items Policy, and told her she could not bring a handgun into the building on future visits. When Ms. Flores questioned the policy, the Security Guard called over a librarian, Deborah Tinsler ("Ms. Tinsler"), who provided Ms. Flores with a more detailed explanation of the Library District's policy. Ms. Tinsler reiterated the request that Ms. Flores not bring her weapon on future visits to the library.

Upon hearing this information, Ms. Flores became upset and began arguing with Ms. Tinsler. Although she and her children had already completed their library business and had been walking out of the building, Ms. Flores and her three children sat down on the floor in the main entrance (between the double set of entrance doors) and refused to leave. Ms. Tinsler explained that if Ms. Flores would not leave, she would have to call the police. Rather than exiting, Ms. Flores insisted that the Library District "go ahead and call Metro."

When the police arrived at the library, Ms. Flores resumed arguing about her right to carry a

¹ For the limited purposes of this Opposition, the Library District assumes *arguendo* the truth of the facts set forth in paragraphs 30-34 of Ms. Flores' Complaint.

² The Las Vegas-Clark County Library District consists of fourteen urban branches and eleven outlying branches, one of which is located at 3150 North Buffalo Drive, Las Vegas, Nevada 89128 (the "Rainbow Library"). (Ex. 1 at ¶ 9.)

1 firearm. Since she would not leave peacefully, the officers cited (ticketed) Ms. Flores for
2 trespassing. Because Ms. Flores had to be cited for trespassing and escorted off the premises (rather
3 than leaving peacefully), the Library District suspended her Library District privileges for a year.

4 Although Ms. Flores' conduct was related to the Library District's Dangerous Items Policy,
5 the Library District's decision to suspend Ms. Flores' library privileges was due to her *reaction* to
6 the policy (disruptive behavior that violated Rule 1 the Rules of Conduct), not her disagreement with
7 the Dangerous Items Policy or violation of the Dangerous Items Policy.

8 In her Motion, Ms. Flores asks the Court to issue a preliminary injunction lifting her
9 suspension, but she is unable to meet the requirements of a preliminary injunction, which requires
10 that Ms. Flores demonstrate a likelihood of success on the merits, irreparable harm in the absence of
11 an injunction, that her harm is greater than the harm to the Library District, and that the injunction
12 would not violate public policy.

13 First, Ms. Flores is unable to demonstrate any likelihood of success on the merits. As a
14 preliminary matter, Ms. Flores' request for judicial review is not ripe because she has failed to
15 exhaust her administrative remedies.

16 Notwithstanding the ripeness issue, the Library District had ample justification for
17 suspending Ms. Flores' library privileges under its Rules of Conduct. Ms. Flores contends that she
18 has been prohibited "from entering any District library facility for 12 months . . . on the basis of her
19 visible, open and obvious possession of a firearm." (Mot. 4:11-14.) However, Ms. Flores' privileges
20 were suspended as a result of her *reaction* when told that she could not return to the library with a
21 firearm—i.e., sitting in the front entrance with crying children until the police escorted her off the
22 property—not the violation of the Dangerous Items Policy.

23 Furthermore, even if the Library District had suspended Ms. Flores for her violation of the
24 Dangerous Items Policy (which it did not), the Library District may prohibit dangerous weapons on
25 its property. Ms. Flores argues that Nevada Senate Bill 175 ("SB 175") preempts any Library
26 District rules, regulations, or policies, but she is wrong. Sections 8, 9, and 10 of SB 175 pertain only
27 to counties, cities, and towns. Like school districts and judicial districts, the Library District is a
28 type of political subdivision that is distinct from counties, cities, and towns (which are also political

subdivisions). SB175 does not modify NRS Chapter 379, which pertains to Library Districts, or otherwise prohibit the Library District from enforcing its Dangerous Items Policy.

Second, Ms. Flores cannot prevail on her request for an injunction because she has not made any effort to establish the existence of *any* damages resulting from her suspension, let alone irreparable harm. Since a showing of irreparable harm is a prerequisite to an injunction, Ms. Flores' Motion must be denied.

Finally, the equities and public policy both tip heavily in favor of the Library District. Regardless of the Library District's basis for the suspension, the equities and public policy support upholding the suspension. As Ms. Flores has failed to offer any argument on either factor, they automatically weigh in the Library District's favor.

All four factors weigh in favor of the Library District; therefore, Ms. Flores' Motion must be denied.

II. RELEVANT FACTS

A. The Library District's Policy Prohibiting Dangerous Weapons.

During the last fiscal year, the Library District provided far more than books³ to the 1.5 million citizens who live within the 8000 square miles that comprise the Library District. (Ex. 1 at ¶ 7.) It hosted 17,750 Library-sponsored and community programs for 598,954 children and adult attendees. (*Id.*)

It is the mission of the Library District to "provide[] welcoming and inspiring spaces for reading, learning and achieving, and the tools and resources that families, children, teens and adults need to succeed." (Ex. 4.) In particular, the Library District strives to be a safe place for children and allows children over 10 years of age to use the facilities independently. (Compl. at Ex. 1 at ¶ 11.) Accordingly, the Library District is committed to "[c]reat[ing] a sense of community by providing a welcoming, inviting, secure environment for our public and staff." (Ex. 4.) Additionally, the Library District has a statutory obligation to ensure that "[t]he library and reading

³ However, it is notable that library users checked out 14.9 million books and other materials during that year. (Ex. 1 at ¶ 8.)

1 room of any consolidated, county, district or town library must forever be and remain free and
2 accessible to the public.” NRS 379.040.

3 In accordance with its statutory obligations, values, and operating principals, the Library
4 District has adopted Rules of Conduct and a policy prohibiting weapons and other dangerous items
5 (the “Dangerous Items Policy”). (Ex. 5.) The Library District’s Rules of Conduct includes a
6 requirement that “[l]ibrary patrons shall be engaged in normal activities associated with the use of a
7 public library. Conduct that disturbs library users or staff, or that hinders others from using the
8 library or library materials is prohibited.” (Compl. at Ex. 1 at ¶ 1.) Additionally, the Rules of
9 Conduct provides for consequences up to and including a one-year suspension of library privileges.
10 (*Id.* at Ex. 1.) The Dangerous Items Policy prohibits firearms as well as other dangerous weapons:

11 NRS 379.040 (quoted below) requires the Trustees of the Las Vegas-Clark
12 County Library District to guarantee that libraries are free and accessible
13 to the public. The Library District bans bringing or possessing on Library
14 District owned premises any dangerous item, including, without
15 limitation, a deadly or dangerous weapon, loaded or unloaded, or
16 ammunition or material for a weapon.

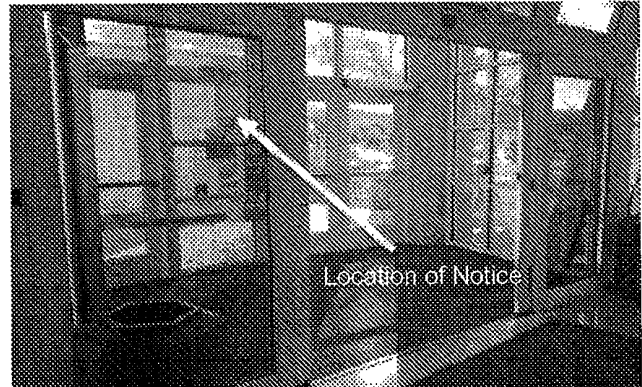
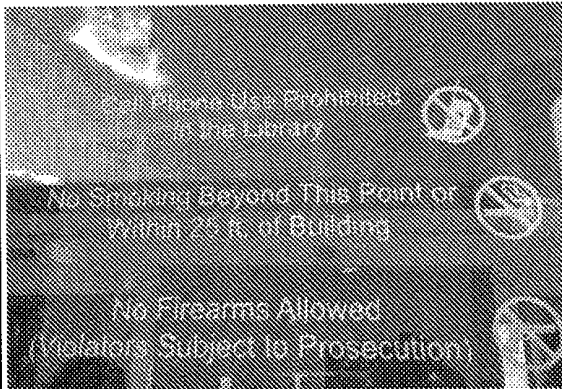
15 NRS 379.040 Library to be free and accessible to public;
16 regulations of trustees. The library and reading room of any
17 consolidated, county, district or town library must forever be and
18 remain free and accessible to the public, subject to such reasonable
19 regulations as the trustees of the library may adopt.

18 A “no firearms” sign is posted at all public entrances to libraries. The “no
19 firearms” policy protects the health and safety of the Library District’s
20 patrons, which include young children. The Library District will
21 reasonably enforce its “no firearms” policy by asserting trespass claims
22 against violators.

21 Patrons wishing to use Library District services while in possession of any
22 dangerous item, including without limitation, a deadly or dangerous
23 weapon, or ammunition or material for a weapon may consult with Library
24 District Administration at 702.507.4400 and/or administration@lvclld.org
25 about alternative sources of library services provided within Clark County
26 by the Library District or others.

24 (Ex. 5.) Pursuant to the Dangerous Items Policy, the Library District has posted a notice on all
25 public entrances which consists of a silhouette of a pistol in a circle with a line through it, next to the
26 words:

27 No Firearms Allowed
28 Violators Subject to Prosecution



(Ex. 1 at ¶ 6 & Ex. 6.)

Additionally, the Dangerous Items Policy provides that alternative access to library services is made available. In addition to providing support and assistance with online services, the staff is prepared to assist patrons with checking out materials without having to enter the facility. (Ex. 1 at ¶ 10.) A patron can call or email a list of items they would like to check out and the items will be collected and delivered to the person's car. Similarly, a patron can call and library staff will come out to their car to deliver materials the patron would like to check out or to collect materials and provide a receipt for materials being returned. (*Id.*)

B. Ms. Flores' Suspension

On March 16, 2016, Ms. Flores entered the Rainbow Branch with her three young children.⁴ (Compl. ¶ 32-33.) Ms. Flores and her children proceeded to use the Library District facilities for approximately one hour before checking out some books and proceeding towards the exit. (Compl. ¶ 32.) Ms. Flores was passing through the main doors when she was stopped by a Library District security guard. (Compl. ¶ 32.)

⁴ For the limited purpose of this Opposition, the Library District assumes the truth of the factual allegations contained in paragraphs 30 through 34 of Ms. Flores' Verified Complaint. However, the Library District will respond to each of these allegations in its Answer and Counterclaim. Pursuant to a stipulation between counsel to extend the Library District's time to respond to the Complaint and the Motion, the Library District's Answer and Counterclaim are being filed concurrently.

1 As Ms. Flores was exiting the building, the Library District's security guard observed that
2 she was carrying a handgun in a holster on her right hip. (Ex. 3 at 2.) Because carrying a firearm
3 violates the Library District's policy prohibiting dangerous weapons, the security guard approached
4 Ms. Flores and informed her that during future visits, she could not bring a handgun into the
5 building. (*Id.*) When Ms. Flores began to argue with the security guard, he called for a librarian.
6 (*Id.*)

7 Ms. Tinsler, an Adult Services Librarian, spoke with Ms. Flores and explained that the
8 Library District's Dangerous Items Policy does not allow patrons to carry firearms on Library
9 District property. (*Id.*) Ms. Tinsler also directed Ms. Flores' attention to the notice posed on the
10 front doors, which consists of a silhouette of a pistol in a circle with a line through it next to the
11 words:

12 No Firearms Allowed
13 Violators Subject to Prosecution

14 (*Id.*) Ms. Tinsler also read Ms. Flores the Library District's Dangerous Items Policy prohibiting
15 dangerous weapons. (*Id.*) When Ms. Flores questioned the Library District's statutory authority to
16 adopt this policy, Ms. Tinsler explained that NRS 379.040 requires that the Library District Trustees
17 are obligated to ensure that "[t]he library and reading room of any consolidated, county, district or
18 town library must forever be and remain free and accessible to the public, subject to such reasonable
19 regulations as the trustees of the library may adopt." (*Id.*)

20 Ms. Tinsler informed Ms. Flores that she was charged with enforcing the policy, but would
21 not debate the policy's merits. (*Id.*) However, Ms. Tinsler provided Ms. Flores with the phone
22 number for the Library District's Administrative Offices and explained that it was the proper
23 department if Ms. Flores wanted to further discuss the issue. (*Id.*) Since Ms. Flores' business at the
24 Library District was completed, Ms. Tinsler asked Ms. Flores to leave and not return with a firearm.
25 (*Id.*) Ms. Flores refused to leave. (*Id.*)

26 Although Ms. Flores had been in the process of departing when she was approached by the
27 Library District's security guard, Ms. Flores refused to vacate the premises. Instead, she and the
28 three children (now crying) sat down on the floor in the entryway between the two sets of glass

1 doors (immediately below the notice regarding the Library District’s Dangerous Items Policy) and
2 instructed Ms. Tinsler to “go ahead and call metro.” (*Id.*)

3 During the fifty minutes that it took the police to arrive, Ms. Flores was repeatedly told that
4 she was free to leave. (*Id.*) Nonetheless, Ms. Flores refused to leave until Las Vegas Metro officers
5 arrived. (*Id.*) Ms. Flores did not make any demands, did not explain why she had decided to sit in
6 the Library’s main entrance, and did not state what she hoped to obtain by her behavior. (*See id.*)

7 When the police officers arrived, Ms. Tinsler explained that the Library District merely
8 wanted Ms. Tinsler to leave peacefully. (*Id.*) If Ms. Flores complied, the Library District was not
9 interested in imposing any punishment or consequences. (*Id.*) However, Ms. Flores would not
10 leave. The police officers had to issue a citation for trespassing and escort her off the Library
11 District’s property. (*Id.*)

12 Before Ms. Flores left, Ms. Tinsler gave one of the officers a Notice of Trespass, which
13 informed Ms. Flores of her suspension and her right to appeal by writing to the Executive Director
14 within fourteen days. (*Id.*) Ms. Flores never submitted an appeal. (Ex. 1 at ¶ 12.)

15 **III. LEGAL ANALYSIS**

16 “[A] preliminary injunction is an extraordinary and drastic remedy, one that should not be
17 granted unless the movant, *by a clear showing*, carries the burden of persuasion.” *Mazurek v.*
18 *Armstrong*, 520 U.S. 968, 972 (1997) (internal citations omitted); *see also Stuhlbarg Int’l Sales Co.,*
19 *Inc. v. John D. Brush and Co., Inc.*, 240 F.3d 832, 839 (9th Cir. 2001) (noting that the analysis of
20 whether to issue a temporary restraining order is substantially identical to that of preliminary
21 injunctions).⁵

22 To obtain a preliminary injunction a plaintiff must show: (1) a reasonable likelihood that she
23 will prevail on the merits; (2) a reasonable probability that if the non-moving party’s conduct is
24 allowed to continue, it will cause irreparable harm for which there is an inadequate remedy at law;
25 (3) the threatened injury to the plaintiff absent issuance of an injunction outweighs any potential

26 ⁵ Because N.R.C.P. 65 is based on Federal Rule of Civil Procedure 65, the Nevada Supreme Court recognizes
27 decisions of federal courts as “strong persuasive authority” on questions of injunctive relief. *Las Vegas Novelty v.*
28 *Fernandez*, 106 Nev. 113, 119, 787 P.2d 772, 776 (1990).

1 harm that the injunction may cause the defendant; and (4) the granting of the injunction is not
2 contrary to the public interest. *Univ. & Cmty. Coll. Sys. of Nev. v. Nevadans for Sound Gov't.*, 120
3 Nev. 712, 721, 100 P.3d 179, 187 (2004).

4 Ms. Flores bears the burden of proving all of the prerequisites for injunctive relief. *See*
5 *Dixon v. Thatcher*, 103 Nev. 414, 416, 742 P.2d 1029 (1987); *L.A. Mem'l Coliseum v. Nat'l Football*
6 *League*, 634 F.2d 1197, 1203 (9th Cir. 1980). The failure to prove each element is fatal to the
7 motion. *See Arcamuzi v. Cont'l Airlines*, 819 F.2d 935, 937 (9th Cir. 1987) (stating that an
8 injunction must be denied if plaintiff "shows no chance of success on the merits," or is unable to
9 "demonstrate a significant threat of irreparable injury").⁶

10 As demonstrated below, Ms. Flores has misconstrued the Library District's basis for issuing
11 the suspension. Accordingly, she cannot demonstrate a likelihood of success on the merits because
12 her disruptive conduct warranted suspension. Additionally, Ms. Flores has made only a bare
13 allegation of irreparable harm, which is not sufficient to meet her burden. Finally, Ms. Flores has
14 not offered any argument regarding the relative equities or public policy. Therefore, Ms. Flores'
15 request for an injunction must be denied.

16 **A. Ms. Flores Is Unable to Demonstrate Any Likelihood of Success on the Merits.**

17 Ms. Flores has asked the Court to lift her suspension, but is unable to demonstrate that she
18 will ultimately prevail on the merits of her claims. The requirement of a "reasonable probability of
19 success on the merits" means that the moving party must demonstrate both the existence of a claim
20 against the defendant and a likelihood of prevailing on that claim. *State Farm Mut. Auto. Ins. Co. v.*
21 *Jafros Inc.*, 109 Nev. 926, 928, 860 P.2d 176, 178 (1993). Ms. Flores fails to meet this standard.

22 **1. Ms. Flores' Suspension Is Not Ripe for Review Because Ms. Flores Did**
23 **Not Exhaust Her Administrative Remedies.**

24 As a threshold matter, Ms. Flores failed to exhaust her administrative remedies. Specifically,
25 she did not appeal her suspension. Accordingly, the enforcement of Ms. Flores' suspension is not

26 ⁶ Because Ms. Flores' Motion seeks to compel the Library District to take an affirmative action (*i.e.*, rescind her
27 suspension), Ms. Flores seeks a mandatory injunction requiring an even higher burden of proof. *Leonard v. Stoebling*,
102 Nev. 543, 550-51, 728 P.2d 1358, 1363 (1986) ("Mandatory injunctions are used to restore the status quo, to undo
28 wrongful conditions. A court should exercise restraint and caution in providing this type of equitable relief.").

1 ripe for review.

2 It is a “well-established rule that administrative remedies must be exhausted prior to seeking
3 judicial relief.” *First Am. Title Co. of Nev. v. State*, 91 Nev. 804, 806, 543 P.2d 1344, 1345 (1975).
4 *See also Benson v. State Eng’r*, 131 Nev. Adv. Op. 78, 358 P.3d 221, 224 (2015) (“Ordinarily, before
5 availing oneself of district court relief from an agency decision, one must first exhaust available
6 administrative remedies.” (quoting *Malecon Tobacco, LLC v. State ex rel. Dep’t of Taxation*, 118
7 Nev. 837, 839, 59 P.3d 474, 475–76 (2002)), reh’g denied (Nov. 5, 2015). “The exhaustion doctrine
8 gives administrative agencies an opportunity to correct mistakes and conserves judicial resources, so
9 its purpose is valuable; requiring exhaustion of administrative remedies often resolves disputes
10 without the need for judicial involvement.” *Mesagate Homeowners’ Ass’n v. City of Fernley*, 124
11 Nev. 1092, 1099, 194 P.3d 1248, 1252-53 (2008) (quoting *Allstate Ins. Co. v. Thorpe*, 123 Nev. 565,
12 572-73, 170 P.3d 989, 993-94 (2007)). Failure to exhaust administrative remedies renders a matter
13 unripe for judicial review. *Thorpe*, 123 Nev. at 571, 170 P.3d at 993 (2007).

14 At the time of her suspension, Ms. Flores was given written notice that she could appeal her
15 suspension. The Notice of Trespass plainly states: “If you wish to appeal this decision, you must do
16 so by written request to the Library Director within fourteen (14) days of the above date.” (Compl.
17 at Ex. 1.) Nonetheless, Ms. Flores did not request an appeal. (Ex. 1 at ¶ 12.)

18 The Library District’s Rules of Conduct attempt to ensure the safe, orderly, and efficient
19 administration of Library District business. (Ex. 1 a ¶ 13.) Ms. Flores was suspended due to her
20 behavior that was disruptive of library function and interfered with other patrons’ ability to access a
21 library facility. Admittedly, the Notice of Trespass does not contain a full accounting of the facts
22 that justify Ms. Flores’ suspension. This may have contributed to Ms. Flores’ misapprehension
23 regarding the conduct that forms the basis for her suspension. However, this issue could have (and
24 would have) been clarified if she had sought internal review of the suspension. Moreover, it would
25 have provided the parties with an opportunity to discuss potential resolution of this dispute.

26 Ms. Flores chose not to seek review of the suspension. Consequently, the enforceability of
27 her suspension is not ripe for judicial review.

28 ///

2. The Library District Was Justified in Suspending Ms. Flores' Library Privileges.

Although Ms. Flores' Motion alleges that her Library District privileges were suspended because she violated the Library District's Dangerous Items Policy (Mot. 3:3-7), her suspension is based on her violation of the Library District's Rules of Conduct. It is evident that the Library District's decision to call the police and suspend Ms. Flores' privileges was not motivated by the fact that she was in possession of a firearm on Library District property. Rather, the Library District responded to Ms. Flores who was sat in the main entryway of the Rainbow Library with three crying children and refused to leave until the Library District called the police to remove her from the property.

When the security guard approached Ms. Flores, he simply informed her that the Library District's Dangerous Items Policy prohibits firearms on Library District property and told her that she would need to leave her gun at home during future visits. (Ex. 3 at 2.) He did not say that she was suspended or otherwise imply that her possession of a firearm would result in any adverse consequences. (*See id.*) Similarly, when Ms. Tinsler spoke to Ms. Flores, her request was the same; she simply asked Ms. Flores to leave and not return with a firearm. (Ex. 2 at 1.) Ms. Tinsler further explained to Ms. Flores that if she refused to leave, she would then have to call the police. (*Id.*) It was only when Ms. Flores refused to leave that Ms. Tinsler contacted the police. (*Id.*) Furthermore, Ms. Tinsler informed the police who came to the scene that the Library District was not interested in having Ms. Flores ticketed or arrested if she would simply leave peacefully. (*Id.* at 1-2.) The citation and the suspension were a consequence of Ms. Flores' disruption and refusal to leave the library—*not* a consequence of her carrying a firearm.

Ms. Flores admits that when the security guard approached her, she had been at the library for approximately one hour, had checked out some books, had concluded her library business, and had already exited the first of the two sets of doors at the main entrance. (Compl. ¶ 32-34.) Having concluded her library activities, Ms. Flores had no reason to remain on Library District property. Nonetheless, Ms. Flores and her children caused a disruption in library services and interfered with other patrons' access to the library by sitting in the relatively small space between the two sets of

1 doors leading into the Rainbow Library and would not leave. During this time, Ms. Flores' children
2 became upset and began crying.

3 Ms. Flores' decision to remain on the property and obstruct the entryway to the Rainbow
4 Library violated the first Rule of Conduct, which states:

5 Library Patrons shall be engaged in normal activities associated with the
6 use of a public library. Conduct that disturbs library users or staff, or that
hinders others from using the library is prohibited.

7 (Compl. at Ex. 1.) The Rules of Conduct further states that violation can result in suspension:

8 Depending on the seriousness of the infraction, any patron who violates
9 any of these Rules of Conduct may be trespassed from the Library District
10 for a period of up to one year. Any patron who is trespassed is prohibited
11 from use of all Las Vegas-Clark County Library District facilities and
services. Trespassed patrons returning to a Las Vegas-Clark County
Library District branch during a period of trespass will be issued a new
one-year trespass.

12 (*Id.*) Ms. Flores has not disputed the validity of the Library District's Rules of Conduct, its right to
13 enforce the rules, or its right to issue suspensions for violation of the Rules of Conduct.
14 Additionally, she can hardly dispute that sitting in the main entryway of the Rainbow Library with
15 crying children is not "normal activities associated with the use of a public library," which would be
16 disruptive to library users and staff, and likely hinders others from using the library. Consequently,
17 the Library District was justified in its decision to suspend Ms. Flores' library privileges.

18 **3. Ms. Flores' Suspension Did Not Violate Her Right to Due Process.⁷**

19 Even assuming that Ms. Flores' suspension was a result of her violating the Dangerous Items
20 Policy, it would not constitute a due process violation. The policy is not vague—it plainly describes
21 the conduct that is prohibited. Second, it is not a violation of Article 1, Section 11 of the Nevada
22 Constitution. Third, the Library District is not "expressly preempted by Senate Bill. No. 175."
23 (Mot. 5 n.2) Therefore, Ms. Flores' Motion must fail.

24
25
26 ⁷ In addition to the three arguments the Library District addresses in its opposition, Ms. Flores suggested that any
27 rule or policy would violate Nevada's Open Meeting Law. However, Ms. Flores does not allege a violation of the Open
28 Meeting Law in her Complaint, and she offers no argument or support in her Motion. Accordingly, the Library District
does not respond to this comment. However, should Ms. Flores raise the issue in her reply brief, the Library District
reserves its right to seek an extension of the hearing date in order to seek leave to file a supplemental brief.

a. The Dangerous Items Policy Is Not Void for Vagueness.

Ms. Flores argues that the Dangerous Items Policy is void for vagueness. (*See* Mot. 5:20-6:3.) However, Ms. Flores misunderstands the appropriate standard and relies on her own ignorance of the Dangerous Items Policy. Instead, Ms. Flores must establish that the rule does not adequately describe the prohibited conduct, which she cannot. Ms. Flores' representation that "the District banned Michelle (and effectively her children) from the library without giving any notice that her lawful conduct was in any way prohibited" is disingenuous. (Mot. 6:8-9.)

"Vagueness doctrine is an outgrowth not of the First Amendment, but of the Due Process Clause[s] of the Fifth and Fourteenth Amendments to the United States Constitution." *State v. Castaneda*, 126 Nev. 478, 481, 245 P.3d 550, 553 (2010) (quoting *United States v. Williams*, 553 U.S. 285, 304 (2008)), *opinion modified on denial of reh'g*, No. 52911, 2010 WL 5559401 (Nev. Dec. 22, 2010). A statute is unconstitutionally vague and subject to facial attack if it (1) fails to provide notice sufficient to enable persons of ordinary intelligence to understand what conduct is prohibited and (2) lacks specific standards, thereby encouraging, authorizing, or even failing to prevent arbitrary and discriminatory enforcement." *Silvar v. Eighth Jud. Dist. Ct. ex rel. Cnty. of Clark*, 122 Nev. 289, 293, 129 P.3d 682, 684-85 (2006).

Notably, the standard is objective, not subjective. It does not turn on whether the plaintiff had actual knowledge of the existence of the policy. Rather, the Court will determine whether it "forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application." *In re Discipline of Schaefer*, 117 Nev. 496, 511, 25 P.3d 191, 201, *opinion modified on denial of reh'g*, 31 P.3d 365 (Nev. 2001).

The Dangerous Items Policy plainly states, "The Library District bans bringing or possessing on Library District owned premises any dangerous item, including, without limitation, a deadly or dangerous weapon, loaded or unloaded, or ammunition or material for a weapon." (Ex. 4.) Ms. Flores entered the Rainbow Library through the front doors, which read:

No Firearms Allowed
Violators Subject to Prosecution

(*See* Ex. 6.) Ms. Flores has not, and cannot, claim that the Dangerous Items Policy does not clearly

1 communicate what conduct is prohibited.

2 Moreover, while at the Rainbow Library, Ms. Flores was informed of the Dangerous Items
3 Policy and it was read to her. (Ex. 1 & 2.) Ms. Flores cannot reasonably claim that she did not have
4 actual knowledge that the Library District prohibited the possession of handguns. Nonetheless, Ms.
5 Flores' actual knowledge or subjective understanding of the policy is irrelevant because vagueness is
6 an objective standard.

7 A Dangerous Items Policy is enforceable if a reasonable person reading the policy would
8 know that possession of a handgun on Library District property is prohibited. The fact that Ms.
9 Flores did not have personal knowledge that the policy exists is irrelevant.

10 b. The Dangerous Items Policy Does Not Violate the Nevada
11 Constitution.

12 Without further elaboration, Ms. Flores simply asserts that "the District's ban for Michelle's
13 lawful exercise of her constitutional right to keep and bear arms without any authority to do so also
14 violates the Nevada Constitution." (Mot. 6:10-12.) This argument is both inadequate and incorrect.

15 Although the Nevada Supreme Court has provided little interpretation of Article 1, Section
16 11,⁸ of the Nevada Constitution, it is clear that the Constitution does not prevent reasonable
17 restrictions on the right to own and carry a firearm. For example, Nevada expressly prohibits
18 "carry[ing] or possess[ing a firearm] while on the property of the Nevada System of Higher
19 Education, a private or public school or child care facility, or while in a vehicle of a private or public
20 school or child care facility." NRS 202.265(1).

21 These restrictions are similar to those permitted under the Second Amendment of the U.S.
22 Constitution,⁹ which does not "protect the right of citizens to carry arms for any sort of
23 confrontation, just as . . . the First Amendment to protect the right of citizens to speak for any
24 purpose." *Dist. of Columbia v. Heller*, 554 U.S. 570, 595 (2008). In analyzing the scope of the

25 _____
26 ⁸ "Every citizen has the right to keep and bear arms for security and defense, for lawful hunting and recreational
use and for other lawful purposes." Nev. Const. art. I, § 11.

27 ⁹ "A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear
28 Arms, shall not be infringed." U.S. Const. amend. II.

1 Second Amendment, the U.S. Supreme Court identified a list of “presumptively lawful” restrictions
2 that include “longstanding prohibitions on the possession of firearms by felons and the mentally ill,
3 or laws forbidding the carrying of firearms in sensitive places such as schools and government
4 buildings, or laws imposing conditions and qualifications on the commercial sale of arms.” *Id.* at
5 626-27 (emphasis added) (“We identify these presumptively lawful regulatory measures only as
6 examples; our list does not purport to be exhaustive.”).

7 Thus, it is evident that the right under the Nevada Constitution to “keep and bear arms” may
8 be limited. Additionally, the Supreme Court has frequently determined that constitutional rights
9 guaranteed under the Nevada Constitution are coterminous with their federal counterparts. *See e.g.*,
10 *Hernandez v. Bennett-Haron*, 128 Nev. Adv. Op. 54, 287 P.3d 305, 310 (2012) (the Nevada
11 Constitution’s Due Process Clause “mirrors” its federal counterpart, and federal authority is
12 persuasive when performing due process analysis.); *Univ. & Cmty. Coll. Sys. of Nev. v. Nevadans*
13 *for Sound Gov’t*, 120 Nev. 712, 722, 100 P.3d 179 (2004) (“We have held that Article 1, Section 9
14 [of the Nevada Constitution] affords no greater protection to speech activity than does the First
15 Amendment of the United States Constitution.”); *Pattison v. Nevada*, No. 3:14-CV-00020-MMD,
16 2015 WL 5602632, at *10 (D. Nev. Sept. 23, 2015) (“The standard governing state law deliberate
17 indifference claims apparently mirrors the analysis of federal claims.”). In fact, the right to bear
18 arms in Nevada’s Constitution is narrower than the Second Amendment in at least one respect. The
19 Nevada Supreme Court recently noted that “Nevada is one of the 16 states that constitutionally limits
20 the right to bear arms to ‘citizens.’ The remaining 26 state constitutional provisions specify state
21 citizens or use the words ‘people,’ ‘person,’ ‘individual,’ or ‘men.’ *Pohlabel v. State*, 128 Nev. Adv.
22 Op. 1, 268 P.3d 1264, 1270 n.7 (2012) (holding that NRS 202.360 prohibiting felons from
23 possessing firearms does not violate the Nevada Constitution).

24 As recognized in *Heller*, government buildings are among the “sensitive places.” Absent any
25 evidence that the Nevada Supreme Court would interpret the Nevada Constitution to reject *Heller*’s
26 recognition of “presumptively lawful regulatory measures,” *Heller*, 554 U.S. at 627, Ms. Flores’
27 argument fails.
28

c. SB 175 Does Not Prohibit Library Districts from Imposing Reasonable Restrictions on Handguns.

Finally, Ms. Flores argues that “[a]ny purported ‘rule’ prohibiting open carry in the library is expressly preempted by Senate Bill No. 175 (2015).” (Mot. 5 at n. 2.) She is wrong.

As an afterthought, Ms. Flores claims that the Dangerous Items Policy is “expressly preempted,” but again, she fails to identify the specific statutory language. Nonetheless, the Library District presumes that Ms. Flores challenges the Dangerous Items Policy based on the 2015 amendments to NRS 244.364, 268.418, and 269.222 that took effect when S.B. 175 was enacted. However, these statutes do not apply to the Library District. As a result, Ms. Flores’ argument for preemption is without merit.

When interpreting statutes, the Court shall apply well-established rules of statutory construction. First, the Court will determine if there is any ambiguity.¹⁰ *State v. Quinn*, 117 Nev. 709, 713, 30 P.3d 1117, 1120 (2001). If there is no ambiguity, the Court will interpret the statute based only on the plain language. *See Williams v. United Parcel Servs.*, 129 Nev. Adv. Op. 41, 302 P.3d 1144, 1147 (2013) (“Our duty is to interpret the statute’s language; this duty does not include expanding upon or modifying the statutory language because such acts are the Legislature’s function.”); *In re Estate of Melton*, 128 Nev. Adv. Op. 4, 272 P.3d 668, 674 (2012) (the Court “must give [a statute’s] terms their plain meaning, considering its provisions as a whole so as to read them in a way that would not render words or phrases superfluous or make a provision nugatory.” (quoting *S. Nev. Homebuilders v. Clark Cnty.*, 121 Nev. 446, 449, 117 P.3d 171, 173 (2005))). “Plain meaning may be ascertained by examining the context and language of the statute as a whole.” *Karcher Firestopping v. Meadow Valley Contractors, Inc.*, 125 Nev. 111, 113, 204 P.3d 1262, 1263 (2009).

“Furthermore, ‘it is the duty of [the] court, when possible, to interpret provisions within a common statutory scheme ‘harmoniously with one another in accordance with the general purpose

¹⁰ “[I]f the statutory language is capable of more than one meaning, it is ambiguous and the plain meaning rule is inapplicable and the drafter’s intent controls.” *Stockmeier v. Psychological Review Panel*, 122 Nev. 534, 540, 135 P.3d 807, 810 (2006).

1 of those statutes' and to avoid unreasonable or absurd results, thereby giving effect to the
2 Legislature's intent." *Torrealba v. Kesmetis*, 124 Nev. 95, 101, 178 P.3d 716, 721 (2008) (quoting *S.*
3 *Nev. Homebuilders v. Clark Cnty.*, 121 Nev. 446, 449, 117 P.3d 171, 173 (2005)).

4 Finally, an interpretation must consider the statute and statutory scheme "as a whole so as to
5 read them in a way that would not render words or phrases superfluous or make a provision
6 nugatory." *Manuela H. v. Eighth Jud. Dist. Ct.*, 132 Nev. Adv. Op. 1, 365 P.3d 497, 501 (2016); *see*
7 *also Stockmeier v. Psychological Review Panel*, 122 Nev. 534, 540, 135 P.3d 807, 810 (2006) ("We
8 should interpret statutes to give meaning to each of their parts, such that, when read in context, none
9 of the statutory language is rendered mere surplusage.")

10 In 2015, the Nevada Legislature passed Senate Bill 175, which was enacted by the Governor
11 on June 2, 2015. SB 175 became effective immediately. Sections 8, 9, and 10 of SB 175 relate to
12 NRS 244.364, 268.418, and 269.222, which are similar statutes that each relate to the authority of
13 specific types of political subdivisions (counties, towns, and cities) to regulate firearms, firearm
14 accessories, or ammunition.

15 The relevant sections are largely identical, differing primarily with respect to the language
16 referencing the applicable type of municipal government.

17 Each of the three sections added a new Section 1 to the existing statutes that states:

18 1. The Legislature hereby declares that:

- 19 (a) The purpose of this section is to establish state control over the
20 regulation of and policies concerning firearms, firearm
21 accessories and ammunition to ensure that such regulation and
22 policies are uniform throughout this State and to ensure the
23 protection of the right to keep and bear arms, which is
24 recognized by the United States Constitution and the Nevada
25 Constitution.
26 (b) The regulation of the transfer, sale, purchase, possession,
27 carrying, ownership, transportation, storage, registration and
28 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, 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.

27 Additionally, SB 175 amended the existing language of the former Section 1 (Section 2 in the
28 amended version) of each of the three statutes as follows:

2. Except as otherwise provided by specific statute, the Legislature reserves for itself such rights and powers as are necessary to regulate the transfer, sale, purchase, possession, *carrying*, ownership, transportation, *storage*, registration and licensing of firearms, *firearm accessories* and ammunition in Nevada [3] and [30] to *define such terms*.¹¹

The last sentence of Section 2 specifies the type of entity that is subject to the prohibition.

- Chapter 244: “No *county* may infringe upon those rights and powers.”
- Chapter 268: “No *city* may infringe upon those rights and powers.”
- Chapter 269: “No *town* may infringe upon those rights and powers.”

After considering the plain language, the virtually identical provisions within each statute, and the location of each statute within the larger statutory scheme, it is evident that the Legislature intended for the restrictions to affect only counties, cities, and towns (and not all political subdivisions), but to apply broadly to each of the three specific types of political subdivisions.

The strong language in the new Section 1 leaves little question that the Legislature intended for the amendment to apply broadly. However, the language was not contained within a chapter of general application. Rather, it is included in three separate chapters, each of which applies only to one type of political subdivision.

When considering the statutory scheme as a whole, the chapter in which the statute is located is relevant to its interpretation. *E.g.*, *MGM Mirage v. Nev. Ins. Guar. Ass'n*, 125 Nev. 223, 231, 209 P.3d 766, 771 (2009) (“The only definition of ‘insurer’ that includes self-insured employers is found in Compensation Act under NRS 616A.270. Nevada’s workers’ compensation laws are located in a separate title, not the insurance title. . . . Thus, we conclude that the Legislature’s substantial use of ‘insurer’ to describe persons or entities in the business of insurance militates in favor of concluding that the NIGA Act’s reference to ‘insurer’ plainly addresses an insurance company.”). *See also Studer v. Studer*, 320 Conn. 483, 493-94, 131 A.3d 240, 248 (2016) (“the title of a statute or regulation and its placement within a group of statutes or regulations may provide some evidence of its meaning”).

///

¹¹ The bold language in italics was added. The bracketed language was deleted.

1 The location of each statute within the larger statutory scheme shows that the amendments
2 were meant to apply only to the three specific chapters in which the revised statutes are located.
3 Most significantly, the Legislature did *not* include the language in any of the chapters relating to
4 other types of political subdivisions. Specifically, the language was not added to Chapter 379, which
5 pertains to the Library District.

6 Like school districts, water districts, and other special districts, the Library District is a
7 “special district,” which is formed by statute. Created by Chapter 379 of the Nevada Revised
8 Statutes, the Library District is part of a special district—a form of “local government”¹² created by
9 the Legislature. NRS 354.474(1)(a). Library districts are separate and distinct entities from the
10 county, town, and/or city that they serve. However, they do fall under the broader heading of
11 “political subdivision.” NRS 379.142.

12 “When the legislature enacts a statute, this court presumes that it does so ‘with full
13 knowledge of existing statutes relating to the same subject.’” *Nevada Power Co. v. Haggerty*, 115
14 Nev. 353, 364, 989 P.2d 870, 877 (1999). Therefore, the Legislature’s decision to amend the
15 existing statutes demonstrates its intent to limit the application to counties, cities, and towns. Had
16 the Legislature intended to preempt rulemaking by all political subdivisions, it could have done so
17 by inserting the language into a chapter of general application. For example, the Legislature could
18 have rescinded NRS 244.364, 268.418, and 269.222 and added a single statute to Chapter 202,
19 which already contains the provisions governing concealed carry of firearms.

20 Alternatively, the Legislature could have chosen more inclusive language that would broaden
21 the application of the restriction (i.e., “No [*political subdivision/local government/public body*] may
22 infringe upon those rights and powers). In the past, the Legislature has used the phrase “supersede
23 and preempt” to demonstrate its intent to preempt any other regulation. *See e.g.* NRS 459.728(1)
24 (“Except as otherwise provided in subsection 2, the provisions of NRS 459.7052 to 459.728,

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26 ¹² “‘Local government’ means every political subdivision or other entity which has the right to levy or receive
27 money from ad valorem or other taxes or any mandatory assessments, and includes, without limitation, counties, cities,
28 towns, boards, school districts and other districts organized pursuant to chapters 244A, 309, 318 and 379 of NRS, NRS
450.550 to 450.750, inclusive, and chapters 474, 541, 543 and 555 of NRS, and any agency or department of a county or
city which prepares a budget separate from that of the parent political subdivision.” NRS 354.474(1)(a).

1 inclusive, and the regulations adopted pursuant thereto *supersede and preempt* any ordinance or
2 regulation adopted by the *governing body of a political subdivision* of this State governing the
3 transportation of a hazardous material upon a public highway of this State.” (emphasis added)); NRS
4 660.235 (“NRS 660.115 to 660.235, inclusive, *supersede and preempt* all codes, ordinances or
5 regulations of *counties, cities, towns and local agencies* regarding the safety of customers at
6 automated tellers located in this state.” (emphasis added)); NRS 489.288 (“The provisions of this
7 chapter and the regulations adopted pursuant to this chapter supersede and preempt any ordinance or
8 regulation of a local governing body that is more stringent than those provisions, except for an
9 ordinance or regulation regarding any prerequisites to the classification of a manufactured home or
10 mobile home as real property pursuant to NRS 361.244.” (emphasis added)).

11 Consequently, the Legislature’s choice to specifically use the more narrow terms “county,”
12 “city,” and “town” and omit the phrase “supersede and preempt” must be read as an intentional limit
13 on the application of NRS 244.364, 268.418, and 269.222.

14 Finally, interpreting the language in NRS 244.364, 268.418, or 269.222 to preempt firearm
15 regulation by other types of political subdivisions would necessarily render the other statutes
16 superfluous because any one statute would be sufficient. *Arguello v. Sunset Station, Inc.*, 127 Nev.
17 Adv. Op. 29, 252 P.3d 206, 209 (2011) (“this court must give [a statute’s] terms their plain meaning,
18 considering its provisions as a whole so as to read them in a way that would not render words or
19 phrases superfluous or make a provision nugatory”).

20 The Court need only apply the well-established rules of statutory construction to establish
21 that the amendments contained in SB 175 do not apply to the Library District.

22 **B. Irreparable Harm.**

23 Irreparable harm is harm that “cannot adequately be remedied by compensatory damages.”
24 *Hamm v. Arrowcreek Homeowners’ Ass’n.*, 124 Nev. 290, 297, 183 P.3d 895, 901 (2008).
25 “Injunctive relief is extraordinary relief, and the irreparable harm must be articulated in specific
26 terms by the issuing order or be sufficiently apparent elsewhere in the record.” *Dep’t of*
27 *Conservation & Nat. Res., Div. of Water Res., v. Foley*, 121 Nev. 77, 80, 109 P.3d 760, 762 (2005)
28 (emphasis added); *see also Excellence Cmty. Mgmt. v Gilmore*, 131 Nev. Adv. Op. 38, 351 P.3d 720,

1 725 (2015) (affirming the district court’s order denying a request for a preliminary injunction, in part
2 because the “evidence was insufficient to demonstrate irreparable harm”).

3 Ms. Flores asks the Court to lift the suspension of her library privileges because the
4 enforcement of the Dangerous Items Policy violated her constitutional rights. However, restoration
5 of her library privileges would not remedy any constitutional injury because Ms. Flores has not
6 requested that the Court enjoin enforcement of the Dangerous Items Policy. Accordingly, an
7 injunction is not an appropriate remedy.

8 Additionally, Ms. Flores has not established that suspension of her library privileges is
9 irreparable. Indeed, compensatory damages (i.e., the cost of purchasing books instead of checking
10 them out at the library) would be adequate to compensate Ms. Flores for this purported harm.

11 As Ms. Flores has failed to demonstrate that she will suffer irreparable harm without an
12 injunction and has failed to show that the requested injunction would remedy the alleged injury, the
13 Motion must be denied.

14 **C. Nevada Public Policy Favors the Library District.**

15 Nevada’s public policy is evident from the Library District’s Mission Statement and Nevada
16 Statutes relating to the Library District. The Library District’s mission is to “provide[] welcoming
17 and inspiring spaces for reading, learning and achieving, and the tools and resources that families,
18 children, teens and adults need to succeed.” (Ex. 4.) Furthermore, the Nevada Legislature enacted
19 NRS 379.040, which requires that “[t]he library and reading room of any consolidated . . . library
20 must forever be and remain free and accessible to the public.”

21 Allowing a person with no legitimate library business to hinder library operations and
22 physically obstruct access to library facilities would not serve the public interest. Moreover, Ms.
23 Flores’ position on the ultimate issue in this case (although not the primary issue in Ms. Flores’
24 Motion) does not serve the public interest. A finding that the Library District’s Dangerous Items
25 Policy is preempted by statute would violate established canons of statutory construction and require
26 that the Library District allow patrons to bring machine guns to story hour. This would plainly
27 undermine Nevada’s public policy of making the Library District’s facilities safe and inviting spaces
28 for families.

1 Alternatively, if the Court finds Ms. Flores’ preemption argument persuasive, the collateral
2 effects would violate Nevada’s public policy allowing certain types of governmental agencies and
3 political subdivisions to prohibit firearms. For example, there is no statute that prohibits open carry
4 at the state courthouses.¹³ If the provisions contained in SB 175 were read to bar any other
5 restrictions, the chief judge of a district court would not have the authority to prohibit the open carry
6 of firearms in Nevada’s courthouses.

7 As Ms. Flores has not offered any argument on this element, it must be found to weigh
8 against an injunction.

9 **D. The Equities Tip Sharply in Favor of the Library District.**

10 Finally, the hardship on the Library District if the injunction is granted far outweighs any
11 harm to Ms. Flores. The imposition on Ms. Flores—leaving her firearm at home when using Library
12 District facilities or accessing Library District services via alternative means—is minimal.
13 Conversely, it will greatly increase the Library District’s risk and administrative costs if the Library
14 District is not permitted to suspend patrons who disrupt the administration of library business or
15 interfere with other patrons’ enjoyment and use of library services.

16 Again, Ms. Flores has not offered any argument on this element. Therefore, it must be found
17 to weigh against an injunction.

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27 ¹³ NRS 202.3673(3)(b) prohibits concealed carry in “[a] public building that has a metal detector at each public
28 entrance or a sign posted at each public entrance indicating that no firearms are allowed in the building.”

1 **IV. CONCLUSION**

2 Ms. Flores has requested that this Court issue an injunction to lift the suspension of her
3 library privilege, but she has failed make the strong showing necessary to warrant extraordinary
4 relief. Ms. Flores has offered virtually no explanation or legal analysis. Similarly, the legal
5 authority cited is almost all inapplicable. Next, Ms. Flores made almost no effort to identify or
6 quantify her damages. Finally, she did not offer any argument the relative burdens or public policy.
7 Because Ms. Flores bears the burden of proof on this Motion, the Court must deny the injunction.

8 DATED this 27th day of May, 2016.

9 BAILEY ♦ KENNEDY

10
11 By: /s/ Dennis L. Kennedy

12 JOHN R. BAILEY
13 DENNIS L. KENNEDY
14 JOSEPH A. LIEBMAN
15 KELLY B. STOUT
16 AMANDA L. STEVENS

17 *Attorneys for Defendant*
18 Las Vegas-Clark County Library District
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CERTIFICATE OF SERVICE

I certify that I am an employee of BAILEY ♦ KENNEDY and that on the 27th day of May, 2016, service of the foregoing **LAS VEGAS-CLARK COUNTY LIBRARY DISTRICT'S OPPOSITION TO MICHELLE FLORES' MOTION FOR PRELIMINARY INJUNCTION** was made by mandatory electronic service through the Eighth Judicial District Court's electronic filing system and/or by depositing a true and correct copy in the U.S. Mail, first class postage prepaid, and addressed to the following at their last known address:

JEFFREY F. BARR, ESQ. ASHCRAFT & BARR LLP 2300 West Sahara Avenue, Ste. 1130 Las Vegas, NV 89102	Email: barrj@AshcraftBarr.com <i>Attorneys for Plaintiff</i> MICHELLE FLORES
--	--

LEE I. IGLODY, ESQ. IGLODY LAW, PLLC 2300 West Sahara Avenue, Ste. 1130 Las Vegas, NV 89102	Email: lee@iglody.com <i>Attorneys for Plaintiff</i> MICHELLE FLORES
---	--

/s/ Jennifer Kennedy
Employee of BAILEY ♦ KENNEDY

Exhibit 1

Exhibit 1

DECLARATION OF DR. RONALD R. HEEZEN

I, Dr. Ronald R. Heezen, declare as follows:

1. I am a resident of Clark County, Nevada.

2. I am the Executive Director for the Las Vegas-Clark County Library District ("Library District"), which is the defendant in the matter of *Flores v. Las Vegas-Clark County Library District*, No. A-16-735496-C, which is pending in Department XXIII of Nevada's Eighth Judicial District Court.

3. I am competent to testify to the facts stated herein, which are based on personal knowledge unless otherwise indicated, and if called upon to testify, I could and would testify competently to the factual averments included herein.

4. I make this declaration in support of the Las Vegas-Clark County Library District's Opposition to Michelle Flores' Motion for Preliminary Injunction.

5. I have reviewed the Library District's original records relating to the incident involving Michelle Flores that occurred on March 16, 2016 (the "Records").

a. The Records are kept by the Library District in its regular course of business.

b. It is the regular practice of the Library District to collect and maintain statements, information, and other documents related to any incident involving law enforcement that occurs at a Library District facility.

c. The original Records were made at or near the time of the occurrence, act, event, or condition recited therein, by or from information transmitted by a person with knowledge, in the course of a regularly conducted activity of the Library District.

d. I have made or caused to be made, a true, complete, and correct copy of the Records, which are attached hereto:

i. Exhibit 2 is a true and correct copy of the March 16, 2016 Incident Report by Deborah Tinsler, an Adult Services Librarian at the Rainbow Library.

- 1 ii. Exhibit 3 is a true and correct copy of the March 16, 2016 Incident Report by
2 Tybert Morgan, a security guard with Allied Barton, a third party who
3 provides security services for the Library District.
- 4 6. I have reviewed the Library District's policies and procedures that were in effect on
5 March 16, 2016 (the "Policies") and to the best of my knowledge:
- 6 a. The Policies are kept by the Library District in the regular course of business.
7 b. It is the regular practice of the Library District to create, collect, and maintain the
8 Policies.
9 c. The original Policies were in effect at the time of the occurrence, act, event, or
10 condition recited therein, by or from information transmitted by a person with
11 knowledge, in the course of a regularly conducted activity of the Library District.
12 d. I have made or caused to be made, a true, complete, and correct copy of the Policies,
13 which are attached hereto:
- 14 i. Exhibit 4 is a true and correct copy of the Library District's Mission
15 Statement.
16 ii. Exhibit 5 is a true and correct copy of the Library District's Dangerous Items
17 Policy.
- 18 7. In my capacity as Executive Director, I provide the highest level of executive
19 leadership, decision making, and comprehensive administration to the Library District.
- 20 8. During the 2014-15 fiscal year, the Library District:
- 21 a. Loaned approximately 14.9 million books and other materials;
22 b. Provided programs and services to a service area of 1.5 million people in 8000 square
23 miles;
24 c. Served 675,393 active cardholders;
25 d. Hosted 17,750 library-sponsored and community programs with attendance of
26 598,954 children and adult patrons; and
27 e. Hosted 6.3 million visits to Library District facilities.
28

1 9. The “Rainbow Library” is one of the Library District’s urban branches and is located
2 at 3150 North Buffalo Drive, Las Vegas, Nevada 89128.

- 3 a. The entrance to the Rainbow Library has a double set of glass doors.
4 b. On the exterior face of the entrance is a notice regarding the Library District’s
5 prohibition on firearms (“Firearms Notice”).
6 c. Attached as Exhibit 6 are two photographs that I recognize as being (i) the main
7 entrance to the Rainbow Library (marked to show the location of the Library
8 Districts’ Firearms Notice) and (2) a photograph of the Firearms Notice.

9 10. Pursuant to the Dangerous Items Policy, the Library District provides alternative
10 access to the library services:

- 11 a. Providing support and assistance with online services.
12 b. Assisting patrons who wish to check out materials without having to enter the facility.
13 For example, a patron can call or email a list of items they would like to check out
14 and the items will be collected and delivered to the patron’s vehicle. Similarly,
15 patrons can call and library staff will come out to their vehicles to deliver materials
16 that the patrons would like to check out, or to collect materials and provide a receipt
17 for materials being returned.
18 c. The Library District is willing to consider any other reasonable accommodations
19 requested by a patron.

20 11. When a patron’s library privileges are suspended, they are issued a notice that states:
21 “If you wish to appeal this decision, you must do so by written request to the Library Director within
22 fourteen (14) days of the above date.”

23 12. I have reviewed the Library District’s records, and Ms. Flores did not request an
24 appeal.

25 13. The Library District’s Rules of Conduct aim to ensure the safe, orderly, and efficient
26 administration of Library District business.

27 ///

28 ///

1 I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true and
2 correct.

3 Executed on this 27th day of May, 2016.


4 
5 Dr. Ronald R. Hotzen, Executive Director
6 Las Vegas-Clark County Library District
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Exhibit 2

Exhibit 2

Incident Report - Rainbow Library - Patron Disturbance, Other

Location: Rainbow Library **Specific Location:** Rainbow Library main entrance
Date: 3.16.2016 **Time:** 11:15 AM

Category: Patron Disturbance, Other

Person(s)Involved:

1. Name: Michelle Flores
Address: , , NV
Phone:

Witnesses:

1. Name: Ty Morgan	2. Name: Deborah Tinsler
Address: , , NV	Address: , , NV
Phone: 702 507 3716	Phone: 702 507 3716
Staff member.	Staff member.
Branch: Rainbow	Branch: Rainbow
Library, Department:	Library, Department:
Security Officer	Adult Services

Incident Description:

PIC Debbie Tinsler was called by SO Ty Morgan to come to the front of the library at approximately 11:20 am. SO Morgan told Debbie that a woman had an open carry handgun on her hip and that she was asserting her right to carry in the library. Debbie spoke with Michelle Flores and said that guns were not allowed in the library and Ms Flores began to state that per the NRS she had the right. I again said she did not per the sign on the front door and per the rules of the library district and our own NRS. She wanted to know what statute I was referring to, and so I went to my office and retrieved the policy and quoted her NRS 379.040 and again stated that per the Trustees, that LVCCLD could guarantee that "libraries are to be free and accessible to the public..., etc." Ms Flores wanted to debate the law, saying we could not prohibit her the right to carry but I stated that I would not debate with her, and that it was my job to enforce the no firearms policy, and that she must leave and not return to any library with a firearm. I further stated that if she did not, I would call Metro. I also gave her the administrative response number to call if she wanted to pursue the issue that way or she could speak to the Board. She told me to "go ahead and call Metro" and "that they won't come cause they don't care...it is not an issue for them." She also stated that she went to many other libraries with her gun in the past "with no problems." She then sat down on the floor with her 3 young boys in between the two main entrance glass doors. I called 311 since she wasn't issuing threats but after being put on hold called 911 at approximately 11:30 a.m. While waiting for Metro, I told her at least twice that she was free to leave with her children who were crying all during this time, and that she could return to the library without a gun but she said she would wait. After about 20 minutes, Metro still hadn't arrived and the children were still crying and patrons were beginning to ask what was going on. I called 911 again and they said someone would arrive as soon as they could. At 12:20 pm, 3 Metro officers arrived who I spoke with before they talked with Ms Flores to let them know the situation. They asked if I wanted them to trespass her and I said it would depend on what transpired when they spoke with her and if she followed the rules and peacefully left. The officers came in and began to talk with Ms Flores who began to state her position once again on

her rights to carry, and at this point since she didn't comply with the rules, the officers handcuffed her and told her she was under arrest for trespass. They escorted her and the children out of the building and said they would talk to me after they spoke with Ms Flores. I also handed the officer our trespass appeal form as they were going out. Metro asked me to fill out a voluntary statement which I did, and they came in about 10 minutes later and had me return outside to officially read the trespass notice to Ms Flores which I did. There was also a gentlemen who had arrived on the scene who was filming with his phone during this time. Metro then told me that she was being issued a ticket/citation and a notice to appear in court but not being arrested due to the three young children with her. Officer Ashe also gave me a red card with the time of the trespass, 12:55 pm., badge #7302. Metro left shortly thereafter.

No injury occurred, no furniture, equipment, shelving, etc. involved.

Contacted By Phone: left message for Administrative Response Team

FAC Work Requisition/I.T. Trouble Ticket Completed: No

Emergency Services Notified: Police Police Event #: 1603161602

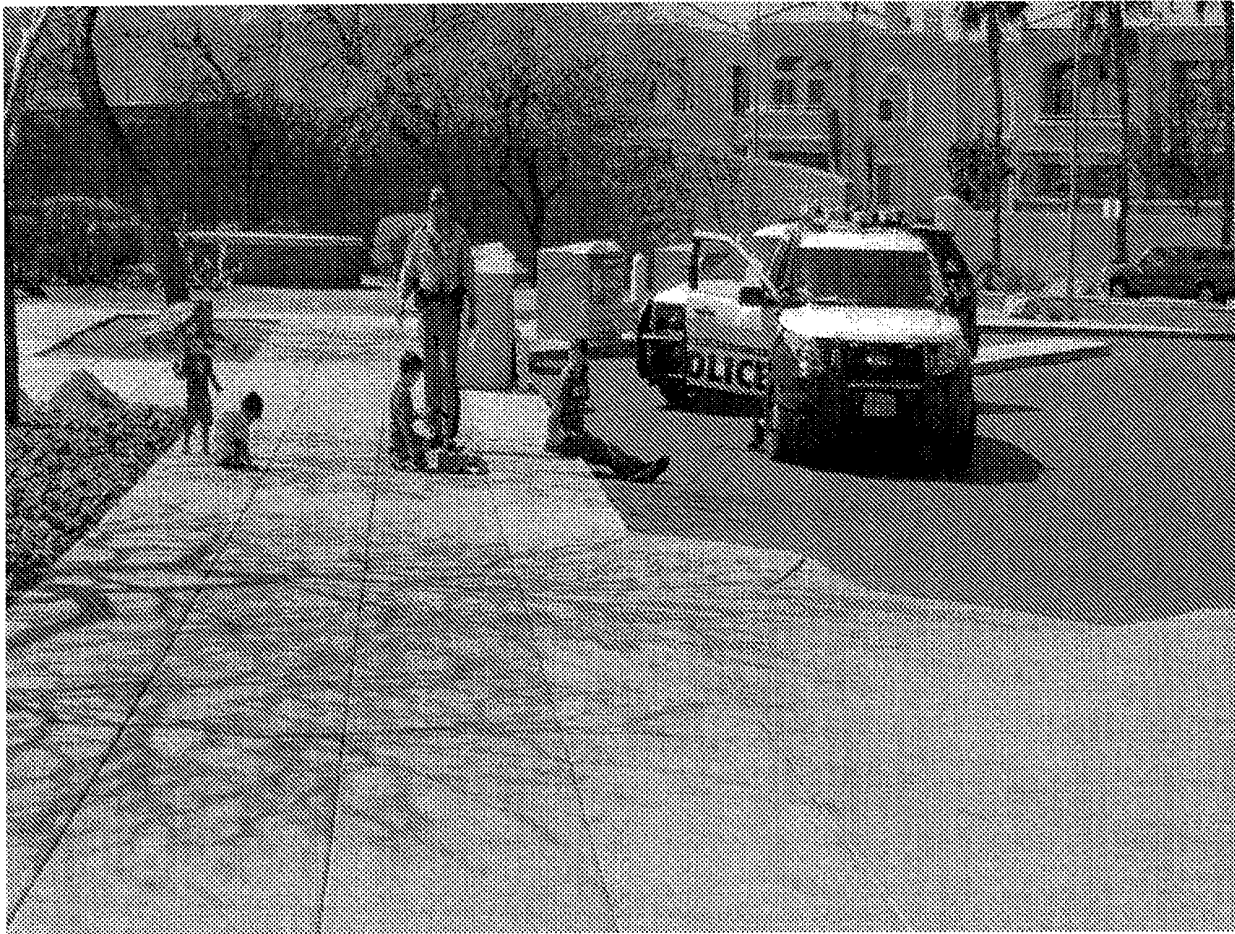
Photos Taken: Yes

Incident Report Sent To: PS, FAC, DL_PIC

Reported By Staff:

Name	Branch	Department	Date
Deborah Tinsler	Rainbow	Adult Services	03/16/2016

Photos Taken:



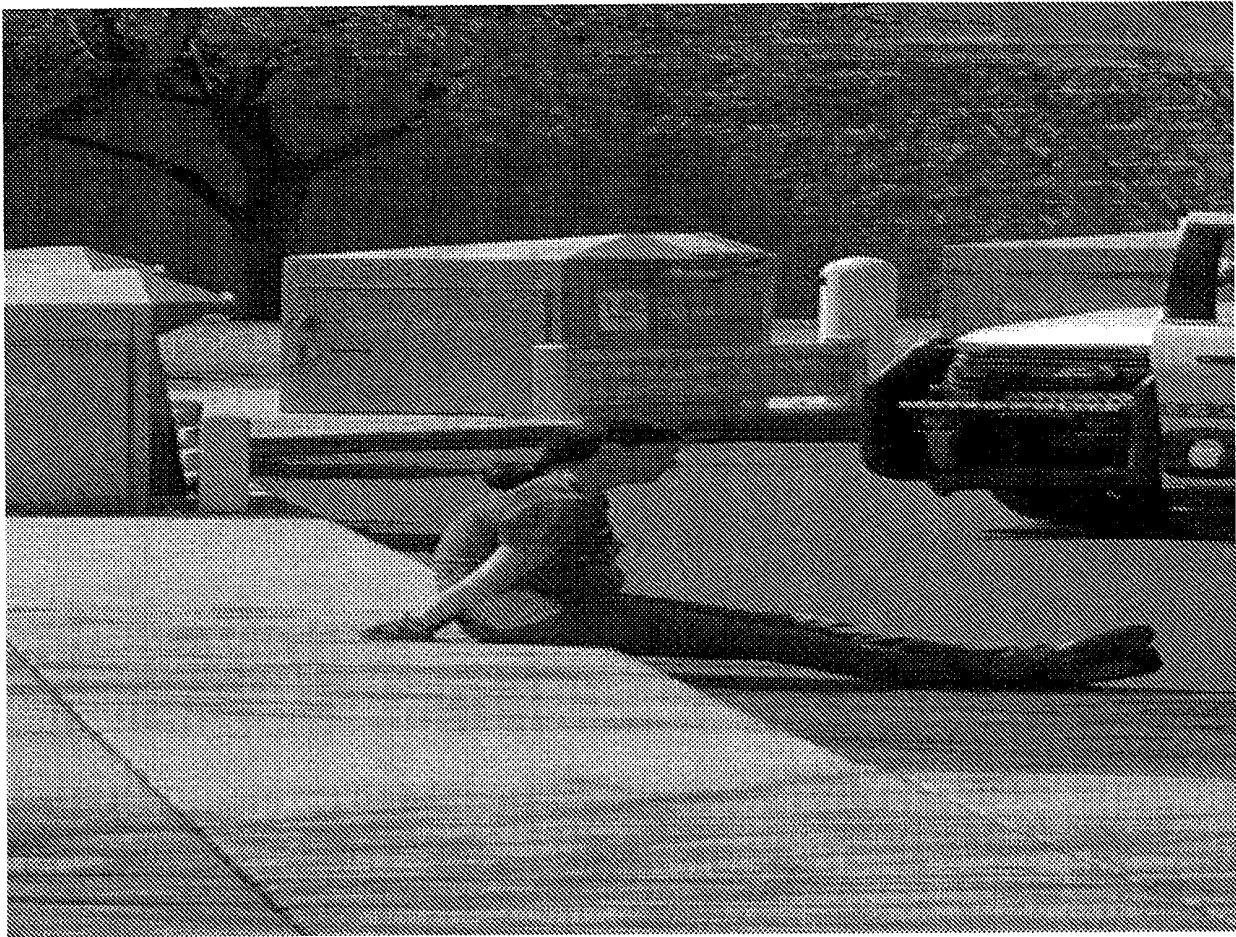


Exhibit 3

Exhibit 3

Att. Robert Palumbo
702-776-6489

INCIDENT REPORT

	CRIMINAL	OPERATIONS	SERVICES
TYPE OF INCIDENT:	<input type="checkbox"/> ASSAULT	<input type="checkbox"/> ALARM	<input type="checkbox"/> MEDICAL EMERG.
	<input type="checkbox"/> ROBBERY/HOLD UP	<input type="checkbox"/> FIRE	<input type="checkbox"/> LOST/FOUND
	<input type="checkbox"/> BURGLARY	<input type="checkbox"/> OPERATIONS EMERGENCY	<input type="checkbox"/> PROPERTY
	<input type="checkbox"/> HARASSMENT	<input type="checkbox"/> PERSONAL ACCIDENT	<input type="checkbox"/> ASSIST OTHER
	<input type="checkbox"/> SEX OFFENSE	<input type="checkbox"/> AUTO ACCIDENT	<input type="checkbox"/> DEPARTMENTS
	<input type="checkbox"/> STOLEN VEHICLE	<input type="checkbox"/> BOMB THREAT	
	<input type="checkbox"/> THEFT	<input type="checkbox"/> UNSECURED PROPERTY	OTHER <input type="checkbox"/>
	<input type="checkbox"/> VANDALISM	<input type="checkbox"/> SMOKE/ODOR INVEST.	
	<input type="checkbox"/> UNDERAGE DRINKING	<input type="checkbox"/> SAFETY HAZARD	
	<input checked="" type="checkbox"/> NARCOTICS (use/possession)		
	<input checked="" type="checkbox"/> DISTURBANCE		

DATE OF INCIDENT: 3/16/16 TIME OF INCIDENT: 11:20 (A.M.) (P.M.)

DATE OF INCIDENT REPORTED: 3/16/16 TIME INCIDENT REPORTED: 1:30 (A.M.) (P.M.)

COMPLAINANT/PERSON REPORTING:

NAME: Tybert Morgan AGE: 64 SEX: MA (M) (F) PHONE# 702-769-1611 HOME
ADDRESS/CITY/STATE/ZIP: _____ WORK

IS REPORTING PARTY INVOLVED IN INCIDENT? ☒ (YES) (NO)

IF NO DESCRIBE THE RELATIONSHIP OF REPORTING PARTY (witness, relative, etc.): _____

VICTIM (if other than reporting party):

NAME: _____ AGE: _____ SEX: _____ (M) (F) PHONE# _____ HOME
ADDRESS/CITY/STATE/ZIP: _____ WORK

HOW WAS REPORT RECEIVED: ☒ AT TIME OF INCIDENT _____ DELAYED IN PERSON _____ DELAYED BY TELEPHONE

REASON FOR DELAY (if any): N/A

WERE LOCAL AUTHORITIES NOTIFIED: ☒ (YES) (NO) BY WHOM: Dibbie (Pic)

POLICE: ☒ FIRE: _____ AMBULANCE: _____ OFFICERS BADGE/VEHICLE # _____

TIME OF ARRIVAL: 12:20 (A.M.) (P.M.)

CONTRACT/LOCATION: 3150 N. Buffalo Dr.

TYPE OF PREMISES: _____ MALL _____ OFFICE BUILDING _____ BANK _____ CONSTRUCTION

_____ CONDOMINIUM _____ PARKING GARAGE _____ NURSING HOME Library (describe) OTHER

EXACT LOCATION OF INCIDENT (give landmarks): 3150 N. Buffalo Dr.

Buffalo & Cheyenne Ave

WAS CLIENT NOTIFIED? ☒ (YES) (NO) WHOM NOTIFIED? Dibbie (Pic) (name and title)

WAS ACCOUNT SUPERVISOR NOTIFIED? ☒ (YES) (NO)

By FAX

ABS-1001
SKU-648475

DID SECURITY GUARD WITNESS INCIDENT? ☒ (YES) ☐ (NO)

WAS AREA OF INCIDENT INSPECTED BY GUARD? ☒ (YES) ☐ (NO) DATE: 3/16/16 TIME: 11:30 (A.M.) (P.M.)

WERE ANY PHOTOGRAPHS TAKEN OF AREA? ☒ (YES) ☐ (NO) PRESENT LOCATION: Rainbow Library

WERE ANY SAFETY HAZARDS OR DEFECTS FOUND AT TIME OF INSPECTION? ☒ (YES) ☐ (NO)

DESCRIBE: N/A

WITNESS: NAME _____ TELEPHONE # () - () (home)
ADDRESS _____ () - () (work)
ZIP _____

WITNESS: NAME _____ TELEPHONE # () - () (home)
ADDRESS _____ () - () (work)
ZIP _____

SUSPECT: DESCRIPTION #1

HT. 5' " WT. 150 lbs. HAIR _____ EYES _____ COMPLEXION _____

CLOTHING _____ BEARD _____ MUSTACHE _____

DESCRIPTION #2

HT. 5' " WT. 150 lbs. HAIR _____ EYES _____ COMPLEXION _____

CLOTHING _____ BEARD _____ MUSTACHE _____

DESCRIPTION #3

HT. 5' " WT. 150 lbs. HAIR _____ EYES _____ COMPLEXION _____

CLOTHING _____ BEARD _____ MUSTACHE _____

DESCRIBE INCIDENT: ON (DATE) 3-16-16 AT ABOUT 11:30 A.M./P.M. WHILE I

S/O (NAME) Tybert Morgan WAS AT (LOCATION) 3150 N Buffalo Dr.

I (SAW/HEARD/FOUND/OTHER: SAW) THE FOLLOWING (DETAIL WHO, WHAT, WHEN,

WHERE, HOW, WHY, PLUS YOUR RESPONSE): At 11:30 AM a woman w/ 3 small children
passed the security desk. I notice a hand gun in a pink holster
on the right side hip. I approached the lady at the main
exit door and told her that in the future that she could not bring
her gun into the Bldg. She stated that she could because
it was an open carry state. At this time she got a paper from
her purse and started reading to me. I tried to explain that
the library was a gun free Bldg. At this time I radioed for
a Pic. (Debbie responded) Debbie read the guide lines to the
woman. The Police was called, she was arrested & was escorted

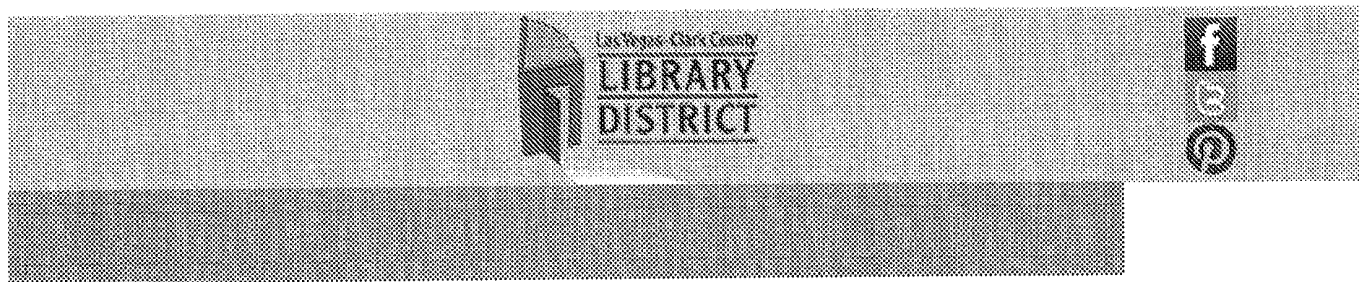
REPORTING SECURITY OFFICER: Tybert Morgan DATE: 3/16/16

REVIEWED BY SUPERVISOR: _____ DATE: 3/16/16

SUPERVISORS COMMENTS: _____

Exhibit 4

Exhibit 4



[Home](#) / **About Us**

Las Vegas-Clark County Library District Mission Statement

The Las Vegas-Clark County Library District provides welcoming and inspiring spaces for reading, learning and achieving, and the tools and resources that families, children, teens and adults need to succeed. The Library is committed to building communities of people who can come together to pursue their individual and group aspirations.

Values and Operating Principles

The District is guided by the principles of Public Librarianship and First Amendment Rights. The District protects library materials from censorship.

We seek innovative ways to:

- Respond and reach out to serve the current and evolving information needs of our diverse community.
- Create a sense of community by providing a welcoming, inviting, secure environment for our public and staff.
- Provide excellent customer service that is both timely and confidential.
- Develop a well-trained, knowledgeable, courteous and professional staff.
- Communicate with our public and staff to ensure vital, relevant and effective library services.
- Manage our resources effectively and be accountable to our funding sources.

We celebrate our accomplishments, learn from our mistakes and take pride in serving our community.

My Account

Kids & Parents

Teens

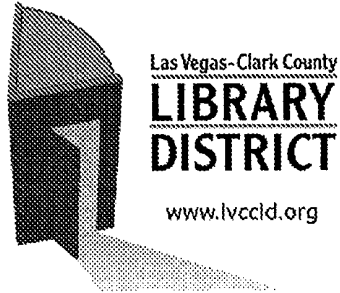
Seniors

Español

Events & Galleries

Exhibit 5

Exhibit 5



Notice to the Public:

NRS 379.040 (quoted below) requires the Trustees of the Las Vegas-Clark County Library District to guarantee that libraries are free and accessible to the public. The Library District bans bringing or possessing on Library District owned premises any dangerous item, including, without limitation, a deadly or dangerous weapon, loaded or unloaded, or ammunition or material for a weapon.

NRS 379.040 Library to be free and accessible to public; regulations of trustees. The library and reading room of any consolidated, county, district or town library must forever be and remain free and accessible to the public, subject to such reasonable regulations as the trustees of the library may adopt.

A "no firearms" sign is posted at all public entrances to libraries. The "no firearms" policy protects the health and safety of the Library District's patrons, which include young children. The Library District will reasonably enforce its "no firearms" policy by asserting trespass claims against violators.

Patrons wishing to use Library District services while in possession of any dangerous item, including without limitation, a deadly or dangerous weapon, or ammunition or material for a weapon may consult with Library District Administration at 702.507.4400 and/or administration@lvccld.org about alternative sources of library services provided within Clark County by the Library District or others.

Exhibit 6

Exhibit 6



Cell Phone Use Prohibited
in the Library

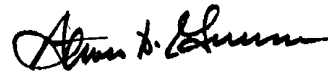


No Smoking Beyond This Point or
Within 25 ft. of Building



No Firearms Allowed
(Violators Subject to Prosecution)





CLERK OF THE COURT

1 **RPLY**

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10 Telephone: (702) 425-5366

11 Attorneys for Plaintiff Michelle Flores

12 **EIGHTH JUDICIAL DISTRICT COURT**

13 **CLARK COUNTY, NEVADA**

14 **MICHELLE FLORES**, an individual
Plaintiff,

15 v.

16 **LAS VEGAS-CLARK COUNTY LIBRARY**
DISTRICT, a political subdivision of the State
17 of Nevada; et al.,

Defendants.

Case No.: A-16-735496-C

Dept. No.: XXIII

**REPLY IN SUPPORT OF MOTION
FOR PRELIMINARY INJUNCTION**

18 Plaintiff Michelle Flores ("Michelle") submits this Reply in Support of Motion for
19 Preliminary Injunction. This Reply is based upon the attached points and authorities, the
20 papers and pleadings on file herein, and any oral argument the Court may entertain at any
21 hearing of this matter.
22

23 DATED this 14th day of June, 2016.

24 ASHCRAFT & BARR | LLP

25 /s/ Jeffrey F. Barr

26 JEFFREY F. BARR, ESQ.

Attorneys for Plaintiff Michelle Flores

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

The issue in this case is simple: Defendant Las Vegas-Clark County Library District (the “District”) manifestly does not possess the authority to prohibit firearms in its facilities when the Nevada Constitution guarantees Nevada citizens the right to bear arms and when the Legislature has preempted all local firearm regulation with, among other things, the passage of SB 175 (2015) (“SB 175”), attached to this Reply as Exhibit 1. The Legislature has denied the District the power it arrogates to itself.

The District cannot and does not overcome the Legislature’s preemptive intent in 45 pages of its Opposition. It does not have the authority to regulate the open possession of firearms. It does not have the power to ban law-abiding patrons who choose to exercise their constitutional rights to openly carry a firearm. All of the District’s actions here are void. In short, Michelle is entitled to an injunction in this case.

II. FACTS

For purposes of this Motion, the central, operative facts are not in dispute. The District admits that Michelle’s open carry of a firearm led to the confrontation that resulted in the issuance of a 12-month ban from all District facilities. [Opp. 8:1-25.] The District bases this ban on a policy prohibiting firearms at all libraries, known as the “Dangerous Items Policy” (the “DIP Rule”). [Opp. 6:3-10.]

III. LEGAL ANALYSIS

A. MICHELLE REMAINS LIKELY TO SUCCEED ON THE MERITS

Michelle remains likely to succeed on the merits in this case for two overwhelming reasons: (1) SB 175 preempts the DIP Rule (and any other District Rule) to the extent it regulates the “possession” or “carrying” of an openly holstered firearm; and (2) SB 175

1 applies to the District because the District is an instrumentality of both a county and a city.

2 Finally, the District's arguments to the contrary are untenable.

3 **1. SB 175 Preempts the DIP Rule**

4 Michelle is likely to succeed in this case because SB 175 preempts the DIP Rule.
5 Preemption occurs when a state law supersedes a conflicting local law or rule. *See Lamb v.*
6 *Mirin*, 90 Nev. 329, 332-33, 526 P.2d 80, 82 (1974). The Legislature can preempt a local rule
7 in three ways: (a) Express Preemption; (b) Conflict Preemption; or (c) Field Preemption.
8 Here, under any iteration of the doctrine, the Legislature has preempted all local firearms
9 regulations, including the DIP Rule. Thus, Michelle is likely to succeed on the merits of this
10 case.

11
12 **(a) SB 175 EXPRESSLY PREEMPTS THE DIP RULE**

13 Express preemption occurs when the Legislature expresses its intent to preempt local
14 regulation by including explicit language in the statute. *See Pacificare of Nev., Inc. v. Rogers*,
15 127 Nev. Adv. Op. 71, 266 P.3d 596, 600 (2011) (discussing federal preemption). Here, the
16 plain language of SB 175 demonstrates the Legislatures unambiguous intent to preempt the
17 DIP Rule.
18

19 The plain language of a statute provides the best evidence of the Legislature's pre-emptive
20 intent. *Id.*; *see also, Chan v. City of Seattle*, 265 P.3d 169, 175 (Wash. Ct. App. 2011) (plain
21 meaning of state firearms statute governs legislature's preemptive intent). The courts must
22 presume that "a legislature says in a statute what it means and means in a statute what it says
23 there." *RTTC Communications, LLC v. The Saratoga Flier, Inc.*, 121 Nev. 34, 37, 110 P.3d
24 24, 26 (2005) (internal citations and quotations omitted). Thus, "when the language of a
25 statute is plain, its intention must be deduced from such language, and the Court has no right
26
27

1 to go beyond it, and where the language of a statute is susceptible of a sensible interpretation,
2 it is not to be controlled by any extraneous considerations.” *Id.*

3 In *Chan*, for example, the City of Seattle Parks Department enacted a rule banning all
4 firearms from city parks in derogation of Washington state law. *Chan*, 265 P.3d at 174. The
5 trial court granted plaintiff’s motion for summary judgment and issued an injunction,
6 enjoining enforcement of the rule; the appellate court affirmed. *Id.* at 171. The state law at
7 issue in *Chan* was broad and stripped local governments of authority to regulate firearms,
8 stating, in part, “The state of Washington hereby fully occupies and preempts the entire field
9 of firearms regulation within the boundaries of the state, including the...possession...of
10 firearms.... Local laws and ordinances that are inconsistent with, more restrictive than, or
11 exceed the requirements of state law shall not be enacted and are preempted and repealed.”
12 *Id.* at 175 (internal quotations and citations omitted).

13
14 The *Chan* court examined the broad language in the first sentence of the statute and
15 concluded that the words, “fully occupies and preempts the entire filed of firearms
16 regulation,” demonstrated the Washington legislature’s intent to expressly preempt local gun
17 regulations, including the policy issued by the Parks Department. *Id.* at 176. The appellate
18 court also examined the last sentence to hold that the statute’s retrospective repeal and
19 prospective preemption of local laws also demonstrated the Washington legislature’s intent
20 to preempt local regulations, including the policy at issue in the case. *Id.* In upholding the
21 trial court’s injunction, the appellate court affirmed the preemption of the policy, stating, “We
22 hold that under the plain language of [the Washington state statute], the City’s attempt to
23 regulate the possession of firearms...by adopting the Firearms Rule is preempted by state
24 law.” *Id.*

1 Here, like the Washington statute in *Chan*, the plain, unambiguous language of SB 175
2 explicitly preempts the DIP Rule. For example, Sections 8, 9, and 10 of SB 175 explicitly set
3 out the purpose of SB 175, “to establish state control over regulation and policies concerning
4 firearms” so as “to ensure that such regulation and policies are uniform throughout this State.”
5 (Emphasis added.)
6

7 Similar to the words “fully occupies and preempts the entire field of firearms regulation”
8 in *Chan*, Sections 8, 9, and 10 of SB 175, likewise, broadly preempt all local regulation of
9 firearms by providing, “The regulation of the...possession [and]...carrying...of firearms...in
10 this State and the ability to define such terms is within the exclusive domain of the
11 Legislature....” (Emphasis added.)
12

13 Like the retrospective repeal and prospective preemption of all local regulations in the
14 Washington statute, SB 175 similarly declares “any other law, regulation, rule, or ordinance
15 to the contrary is null and void.” (Emphasis added.) SB 175 also contains the Legislature’s
16 instructions to the courts, “This section must be liberally construed to effectuate its purpose.”
17

18 In short, the plain language of SB 175 deliberately establishes “state control” over the
19 “possession and carrying of firearms,” and any rule to the contrary, including the DIP Rule,
20 is “null and void.” There are few expressions of Legislative intent more explicit than the
21 preemption language in Sections 8, 9, and 10 of SB 175. Thus, Michelle is likely to succeed
22 because the SB 175 expressly preempts the DIP Rule.
23

24 (b) CONFLICT PREEMPTION PREEMPTS THE DIP RULE

25 Even in the absence of express preemption, the inquiry does not end; courts must still
26 consider whether there is an actual conflict between state law and a local rule. *See Altria*
27 *Group, Inc. v. Good*, 555 U.S. 70, 76-77 (2008); *see also, PLIVA, Inc. v. Mensing*, 564 U.S.
604, 618 n.5 (2011) (“the absence of express pre-emption is not a reason to find no conflict

1 pre-emption”). This is the doctrine of conflict preemption. Conflict preemption occurs in
2 two ways: (i) where the local regulation directly conflicts with state law or (ii) where the
3 local regulation frustrates the purposes and objectives of state law. *See Lamb*, 90 Nev. at 333
4 and *Crowley v. Duffrin*, 109 Nev. 597, 604-05, 855 P.2d 536, 541 (1993). Both forms of
5 conflict preemption are present here.

6
7 (i) *The Dip Rule Directly Conflicts with Nevada Law*

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

15 Like *Lamb*, the DIP Rule in this case directly conflicts with both the Nevada Constitution
16 and a Legislative enactment, SB 175. Article 1, § 11 of the Nevada Constitution guarantees
17 the rights of Nevada citizens “to keep and bear arms.” The term, “bear,” means to “carry.”
18 *Dist. of Columbia v. Heller*, 554 U.S. 570, 584 (2008). SB 175 makes it exclusively the
19 domain of the Legislature to regulate the “carrying” of firearms, and “any other law,
20 regulation, rule, or ordinance to the contrary is null and void.” In short, SB 175 makes it the
21 sole province of the Legislature to regulate the carrying of firearms in this State.

22
23 The DIP Rule denies Nevada citizens the constitutional right to openly carry firearms.
24 Moreover, the District arrogates the authority to regulate the “possession” or “carrying” of
25 firearms in the District’s libraries to itself in complete derogation of the Legislature’s
26 authority. Like *Lamb*, the District seeks to prohibit what the Legislature and the Constitution
27

1 permit. This cannot be countenanced. Like *Lamb*, the DIP Rule is thus preempted under the
2 doctrine of conflict preemption.

3 (ii) *The DIP Rule Frustrates Legislative Purpose*

4 A local regulation frustrates the purposes of a state law where the local regulation stands
5 as an obstacle to the accomplishment of the full objectives of the Legislature. See *Ray v.*
6 *Atlantic Richfield Co.*, 435 U.S. 151, 158 (1978); see also, *Crowley*, 109 Nev. 597, at 604-05
7 and *Fiscal v. City and County of San Francisco*, 70 Cal. Rptr.3d 324, 335 (Cal. Ct. App.
8 2011).

9
10 In *Fiscal*, the City of San Francisco passed an ordinance prohibiting most residents from
11 possessing handguns, even those licensed to do so by other state statutes. *Fiscal*, 70 Cal.
12 Rptr.3d at 327. The trial court held that a state firearm licensing statute preempted the city's
13 ban. *Id.* at 328. In affirming the trial court's order, the appellate court determined that the
14 ordinance frustrated the state-wide purpose of permitting licensed California citizens to
15 possess handguns, stating, "If the preemption doctrine means anything, it means that a local
16 entity may not pass an ordinance, the effect of which is to completely frustrate a broad,
17 evolutionary statutory regime enacted by the Legislature." *Id.* at 335.

18
19 Here, like the city ordinance in *Fiscal*, the DIP Rule frustrates the broad purpose of the
20 Legislature, namely, (1) to ensure "state control" over firearm regulation and (2) to ensure
21 that firearm "regulation and policies are uniform throughout this State." Indeed, if the District
22 is permitted to enforce the DIP Rule, firearm "regulation and policies" would no longer be
23 uniform throughout this State, and the result would be a "Balkanized patchwork of inconsistent
24 local regulations."¹ For example, the Elko-Lander-Eureka County Library System could
25

26
27 ¹ *Capital Area Dist. Library v. Mich. Open Carry, Inc.*, 826 N.W.2d 736, 746 (Mich. Ct. App. 2012).

1 permit shotguns and prohibit handguns. Henderson Libraries could impose no ban at all. The
2 North Las Vegas Library District could ban only certain calibers. Indeed, “state control” over
3 the regulation of firearms would be meaningless if the DIP Rule is permitted to stand. The
4 DIP Rule makes it difficult for firearm owners to know where and under what circumstances
5 they could possess a gun. In short, the DIP Rule frustrates the purpose of the Legislature to
6 maintain uniform policies of firearm regulation; the doctrine of conflict preemption therefore
7 preempts the DIP Rule, and Michelle is likely to succeed on the merits of this case.

9 (c) FIELD PREEMPTION PREEMPTS THE DIP RULE

10 The final iteration of preemption is field preemption. If the Legislature occupies an entire
11 regulatory field by enacting a comprehensive regulatory scheme, state law preempts all local
12 regulation within that field. *See Douglas County Contractors Ass’n v. Douglas County*, 112
13 Nev. 1452, 1463-64, 929 P.2d 253, 260 (1996); *see also, Capital Area Dist. Library v. Mich.*
14 *Open Carry, Inc.*, 826 N.W.2d 736, 746 (Mich. Ct. App. 2012) (state’s enactment of
15 comprehensive firearms regulation preempted local library’s firearms policy).

16
17 In *Capital Area*, a library district passed a regulation banning firearms in its libraries in
18 contravention to a state law. *Capital Area*, 826 N.W.2d at 738. The trial court upheld the
19 ban, and the Michigan Court of Appeals reversed holding that the regulation was preempted
20 by Michigan state law under the doctrine of field preemption. *Id.* at 747. The Michigan law
21 stated, in relevant part, “A local unit of government shall not...enact or enforce any ordinance
22 or regulation pertaining to, or regulate in any other manner...possession of pistols...except as
23 otherwise provided by federal law or a law of this state.” *Id.* at 740 (internal citations and
24 quotations omitted). Although the appeals court found that the term, “local unit of
25 government” did not expressly include a library district, it surveyed dozens of provisions of
26 Michigan law and reluctantly concluded that field preemption preempted the policy,
27

1 declaring, “The extent and specificity of this statutory scheme, coupled with the Legislature’s
2 clear policy choice,...demonstrates that the Legislature has occupied the field of firearm
3 regulation that the library’s weapons policy attempts to regulate: the possession of firearms.”
4 *Id.* at 746 (internal citations and quotations omitted).

5 Here, like *Capital Area*, field preemption preempts the DIP Rule, even if SB 175 does not
6 expressly include library districts. Similar to the Michigan law in *Capital Area*, SB 175 is the
7 latest in a long-litany of Legislative enactments designed comprehensively to regulate
8 firearms in this State. SB 175 is compiled in Chapters 244, 268, and 269 of the Nevada
9 Revised Statutes.² But the Legislature’s regulation of firearms spans across dozens of
10 chapters and hundreds of sections of the Nevada Revised Statutes, just like Michigan’s
11 comprehensive regulatory scheme in *Capital Area*. See e.g., NRS 12.107; NRS 41.0395; NRS
12 118B.200; NRS 171.146; NRS 179.121; NRS 193.165; NRS 202.300; NRS 202.310; NRS
13 202.3673; NRS 205.060; NRS 212.160; NRS 213.090; NRS 244.364; NRS 268.418; NRS
14 269.222; NRS 386.585; NRS 393.410; NRS 396.110; NRS 403.560; NRS 407.0475; NRS
15 412.088; NRS 414.155; NRS 501.375; NRS 503.150; NRS 503.165; NRS 503.175; NRS
16 647.105; and NRS 706.1517. Similar to the court in *Capital Area*, this Court should likewise
17 conclude that SB 175 in one more law in an exhaustive Legislative scheme to regulate firearms
18 in Nevada which preempts the District’s DIP Rule under the doctrine of field preemption. In
19 sum, Michelle is likely to succeed on the merits.

22 **2. SB 175 Applies to the District**

23 The District concedes that SB 175 explicitly applies to counties and cities. [Opp. 19:8-
24 11.] For the reasons detailed below, the District is a joint instrumentality of both Clark County
25
26

27 ² See NRS 220.120.

1 and the City of Las Vegas, so therefore, SB 175 applies to the District. Thus, SB 175 expressly
2 preempts the DIP Rule.

3 An instrumentality is an arm or an inferior constituent part. *See Johnson v. Univ. of Nev.*,
4 596 F. Supp. 175, 177 (D. Nev. 1984) (examining definition of state instrumentality for
5 Eleventh Amendment immunity purposes), *reasoning approved by, Simonian v. Univ. &*
6 *Community College Sys.*, 122 Nev. 187, 195, 128 P.3d 1057, 1062 n.33 (2006). To determine
7 whether an entity is an instrumentality of another government entity, the court looks at three
8 factors: (A) whether the constituent entity provides a government function; (B) whether the
9 constituent entity is comprehensively controlled by another entity; and (C) whether the
10 constituent entity is fiscally tied to another entity. *See id.*

11
12 Because the District meets all three of these factors, it is an instrumentality of Clark
13 County and the City of Las Vegas; therefore SB 175 expressly applies to the District.

14 First, it is undisputable that libraries, including the District, perform a public,
15 governmental function. *See NRS 379.002.*

16
17 Second, the District is controlled by Clark County and the City of Las Vegas. The
18 Legislature has delegated authority to counties and cities to create a consolidated library
19 district in certain populous counties. NRS 379.0221. Here, the District is such a consolidated
20 library. Clark County and the City jointly approve the District's board of trustees, and they
21 may remove trustees. NRS 379.022. This is the epitome of control over the District. In short,
22 Clark County and the City of Las Vegas jointly control the District.

23
24 Third, the District is fiscally tied to Clark County and the City of Las Vegas. Clark County
25 and the City must jointly approve the District's budget pursuant to NRS 379.025(1)(f)(2).
26 Only Clark County may levy taxes to fund the District; the District has no independent taxing
27 authority. NRS 379.0227. Similarly, Clark County and the City must jointly approve of any

1 bond issuance for the District; the District has no independent authority to issue bonds. NRS
2 379.0225. Thus, the District is fiscally bound to Clark County and the City of Las Vegas.

3 In sum, the District concedes that a county or a city may not pass any ordinance regulating
4 firearms. It follows then that any instrumentality of such county or city may not make any
5 rule regulating firearms either. The District is an instrumentality of Clark County and the City
6 of Las Vegas. Therefore, SB 175 applies to the District. As such, SB 175 preempts the DIP
7 Rule.
8

9 **3. The District's Arguments Are Untenable**

10 The District's arguments cannot withstand scrutiny in light of SB 175.

11 First, the plain language of SB 175's preemption overcomes the District's statutory
12 construction argument. The District urges the Court to view it as a magical political
13 subdivision exempt from the broad language of SB 175. The Court should decline this
14 invitation. Where a statute is clear on its face, a court does not resort to rules of construction;
15 instead it applies the plain language of the law. *Slade v. Caesar's Entertainment Corp.*, 132
16 Nev. Adv. Op. 36, -- P.3d -- (May 12, 2016). The District ignores the plain language of SB
17 175, and instead, it engages in contortions of statutory construction. But these contortions
18 lead to an absurd result.
19

20 Statutory construction must avoid absurd or unreasonable results. *Banegas v. SIIS*, 117
21 Nev. 222, 226, 19 P.3d 245, 248 (2001). Firearms regulation cannot be simultaneously the
22 exclusive domain of the Legislature and the province of the District. The District
23 unreasonably reads an exception into SB 175, namely that firearms regulation is the exclusive
24 domain of the Legislature except when it is the domain of the District. By definition,
25 regulations and policies cannot be "uniform throughout this State" if there are multiple
26 authorities making inconsistent regulations and policies. It is absurd to say that counties and
27

1 cities do not possess the power to regulate firearms, but a library district formed by a county
2 and a city does somehow possess this power.

3 In addition, the District insists on writing in the words “county” and “city” into the
4 otherwise all-encompassing, preemptive language of SB 175. But it is the prerogative of the
5 Legislature, alone, to rewrite a statute. *Holiday Retirement Corp. v. State Div. of Indust. Rel.*,
6 128 Nev. Adv. Op. 13, 274 P.3d 759, 761 (2012). The Legislature left those words out from
7 the expansive language of SB 175, and the District cannot insert them. In short, the District’s
8 reading of SB 175 cannot be correct, and the Court should ignore it. SB 175 expressly
9 preempts the DIP Rule, and Michelle is therefore likely to succeed on the merits of this case.

11 Second, the District’s exhaustion of administrative remedies argument simply does not
12 apply. A complainant need not exhaust administrative remedies where a statute gives original
13 jurisdiction to the courts and the administrative agency does not have the authority to award
14 the relief the complainant sought. *Nev. Power Co. v. Eighth Judicial Dist. Ct.*, 120 Nev. 948,
15 960-61, 102 P.3d 578, 586-87 (2004). Here, SB 175 gives explicit jurisdiction to the courts,
16 stating, “Any person who is adversely affected by the enforcement of an ordinance or
17 regulation that violates this section..., may file suit in the appropriate court for declarative
18 and injunctive relief...” (Emphasis added.) Moreover, like *Nev. Power Co.*, the District
19 cannot declare that SB 175 preempts the DIP Rule and cannot award compensatory damages
20 for violation of SB 175. In sum, the exhaustion of administrative remedies argument is a red
21 herring and does not keep Michelle from succeeding on the merits of this case.

23 B. MICHELLE CONTINUES TO SUFFER IRREPARABLE HARM

25 Where a statute provides for injunctive relief, a plaintiff need not show irreparable harm.
26 See *Nev. Real Estate Comm’n v. Ressel*, 72 Nev. 79, 81, 294 P.2d 1115 (1956). Nevertheless,
27 access to libraries are a fundamental right, the denial of which is sufficient to demonstrate

1 irreparable harm for which monetary damages would be insufficient. *See O'Conner v.*
2 *Mowbray*, 504 F. Supp. 139, 143 (D. Nev. 1980).

3 Here, SB 175 gives an aggrieved plaintiff the right to seek injunctive relief. As such, no
4 showing of irreparable harm is necessary. Despite this long-standing law in Nevada, it is
5 undisputed that Michelle has been denied access to the District's libraries for an alleged
6 violation of an illegal rule. Thus, Michelle continues to suffer irreparable harm and is entitled
7 to injunctive relief.
8

9 IV. CONCLUSION

10 For the reasons detailed above, Michelle respectfully requests that this Court issue an
11 injunction overturning the District's unlawful ban on her library privileges and enjoining
12 enforcement of the DIP Rule.

13 DATED this 14th day of June, 2016.

14 ASHCRAFT & BARR | LLP

15 /s/ Jeffrey F. Barr
16 JEFFREY F. BARR, ESQ.
17 Attorneys for Plaintiff Michelle Flores

18 CERTIFICATE OF SERVICE

19 I certify that on this 14th day of June, 2016, I electronically filed and served the foregoing
20 Motion for Preliminary Injunction by using the Eighth Judicial District Court E-File & Serve
21 System, and if necessary, by first class mail, postage pre-paid to the following:

22 BAILEY KENNEDY
23 8984 Spanish Ridge Avenue
24 Las Vegas, Nevada 89148-1302
25 JBailey@BaileyKennedy.com
26 JLiebman@BaileyKennedy.com
27 AStevens@BaileyKennedy.com

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KStout@BaileyKennedy.com

/s/ Justine Levy
An employee of ASHCRAFT & BARR | LLP

EXHIBIT 1

EXHIBIT 1

Joint Sponsors: Assemblymen Hambrick, Wheeler and Shelton

CHAPTER.....

AN ACT relating to public safety; revising provisions governing justifiable homicide; prohibiting a person convicted in this State or any other state of a misdemeanor crime of domestic violence from owning or having in his or her possession or under his or her custody or control any firearm; requiring the Department of Public Safety to make certain determinations before issuing a list of states for purposes of reciprocity; prohibiting a person against whom an extended order for protection against domestic violence is issued from subsequently purchasing or otherwise acquiring any firearm during the period the extended order is in effect; revising provisions governing civil liability in actions involving the use of force; expanding the rights and powers reserved for the Legislature relating to the regulation of firearms and ammunition; requiring the governing bodies of certain political subdivisions of this State to repeal certain ordinances and regulations; authorizing a person adversely affected by the enforcement of such an ordinance or regulation to seek declarative and injunctive relief and damages; providing that such a person is entitled to certain damages; deleting certain provisions relating to the registration of firearms capable of being concealed; revising the applicability of certain provisions pertaining to the regulation of firearms by local governments; providing a penalty; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law provides that justifiable homicide is the killing of a human being in necessary self-defense, or in defense of habitation, property or person against a person who manifestly intends or endeavors to commit a felony or to enter the habitation of another for the purpose of assaulting a person who is in the habitation. (NRS 200.120) **Section 1** of this bill revises the definition of "justifiable homicide" to include specifically the killing of a person in defense of an occupied motor vehicle or in defense against any person who manifestly intends and endeavors to enter the occupied motor vehicle of another for the purpose of assaulting a person who is in the motor vehicle.

Existing law also provides that a killing is justifiable if the circumstances were sufficient to excite the fears of a reasonable person and the person killing really acted under the influence of those fears and not in a spirit of revenge. (NRS 200.130) **Section 2** of this bill establishes a rebuttable presumption that a killing is



justifiable under the standard set forth in NRS 200.130 if the person killing: (1) knew or reasonably believed that the person who was killed was entering unlawfully and with force, or attempting to enter unlawfully and with force, the habitation or property of another; (2) knew or reasonably believed that the person who was killed was committing or attempting to commit a crime of violence; and (3) did not provoke the person who was killed.

Existing law prohibits certain persons from owning or having in their possession or under their custody or control any firearm. A person who violates such a provision is guilty of a category B felony. (NRS 202.360) **Section 3** of this bill adds to such a list of persons a person who has been convicted in this State or any other state of a misdemeanor crime of domestic violence as defined in federal law.

Existing law authorizes a court to issue an extended order for protection against domestic violence. (NRS 33.030) **Section 5** of this bill provides that if such an extended order is issued, the adverse party is prohibited from purchasing or otherwise acquiring any firearm during the period that the extended order is in effect. A person who violates such a provision is guilty of a category B felony.

Existing law provides that in a civil action brought by or on behalf of a person against whom force which is intended or likely to cause death or bodily injury was used: (1) there is a presumption that the person who used such force had a reasonable fear of imminent death or bodily injury to himself or herself or another person if the person against whom such force was used was committing burglary or invasion of the home; and (2) that presumption must be overcome by clear and convincing evidence to the contrary for the civil action to be maintained. (NRS 41.095) **Section 7** of this bill extends that presumption to circumstances in which the person who used such force was in his or her motor vehicle and the other person was committing grand larceny of the motor vehicle with the use or threatened use of a deadly weapon. **Section 7** also enacts a provision, based upon Texas law, which provides that a person is immune to civil liability for using force which is intended or likely to cause death or bodily injury if the person was justified in using such force under the applicable provisions of Nevada criminal law. (Texas Civil Practice and Remedies Code § 83.001)

Existing law requires the Department of Public Safety to prepare annually a list of states that have: (1) requirements for the issuance of a permit to carry a concealed firearm that are substantially similar to or more stringent than the requirements set forth in this State; and (2) an electronic database which identifies each individual who possesses a valid permit to carry a concealed firearm by that state and which a law enforcement officer in this State may access at all times. Additionally, a state may only be included in the list if the Nevada Sheriffs' and Chiefs' Association agrees with the Department's inclusion of the state. (NRS 202.3689) Existing law also authorizes a person who possesses a permit to carry a concealed firearm that was issued by a state included in the list to carry a concealed firearm in this State in accordance with the laws of this State unless the person: (1) becomes a resident of this State; and (2) has not been issued a permit from the sheriff of the county in which he or she resides within 60 days after becoming a resident of this State. (NRS 202.3688) **Section 4.5** of this bill requires the Department to determine whether each state requires a person to complete any training, class or program for purposes of preparing the list.

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 transfer, sale, purchase, possession, ownership, transportation, registration and licensing of firearms and ammunition in this State, and further provides that no county, city or town may infringe upon those rights and powers. (NRS 244.364,



268.418, 269.222) **Sections 8-10** of this bill expand such rights and powers of the Legislature to include those necessary to: (1) regulate the carrying and storage of firearms, firearm accessories and ammunition; 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 and require the governing bodies of certain political subdivisions of this State to repeal any such ordinance or regulation. **Sections 8-10** also authorize any person who is adversely affected by the enforcement of any such ordinance or regulation on or after October 1, 2015, to file suit in the appropriate court for declarative and injunctive relief and damages. Such a person is entitled to certain damages depending on whether and when the relevant governing body of a political subdivision repeals such an ordinance or a regulation.

Existing law also requires certain political subdivisions of this State in a county whose population is 700,000 or more (currently Clark County), which adopted ordinances or regulations before June 13, 1989, that require the registration of firearms capable of being concealed, to make certain amendments to such registration provisions. (NRS 244.364, 268.418, 269.222) **Sections 8-10** additionally delete the provisions requiring certain political subdivisions of this State to make such amendments.

Assembly Bill No. 147 of the 1989 Legislative Session (A.B. 147) reserved for the Legislature the rights and powers necessary to regulate the transfer, sale, purchase, possession, ownership, transportation, registration and licensing of firearms and ammunition in this State. (Chapter 308, Statutes of Nevada 1989, p. 652) However, **section 5** of A.B. 147 provided that the preemptive effect of the bill applied only to ordinances or regulations adopted by certain political subdivisions on or after June 13, 1989. **Section 11** of this bill amends **section 5** of A.B. 147 to include and preempt ordinances or regulations adopted by certain political subdivisions before June 13, 1989.

EXPLANATION - Matter in *bolded italics* is new; matter between brackets ~~is omitted material~~ is material to be omitted.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. NRS 200.120 is hereby amended to read as follows:

200.120 1. Justifiable homicide is the killing of a human being in necessary self-defense, or in defense of *an occupied habitation, ~~property~~ an occupied motor vehicle* or person, against one who manifestly intends or endeavors ~~{, by violence or surprise,}~~ to commit a ~~{felony,}~~ *crime of violence*, or against any person or persons who manifestly intend and endeavor, in a violent, riotous, tumultuous or surreptitious manner, to enter the *occupied habitation or occupied motor vehicle*, of another for the purpose of assaulting or offering personal violence to any person dwelling or being therein.

2. A person is not required to retreat before using deadly force as provided in subsection 1 if the person:

(a) Is not the original aggressor;



(b) Has a right to be present at the location where deadly force is used; and

(c) Is not actively engaged in conduct in furtherance of criminal activity at the time deadly force is used.

3. *As used in this section:*

(a) *"Crime of violence" means any felony for which there is a substantial risk that force or violence may be used against the person or property of another in the commission of the felony.*

(b) *"Motor vehicle" means every vehicle which is self-propelled.*

Sec. 2. NRS 200.130 is hereby amended to read as follows:

200.130 1. A bare fear of any of the offenses mentioned in NRS 200.120, to prevent which the homicide is alleged to have been committed, ~~{shall not be}~~ *is not* sufficient to justify the killing. It must appear that the circumstances were sufficient to excite the fears of a reasonable person and that the ~~{party}~~ *person* killing really acted under the influence of those fears and not in a spirit of revenge.

2. *There is a rebuttable presumption that the circumstances were sufficient to excite the fears of a reasonable person and that the person killing really acted under the influence of those fears and not in a spirit of revenge if the person killing:*

(a) *Knew or reasonably believed that the person who was killed was entering unlawfully and with force, or attempting to enter unlawfully and with force, the occupied habitation or occupied motor vehicle, of another;*

(b) *Knew or reasonably believed that the person who was killed was committing or attempting to commit a crime of violence; and*

(c) *Did not provoke the person who was killed.*

3. *As used in this section:*

(a) *"Crime of violence" means any felony for which there is a substantial risk that force or violence may be used against the person or property of another in the commission of the felony.*

(b) *"Motor vehicle" means every vehicle which is self-propelled.*

Sec. 3. NRS 202.360 is hereby amended to read as follows:

202.360 1. A person shall not own or have in his or her possession or under his or her custody or control any firearm if the person:

(a) *Has been convicted in this State or any other state of a misdemeanor crime of domestic violence as defined in 18 U.S.C. § 921(a)(33);*



(b) Has been convicted of a felony in this *State* or any other state, or in any political subdivision thereof, or of a felony in violation of the laws of the United States of America, unless the person has received a pardon and the pardon does not restrict his or her right to bear arms;

~~{(b)}~~ (c) Is a fugitive from justice; or

~~{(c)}~~ (d) Is an unlawful user of, or addicted to, any controlled substance.

➤ A person who violates the provisions of this subsection is guilty of a category B felony and shall be punished by imprisonment in the state prison for a minimum term of not less than 1 year and a maximum term of not more than 6 years, and may be further punished by a fine of not more than \$5,000.

2. A person shall not own or have in his or her possession or under his or her custody or control any firearm if the person:

(a) Has been adjudicated as mentally ill or has been committed to any mental health facility; or

(b) Is illegally or unlawfully in the United States.

➤ A person who violates the provisions of this subsection is guilty of a category D felony and shall be punished as provided in NRS 193.130.

3. As used in this section:

(a) "Controlled substance" has the meaning ascribed to it in 21 U.S.C. § 802(6).

(b) "Firearm" includes any firearm that is loaded or unloaded and operable or inoperable.

Sec. 4. NRS 202.3688 is hereby amended to read as follows:

202.3688 1. Except as otherwise provided in subsection 2, a person who possesses a permit to carry a concealed firearm that was issued by a state included in the list prepared pursuant to NRS 202.3689 may carry a concealed firearm in this State in accordance with the requirements set forth in NRS 202.3653 to 202.369, inclusive.

2. A person who possesses a permit to carry a concealed firearm that was issued by a state included in the list prepared pursuant to NRS 202.3689 may not carry a concealed firearm in this State if the person:

(a) Becomes a resident of this State; and

(b) Has not been issued a permit from the sheriff of the county in which he or she resides within 60 days after becoming a resident of this State.

~~{3. A person who carries a concealed firearm pursuant to this section is subject to the same legal restrictions and requirements~~



~~imposed upon a person who has been issued a permit by a sheriff in this State.~~

Sec. 4.5. NRS 202.3689 is hereby amended to read as follows:

202.3689 1. On or before July 1 of each year, the Department shall:

(a) ~~{Examine the requirements for the}~~ *Determine whether each state requires a person to complete any training, class or program before the issuance of a permit to carry a concealed firearm in {each} that state . {and determine whether the requirements of each state are substantially similar to or more stringent than the requirements set forth in NRS 202.3653 to 202.369, inclusive.}*

(b) Determine whether each state has an electronic database which identifies each individual who possesses a valid permit to carry a concealed firearm issued by that state and which a law enforcement officer in this State may access at all times through a national law enforcement telecommunications system.

(c) Prepare a list of states that meet the requirements of paragraphs (a) and (b). A state must not be included in the list unless the Nevada Sheriffs' and Chiefs' Association agrees with the Department that the state should be included in the list.

(d) Provide a copy of the list prepared pursuant to paragraph (c) to each law enforcement agency in this State.

2. The Department shall, upon request, make the list prepared pursuant to subsection 1 available to the public.

Sec. 5. Chapter 33 of NRS is hereby amended by adding thereto a new section to read as follows:

1. *If a court issues an extended order pursuant to NRS 33.030, the adverse party shall not subsequently purchase or otherwise acquire any firearm during the period that the extended order is in effect.*

2. *A person who violates the provisions of subsection 1 is guilty of a category B felony and shall be punished by imprisonment in the state prison for a minimum term of not less than 1 year and a maximum term of not more than 6 years, and may be further punished by a fine of not more than \$5,000.*

Sec. 6. NRS 33.017 is hereby amended to read as follows:

33.017 As used in NRS 33.017 to 33.100, inclusive, *and section 5 of this act*, unless the context otherwise requires:

1. "Extended order" means an extended order for protection against domestic violence.

2. "Temporary order" means a temporary order for protection against domestic violence.



Sec. 7. NRS 41.095 is hereby amended to read as follows:

41.095 1. For the purposes of NRS 41.085 and 41.130, any person who uses ~~{,while}~~ :

(a) *While* lawfully in his or her residence , ~~{or}~~ in transient lodging ~~{,}~~ *or in a motor vehicle that is not his or her residence*, force which is intended or likely to cause death or bodily injury is presumed to have had a reasonable fear of imminent death or bodily injury to himself or herself or another person lawfully in the residence , ~~{or}~~ transient lodging *or motor vehicle* if the force is used against a person who is committing burglary , ~~{or}~~ invasion of the home *or grand larceny of the motor vehicle with the use or threatened use of a deadly weapon* and the person using the force knew or had reason to believe that burglary , ~~{or}~~ invasion of the home *or grand larceny of the motor vehicle with the use or threatened use of a deadly weapon* was being committed. An action to recover damages for personal injuries to or the wrongful death of the person who committed burglary , ~~{or}~~ invasion of the home *or grand larceny of the motor vehicle with the use or threatened use of a deadly weapon* may not be maintained against the person who used such force unless the presumption is overcome by clear and convincing evidence to the contrary.

(b) *Force which is intended or likely to cause death or bodily injury is immune from civil liability in an action to recover damages for personal injuries to or the wrongful death of a person against whom such force was used if the use of such force was justified under the applicable provisions of chapter 200 of NRS relating to the use of such force.*

2. As used in this section ~~{, "residence"}~~ :

(a) *"Deadly weapon" has the meaning ascribed to it in NRS 193.165.*

(b) *"Motor vehicle" means every vehicle which is self-propelled.*

(c) *"Residence" means any house, room, apartment, tenement or other building, vehicle, vehicle trailer, semitrailer, house trailer or boat designed or intended for occupancy as a residence.*

Sec. 8. NRS 244.364 is hereby amended to read as follows:

244.364 1. *The Legislature hereby declares that:*

(a) *The purpose of this section is to establish state control over the regulation of and policies concerning firearms, firearm accessories and ammunition to ensure that such regulation and policies are uniform throughout this State and to ensure the protection of the right to keep and bear arms, which is recognized by the United States Constitution and the Nevada Constitution.*



(b) The regulation of the transfer, sale, purchase, 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, 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.

2. Except as otherwise provided by specific statute, the Legislature reserves for itself such rights and powers as are necessary to regulate the transfer, sale, purchase, possession, carrying, ownership, transportation, storage, registration and licensing of firearms, firearm accessories and ammunition in Nevada ~~{,}~~ and ~~{not}~~ to define such terms. No county may infringe upon those rights and powers. ~~{As used in this subsection, "firearm" means any weapon from which a projectile is discharged by means of an explosive, spring, gas, air or other force.~~

~~2.}~~ 3. A board of county commissioners may proscribe by ordinance or regulation the unsafe discharge of firearms.

~~{3. If a board of county commissioners in a county whose population is 700,000 or more has required by ordinance or regulation adopted before June 13, 1989, the registration of a firearm capable of being concealed, the board of county commissioners shall amend such an ordinance or regulation to require:~~

~~(a) A period of at least 60 days of residency in the county before registration of such a firearm is required.~~

~~(b) A period of at least 72 hours for the registration of a pistol by a resident of the county upon transfer of title to the pistol to the resident by purchase, gift or any other transfer.~~

~~4. Except as otherwise provided in subsection 1, as}~~

4. Any ordinance or regulation which is inconsistent with this section or which is designed to restrict or prohibit the sale, purchase, transfer, manufacture or display of firearms, firearm accessories or ammunition that is otherwise lawful under the laws of this State is null and void, and any official action taken by an employee or agent of a county in violation of this section is void.

5. A board of county commissioners shall repeal any ordinance or regulation described in subsection 4, and any such ordinance or regulation that is posted within the county must be removed.

6. A board of county commissioners shall cause to be destroyed any ownership records of firearms owned by private



persons which are kept or maintained by the county or any county agency, board or commission, including, without limitation, any law enforcement agency, for the purposes of compliance with any ordinance or regulation that is inconsistent with this section. The provisions of this subsection do not apply to the ownership records of firearms purchased and owned by any political subdivision of this State.

7. Any person who is adversely affected by the enforcement of an ordinance or regulation that violates this section on or after October 1, 2015, may file suit in the appropriate court for declarative and injunctive relief and damages attributable to the violation. Notwithstanding any other provision of law, such a person is entitled to:

(a) Reimbursement of actual damages, reasonable attorney's fees and costs which the person has incurred if, within 30 days after the person commenced the action but before a final determination has been issued by the court, the board of county commissioners repeals the ordinance or regulation that violates this section.

(b) Liquidated damages in an amount equal to two times the actual damages, reasonable attorney's fees and costs incurred by the person if, more than 30 days after the person commenced the action but before a final determination has been issued by the court, the board of county commissioners repeals the ordinance or regulation that violates this section.

(c) Liquidated damages in an amount equal to three times the actual damages, reasonable attorney's fees and costs incurred by the person if the court makes a final determination in favor of the person.

8. This section must not be construed to prevent:

(a) A law enforcement agency or correctional institution from promulgating and enforcing its own rules pertaining to firearms, firearm accessories or ammunition that are issued to or used by peace officers in the course of their official duties.

(b) A court or administrative law judge from hearing and resolving a case or controversy or issuing an opinion or order on a matter within its jurisdiction.

(c) A public employer from regulating or prohibiting the carrying or possession of firearms, firearm accessories or ammunition during or in the course of an employee's official duties.

(d) The enactment or enforcement of a county zoning or business ordinance which is generally applicable to businesses



within the county and thereby affects a firearms business within the county, including, without limitation, an indoor or outdoor shooting range.

(e) A county from enacting and enforcing rules for the operation and use of any firearm range owned and operated by the county.

(f) A political subdivision from sponsoring or conducting a firearm-related competition or educational or cultural program and enacting and enforcing rules for participation in or attendance at any such competition or program.

(g) A political subdivision or any official thereof with appropriate authority from enforcing any statute of this State.

9. As used in this section:

(a) "Ammunition" includes, without limitation, fixed cartridge ammunition and the individual components thereof, shotgun shells and the individual components thereof, projectiles for muzzle-loading firearms and any propellant used in firearms or ammunition.

(b) "Firearm" ~~{means}~~ includes, without limitation, a pistol, revolver, rifle, shotgun, machine gun, submachine gun, black powder weapon, muzzle-loading firearm or any device which is designed to ~~{be used as a weapon from which}~~, able to or able to be readily converted to expel a projectile ~~{may be expelled}~~ through the barrel by the ~~{force}~~ action of ~~{any explosion or}~~ an explosive, other form of combustion ~~{~~

~~*(b) "Firearm capable of being concealed" includes all firearms having a barrel less than 12 inches in length.*~~

~~*(c) "Pistol" means a firearm capable of being concealed that is intended to be aimed and fired with one hand; or expanding gases.*~~

(c) "Firearm accessories" means:

(1) Devices specifically designed or adapted to enable the wearing or carrying of a firearm or the storing in or mounting on a conveyance of a firearm; or

(2) Attachments or devices specifically designed or adapted to be inserted into or affixed on a firearm to enable, alter or improve the functioning or capability of the firearm.

(d) "Person" includes, without limitation:

(1) Any person who has standing to bring or maintain an action concerning this section pursuant to the laws of this State.

(2) Any person who:

(I) Can legally possess a firearm under state and federal law;



(II) Owns, possesses, stores, transports, carries or transfers firearms, ammunition or ammunition components within a county; and

(III) Is subject to the county ordinance or regulation at issue.

(3) A membership organization whose members include a person described in subparagraphs (1) and (2) and which is dedicated in whole or in part to protecting the legal, civil or constitutional rights of its members.

(e) "Political subdivision" includes, without limitation, a state agency, county, city, town or school district.

(f) "Public employer" has the meaning ascribed to it in NRS 286.070.

Sec. 9. NRS 268.418 is hereby amended to read as follows:

268.418 1. *The Legislature hereby declares that:*

(a) The purpose of this section is to establish state control over the regulation of and policies concerning firearms, firearm accessories and ammunition to ensure that such regulation and policies are uniform throughout this State and to ensure the protection of the right to bear arms, which is recognized by the United States Constitution and the Nevada Constitution.

(b) The regulation of the transfer, sale, purchase, 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, 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.

2. Except as otherwise provided by specific statute, the Legislature reserves for itself such rights and powers as are necessary to regulate the transfer, sale, purchase, possession, *carrying*, ownership, transportation, *storage*, registration and licensing of firearms, *firearm accessories* and ammunition in Nevada ~~{,}~~ and ~~{no}~~ *to define such terms. No city may infringe upon those rights and powers. {As used in this subsection, "firearm" means any weapon from which a projectile is discharged by means of an explosive, spring, gas, air or other force.*

~~—2.}~~ 3. The governing body of a city may proscribe by ordinance or regulation the unsafe discharge of firearms.

~~{3. If the governing body of a city in a county whose population is 700,000 or more has required by ordinance or regulation adopted before June 13, 1989, the registration of a~~



~~firearm capable of being concealed, the governing body shall amend such an ordinance or regulation to require:~~

~~.....(a) A period of at least 60 days of residency in the city before registration of such a firearm is required.~~

~~.....(b) A period of at least 72 hours for the registration of a pistol by a resident of the city upon transfer of title to the pistol to the resident by purchase, gift or any other transfer.~~

~~4. Except as otherwise provided in subsection 1, as:~~

4. Any ordinance or regulation which is inconsistent with this section or which is designed to restrict or prohibit the sale, purchase, transfer, manufacture or display of firearms, firearm accessories or ammunition that is otherwise lawful under the laws of this State is null and void, and any official action taken by an employee or agent of a city in violation of this section is void.

5. The governing body of a city shall repeal any ordinance or regulation described in subsection 4, and any such ordinance or regulation that is posted within the city must be removed.

6. The governing body of a city shall cause to be destroyed any ownership records of firearms owned by private persons which are kept or maintained by the city or any city agency, board or commission, including, without limitation, any law enforcement agency, for the purposes of compliance with any ordinance or regulation that is inconsistent with this section. The provisions of this subsection do not apply to the ownership records of firearms purchased and owned by any political subdivision of this State.

7. Any person who is adversely affected by the enforcement of an ordinance or regulation that violates this section on or after October 1, 2015, may file suit in the appropriate court for declarative and injunctive relief and damages attributable to the violation. Notwithstanding any other provision of law, such a person is entitled to:

(a) Reimbursement of actual damages, reasonable attorney's fees and costs which the person has incurred if, within 30 days after the person commenced the action but before a final determination has been issued by the court, the governing body of the city repeals the ordinance or regulation that violates this section.

(b) Liquidated damages in an amount equal to two times the actual damages, reasonable attorney's fees and costs incurred by the person if, more than 30 days after the person commenced the action but before a final determination has been issued by the court, the governing body of the city repeals the ordinance or regulation that violates this section.



(c) Liquidated damages in an amount equal to three times the actual damages, reasonable attorney's fees and costs incurred by the person if the court makes a final determination in favor of the person.

8. This section must not be construed to prevent:

(a) A law enforcement agency or correctional institution from promulgating and enforcing its own rules pertaining to firearms, firearm accessories or ammunition that are issued to or used by peace officers in the course of their official duties.

(b) A court or administrative law judge from hearing and resolving a case or controversy or issuing an opinion or order on a matter within its jurisdiction.

(c) A public employer from regulating or prohibiting the carrying or possession of firearms, firearm accessories or ammunition during or in the course of an employee's official duties.

(d) The enactment or enforcement of a city zoning or business ordinance which is generally applicable to businesses within the city and thereby affects a firearms business within the city, including, without limitation, an indoor or outdoor shooting range.

(e) A city from enacting and enforcing rules for the operation and use of any firearm range owned and operated by the city.

(f) A political subdivision from sponsoring or conducting a firearm-related competition or educational or cultural program and enacting and enforcing rules for participation in or attendance at any such competition or program.

(g) A political subdivision or any official thereof with appropriate authority from enforcing any statute of this State.

9. As used in this section:

(a) "Ammunition" includes, without limitation, fixed cartridge ammunition and the individual components thereof, shotgun shells and the individual components thereof, projectiles for muzzle-loading firearms and any propellant used in firearms or ammunition.

(b) "Firearm" ~~{means}~~ includes, without limitation, a pistol, revolver, rifle, shotgun, machine gun, submachine gun, black powder weapon, muzzle-loading firearm or any device which is designed to ~~{be used as a weapon from which}~~, able to or able to be readily converted to expel a projectile ~~{may be expelled}~~ through the barrel by the ~~{force}~~ action of ~~{any explosion or}~~ an explosive, other form of combustion ~~{~~



~~.....(b) "Firearm capable of being concealed" includes all firearms having a barrel less than 12 inches in length.~~

~~.....(c) "Pistol" means a firearm capable of being concealed that is intended to be aimed and fired with one hand.} or expanding gases.~~

(c) "Firearm accessories" means:

(1) Devices specifically designed or adapted to enable the wearing or carrying of a firearm or the storing in or mounting on a conveyance of a firearm; or

(2) Attachments or devices specifically designed or adapted to be inserted into or affixed on a firearm to enable, alter or improve the functioning or capability of the firearm.

(d) "Person" includes, without limitation:

(1) Any person who has standing to bring or maintain an action concerning this section pursuant to the laws of this State.

(2) Any person who:

(I) Can legally possess a firearm under state and federal law;

(II) Owns, possesses, stores, transports, carries or transfers firearms, ammunition or ammunition components within a city; and

(III) Is subject to the city ordinance or regulation at issue.

(3) A membership organization whose members include a person described in subparagraphs (1) and (2) and which is dedicated in whole or in part to protecting the legal, civil or constitutional rights of its members.

(e) "Political subdivision" includes, without limitation, a state agency, county, city, town or school district.

(f) "Public employer" has the meaning ascribed to it in NRS 286.070.

Sec. 10. NRS 269.222 is hereby amended to read as follows:

269.222 1. The Legislature hereby declares that:

(a) The purpose of this section is to establish state control over the regulation of and policies concerning firearms, firearm accessories and ammunition to ensure that such regulation and policies are uniform throughout this State and to ensure the protection of the right to keep and bear arms, which is recognized by the United States Constitution and the Nevada Constitution.

(b) The regulation of the transfer, sale, purchase, 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, 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.

2. Except as otherwise provided by specific statute, the Legislature reserves for itself such rights and powers as are necessary to regulate the transfer, sale, purchase, possession, *carrying*, ownership, transportation, *storage*, registration and licensing of firearms, *firearm accessories* and ammunition in Nevada ~~{ }~~ and ~~{ no }~~ *to define such terms. No town may infringe upon those rights and powers. {As used in this subsection, "firearm" means any weapon from which a projectile is discharged by means of an explosive, spring, gas, air or other force.*

~~2.}~~ 3. A town board may proscribe by ordinance or regulation the unsafe discharge of firearms.

~~{3. If a town board in a county whose population is 700,000 or more has required by ordinance or regulation adopted before June 13, 1989, the registration of a firearm capable of being concealed, the town board shall amend such an ordinance or regulation to require:~~

~~(a) A period of at least 60 days of residency in the town before registration of such a firearm is required.~~

~~(b) A period of at least 72 hours for the registration of a pistol by a resident of the town upon transfer of title to the pistol to the resident by purchase, gift or any other transfer.~~

~~4. Except as otherwise provided in subsection 1, as}~~

4. *Any ordinance or regulation which is inconsistent with this section or which is designed to restrict or prohibit the sale, purchase, transfer, manufacture or display of firearms, firearm accessories or ammunition that is otherwise lawful under the laws of this State is null and void, and any official action taken by an employee or agent of a town in violation of this section is void.*

5. *A town board shall repeal any ordinance or regulation described in subsection 4, and any such ordinance or regulation that is posted within the town must be removed.*

6. *A town board shall cause to be destroyed any ownership records of firearms owned by private persons which are kept or maintained by the town or any town agency, board or commission, including, without limitation, any law enforcement agency, for the purposes of compliance with any ordinance or regulation that is inconsistent with this section. The provisions of this subsection do not apply to the ownership records of firearms purchased and owned by any political subdivision of this State.*



7. Any person who is adversely affected by the enforcement of an ordinance or regulation that violates this section on or after October 1, 2015, may file suit in the appropriate court for declarative and injunctive relief and damages attributable to the violation. Notwithstanding any other provision of law, such a person is entitled to:

(a) Reimbursement of actual damages, reasonable attorney's fees and costs which the person has incurred if, within 30 days after the person commenced the action but before a final determination has been issued by the court, the town board repeals the ordinance or regulation that violates this section.

(b) Liquidated damages in an amount equal to two times the actual damages, reasonable attorney's fees and costs incurred by the person if, more than 30 days after the person commenced the action but before a final determination has been issued by the court, the town board repeals the ordinance or regulation that violates this section.

(c) Liquidated damages in an amount equal to three times the actual damages, reasonable attorney's fees and costs incurred by the person if the court makes a final determination in favor of the person.

8. This section must not be construed to prevent:

(a) A law enforcement agency or correctional institution from promulgating and enforcing its own rules pertaining to firearms, firearm accessories or ammunition that are issued to or used by peace officers in the course of their official duties.

(b) A court or administrative law judge from hearing and resolving a case or controversy or issuing an opinion or order on a matter within its jurisdiction.

(c) A public employer from regulating or prohibiting the carrying or possession of firearms, firearm accessories or ammunition during or in the course of an employee's official duties.

(d) The enactment of enforcement of a town zoning or business ordinance which is generally applicable to businesses within the town and thereby affects a firearms business within the town, including, without limitation, an indoor or outdoor shooting range.

(e) A town from enacting and enforcing rules for the operation and use of any firearm range owned and operated by the town.

(f) A political subdivision from sponsoring or conducting a firearm-related competition or educational or cultural program



and enacting and enforcing rules for participation in or attendance at any such competition or program.

(g) A political subdivision or any official thereof with appropriate authority from enforcing any statute of this State.

9. As used in this section:

(a) "Ammunition" includes, without limitation, fixed cartridge ammunition and the individual components thereof, shotgun shells and the individual components thereof, projectiles for muzzle-loading firearms and any propellant used in firearms or ammunition.

(b) "Firearm" ~~{means}~~ includes, without limitation, a pistol, revolver, rifle, shotgun, machine gun, submachine gun, black powder weapon, muzzle-loading firearm or any device which is designed to ~~{be used as a weapon from which}~~, able to or able to be readily converted to expel a projectile ~~{may be expelled}~~ through the barrel by the ~~{force}~~ action of ~~{any explosion or}~~ an explosive, other form of combustion ~~†~~

~~----- (b) "Firearm capable of being concealed" includes all firearms having a barrel less than 12 inches in length.~~

~~----- (c) "Pistol" means a firearm capable of being concealed that is intended to be aimed and fired with one hand.} or expanding gases.~~

(c) "Firearm accessories" means:

(1) Devices specifically designed or adapted to enable the wearing or carrying of a firearm or the storing in or mounting on a conveyance of a firearm; or

(2) Attachments or devices specifically designed or adapted to be inserted into or affixed on a firearm to enable, alter or improve the functioning or capability of the firearm.

(d) "Person" includes, without limitation:

(1) Any person who has standing to bring or maintain an action concerning this section pursuant to the laws of this State.

(2) Any person who:

(I) Can legally possess a firearm under state and federal law;

(II) Owns, possesses, stores, transports, carries or transfers firearms, ammunition or ammunition components within a town; and

(III) Is subject to the town ordinance or regulation at issue.

(3) A membership organization whose members include a person described in subparagraphs (1) and (2) and which is dedicated in whole or in part to protecting the legal, civil or constitutional rights of its members.



(e) "Political subdivision" includes, without limitation, a state agency, county, city, town or school district.

(f) "Public employer" has the meaning ascribed to it in NRS 286.070.

Sec. 11. Section 5 of chapter 308, Statutes of Nevada 1989, as amended by chapter 320, Statutes of Nevada 2007, at page 1291, is hereby amended to read as follows:

~~Sec. 5. {1. Except as otherwise provided in subsection 2, the provisions of this act apply to ordinances or regulations adopted on or after June 13, 1989.~~

~~2.} The provisions of this act {as amended on October 1, 2007,} apply to ordinances or regulations adopted before, on or after June 13, 1989.~~

Sec. 12. 1. The provisions of NRS 202.360, as amended by section 3 of this act, apply to an offense committed before, on or after the effective date of this act.

2. The provisions of section 5 of this act apply to an extended order pursuant to NRS 33.030 issued on or after the effective date of this act.

Sec. 12.5. Records relating to the registration of any firearm capable of being concealed pursuant to any ordinance or regulation adopted by a political subdivision before June 13, 1989, must be destroyed within 1 year after the effective date of this act.

Sec. 13. (Deleted by amendment.)

Sec. 14. This act becomes effective upon passage and approval.




CLERK OF THE COURT

1 **TRAN**

2
3 **EIGHTH JUDICIAL DISTRICT COURT**
4 **CIVIL/CRIMINAL DIVISION**
5 **CLARK COUNTY, NEVADA**

6 MICHELLE FLORES,)
7 Plaintiff,) CASE NO. A-16-735496
8 vs.) DEPT. NO. XXIII
9 LAS VEGAS-CLARK COUNTY LIBRARY)
10 DISTRICT,)
11 Defendant.)

12 BEFORE THE HONORABLE STEFANY MILEY, DISTRICT COURT JUDGE

13 TUESDAY, JUNE 21, 2016

14 **TRANSCRIPT RE:**
15 **PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION**

16 **APPEARANCES:**

17 For the Plaintiff: JEFFREY F. BARR, ESQ.
18 LEE I. IGLODY, ESQ.
19 For the Defendant: DENNIS L. KENNEDY, ESQ.
20 KELLY B. STOUT, ESQ.

21 **ALSO PRESENT:** MICHELLE FLORES

22
23
24 **RECORDED BY:** Maria Garibay, Court Recorder

1 LAS VEGAS, NEVADA

TUESDAY, JUNE 21, 2016

2 **PROCEEDINGS**

3 (PROCEEDINGS BEGAN AT 9:28 A.M.)

4 THE MARSHAL: A735496, Michelle Flores versus Las Vegas-Clark County
5 Library District.

6 THE COURT: All right, good morning. So this is plaintiff's motion for
7 preliminary injunction. I do have an opposition and a reply by the plaintiff.

8 All right. Plaintiff, it's your burden on the injunction.

9 MR. BARR: Good morning, Your Honor, Jeff Barr. With me is Lee Iglody
10 and plaintiff, Michelle Flores.

11 MR. KENNEDY: Dennis Kennedy and Kelly Stout for the defendant Library
12 District.

13 THE COURT: All right, good morning.

14 All right. Mr. Barr.

15 MR. BARR: This really is an issue of law, Your Honor. Here we're just
16 asking the Court to enforce a law, SB175. Through SB175 the Legislature has
17 preempted all local laws, regulations, ordinances and specifically rules governing
18 the possession of firearms. This rule includes any -- this law, SB175, includes any
19 rule promulgated by the District. The District simply does not have the authority
20 to regulate firearms in libraries. Because the Legislature has stripped, has denied
21 them the power of this, the ability to regulate firearms in the libraries, the ban --
22 Ms. Flores' ban on access to libraries is basically unlawful, and that is she's entitled
23 to an injunction lifting the ban and permitting her -- restoring her access to the
24 libraries.

1 THE COURT: Let me ask this. One of the -- you've touched on one of the
2 problems, which is the likelihood of success on the merits, okay. That's what you're
3 arguing the underlying case. But the other thing you have to look at is whether or
4 not money damages would be adequate, and quite simply, I don't see how this is a
5 case where money damages are inadequate because quite simply -- I understand
6 it's free to go to the library, there's a whole assortment of books, but by the same
7 token you can go to the bookstore, you can download books. And, you know,
8 perhaps in the case if she prevails, her damages would be the cost of having to
9 purchase books versus, you know, take them out on loan from the library. But I just
10 don't see how money damages are not sufficient in this case.

11 MR. BARR: So, yeah, I understand the Court's question, but there's really
12 no need to show irreparable harm when a statute provides for injunctive relief.
13 Here, SB175 permits us to come to the court and ask for injunctive relief. That
14 notwithstanding, constitutional injury is always irreparable harm. Here we have two
15 constitutional rights that are at stake. One, Ms. Flores' right to keep and bear arms.
16 That's a right guaranteed by the U.S. Constitution. It's a right guaranteed by Article
17 1, Section 11 of the Nevada Constitution. The second constitutional right that's at
18 issue here is access to the library. She's being denied access to the library. Access
19 to the library is a fundamental constitutional right -- to public libraries. She's being
20 denied access to a public library because of her exercise of her fundamental
21 constitutional right to bear arms.

22 THE COURT: That's where I want to stop you, too, because I'm sure the
23 defense will probably make an issue of that, is their contention is that it wasn't the
24 fact that she had a gun that caused her to be, you know, 86'd from the library, it was

1 the fact of her engaging in disruptive behavior at the library, which is what caused
2 them to revoke her library privileges.

3 MR. BARR: May I -- well, with all due respect, that's not what the trespass
4 notice says, Your Honor. The trespass notice, which was attached to our complaint,
5 it's Exhibit 1 or 2 to our complaint, says that you have been officially trespassed for
6 the following infraction: firearms in library. It does not say disruptive behavior. It
7 does not say disorderly conduct. It does not say engaging in political speech to try
8 and educate the library staff as to her constitutional rights. It says firearms in library.
9 So any post hoc after the fact reconstruction of facts is immaterial, Your Honor.
10 What she's been trespassed for is firearms in a library.

11 THE COURT: Okay. And the other thing they've indicated is that -- and I'm
12 not familiar with that library, it's not a library I go to, but there are postings on the
13 door which clearly indicate that firearms are prohibited in that library, and presumably
14 she saw that when walking into the facility.

15 MR. BARR: Regardless, Your Honor, the Legislature has preempted the
16 District's ability to post those signs. They can't do it. They're not allowed to restrict
17 open carry firearms in the library. That's the whole point of this case. It comes
18 down to this. If the Library District has the authority to do what it did, then our case
19 is over. But if the Library District didn't have the authority, as we suggest, then
20 everything that follows from that -- if the Library District doesn't have the authority to
21 prohibit firearms in the library, then everything that follows from that, all their actions
22 are void, including banning Michelle.

23 THE COURT: Okay. Is there anything else, Mr. Barr, as far as the request
24 for a preliminary injunction?

1 MR. BARR: So, we would also ask that the ban be overturned and that the
2 Library District be enjoined from enforcing whatever rule they want to put out there
3 regarding the possession of openly carried holster -- openly carried firearms.

4 THE COURT: Okay. And I actually have one more note I wanted to ask
5 you. There's a contention by the defense that the plaintiff did not complete her
6 administrative remedies; rather, she first sought relief here in court. Would you
7 like to address that?

8 MR. BARR: Certainly. There's really no need to exhaust administrative
9 remedies when the statute gives original jurisdiction to the courts and the
10 administrative agency can't give the relief that's being sought. Here the Court has
11 original jurisdiction pursuant to SB175, in particular Section 8, subsection 7. And
12 the District can't declare -- I'm sorry, the District can't issue declaratory relief. It
13 can't say that its rule is unconstitutional and unlawful. It also can't award monetary
14 damages pursuant to SB175.

15 Finally I would add, and this is not in our pleadings but I would add
16 that it would be --

17 THE COURT: Well, hold on a second. Let's go back to that statement
18 because that goes back to what I was asking you. I mean, one of the criteria, as
19 I've already indicated, for the preliminary injunction is that money damages are
20 inadequate. And your reasoning for not utilizing the administrative procedure is that
21 they cannot award money damages. But you're sitting here telling me on the other
22 side of what we want is not money damages, I want my constitutional right to carry
23 my gun wherever I want to and that includes a public library. So you can't really
24 have it both ways.

1 MR. BARR: Well, I can -- respectfully, Your Honor, I can have it both ways
2 because the statute, SB175, permits three different types of damages. I can get
3 injunctive relief, I can get declaratory relief and I can get damages. They call them
4 liquidated damages in the statute.

5 THE COURT: At the end of the case, but we're kind of not in that posture.
6 Right now it's whether or not a preliminary injunction is necessary. I'm not saying
7 that you may not prevail at the end of the case and get certain types of damages,
8 but it's now whether the injunction is appropriate at this stage of the game.

9 MR. BARR: And I understand, and of course it is appropriate. We do suffer
10 irreparable harm, in addition to the potential for monetary damages as given by
11 the statute. All I'm suggesting is it's not necessary to exhaust our administrative
12 remedies in this case for a couple reasons. One, the statute, SB175, gives you
13 original jurisdiction. Two, the Library District can't give us declaratory or injunctive
14 relief. And three, it's not -- it's going to be futile. The District's Executive Director
15 is not going to say, oh, this rule is completely unconstitutional. He's not going to do
16 that. I should overturn the ban. It would be futile to do it. So we're not required to
17 exhaust our administrative remedies in this case.

18 THE COURT: Okay. By the Library?

19 MR. KENNEDY: Thank you, Your Honor. Dennis Kennedy for the Library.

20 First, let's look at the evidence that's before the Court so that we can
21 define the issue. We have a verified complaint that -- and I'm not faulting it, but
22 like most complaints it's somewhat vague and somewhat general. What we have
23 is Exhibit 2 to the opposition is the Incident Report filed by Ty Morgan, the security
24 officer, and Deborah Tinsler, who is the librarian. That document, unlike the

1 complaint, is extremely detailed and it's been authenticated, and that's really the
2 principal evidence before the Court when looking to see what actually happened
3 here.

4 The plaintiff went to the Rainbow branch of the library with her three
5 children, ages one, three and five, and she was there for an hour. She was openly
6 carrying a .38 caliber firearm holstered on her hip. She was there for one hour with
7 the three kids. She checked out the books and when she was leaving the library,
8 when she was leaving she was stopped by the security officer who said to her, we
9 have a policy against firearms, so if you come back don't bring your gun. And she
10 then wanted to debate with the security officer the validity of the policy. Now, she
11 was on her way out. She was almost out the door. The security officer said to her,
12 ma'am, I can't debate the policy with you, but I'll get the librarian, the head librarian,
13 and he does. The head librarian comes and informs her of the policy and she's
14 debating the wisdom and validity of the policy with the librarian and the librarian
15 says, look, here's a phone number you can call, but don't bring your gun when you
16 come back.

17 Here's what the plaintiff does. The plaintiff and her three children sit
18 down in the doorway. There's an outer door and an inner door and they sit down
19 in the doorway at this point, for reasons that are unknown because they're leaving,
20 but they sit down. They are then asked, don't sit in the doorway, please leave.
21 They refused to leave. There's no stated reason. It's we are going to sit here and
22 we are not going to leave; the plaintiff and her three children, one, three and five
23 years old. Finally the librarian says you can't sit here and block the doorway of the
24 library. And the plaintiff says, well, then go ahead and call Metro, they're not going

1 to do anything. The librarian then calls Metro. Metro comes eventually after the
2 plaintiff and her three children, who are now crying, have been sitting in the doorway
3 of the library for an hour. Metro says to the plaintiff, look, you have to leave, you
4 can't just sit here in the doorway of the library. She refuses. Metro says if you
5 won't, we're going to trespass you. Well, go ahead. So they remove her and the
6 three kids and the library then, they read the trespass notice to her, saying you
7 can't sit here in the doorway.

8 So she, under the policy of the library, had her library privileges
9 suspended for twelve months, which is stated in the library policy that's attached
10 to the complaint as an exhibit -- not because she had a gun in the library; she was
11 leaving. And she was simply told if you come back, leave your gun in your car or
12 don't bring it. She was -- she lost her privileges because she and her three children
13 sat in the doorway of the library for an hour after having been asked to leave.

14 Now, what does the preliminary injunction itself ask for? Why are we
15 here? The object of the motion -- it's stated four times in the motion -- to restore
16 the plaintiff's library privileges; page 3. Page 4, lifting the ban on her library visits.
17 Page 5 and page 7, same thing, we want to lift the ban on her library visits. The
18 defendant of course responded and said, well, the ban is because of your disruptive
19 behavior, not because you carried a gun. It was because of your disruptive behavior.
20 And now what the plaintiff has done has said, well, you know, it's really a large
21 constitutional issue that's at stake here. Well, it might have been if she was banned
22 for carrying a weapon, but she was not. She was banned from the library for twelve
23 months for sitting with her three children in the main doorway of the library for an
24 hour and refusing to leave for no reason.

1 So the question before the Court, as framed by the motion, is was the
2 Library District's decision to ban the plaintiff or to suspend her library privileges for
3 twelve months a valid decision, or is it one that if the Court examines the Court will
4 say it's likely to be overturned because it was an abuse of discretion or irrational?
5 Well, if you look at the rule that's at issue, the rule simply says you cannot engage
6 in disruptive behavior at the library. And the library, it's purpose is to be accessible
7 to everyone. And a mom with kids aged one, three and five sitting in the main
8 doorway and refusing to leave is disruptive behavior by any definition. That's
9 number one.

10 Chance of success on the merits, pretty small. Irreparable harm. The
11 harm that the plaintiff has suffered is completely self-inflicted. She could have just
12 got up and left and nothing would have happened. But instead of doing that she
13 insisted on sitting there and saying I won't leave, you'll have to call Metro, which the
14 library did finally.

15 Third, balance of harms, public interest. Clearly the public interest is
16 served by unimpeded access to the library by the public and not having a woman
17 and three real young kids sitting in the doorway and refusing to leave. That's the
18 issue that's before the Court and that's the issue that's framed by the plaintiff in the
19 motion for preliminary injunction, can I have my library privileges back; will the Court
20 order the library to withdraw its suspension? And the answer is no, the Court should
21 not because there really is no chance of success on the merits of that issue for the
22 plaintiff, based on her own admitted behavior.

23 Now, what happens is the plaintiff tries to frame it as a larger
24 constitutional issue. It's really not. I mean, the Court did hit on the administrative

1 remedy, because what the plaintiff wants is to have the suspension overturned.
2 Well, you have 14 days to take an appeal administratively to the Library District.
3 What they're saying is, well, they can't award damages, on and on and on. That
4 wouldn't be the issue. The issue on the appeal would be was it proper for you to
5 suspend my privileges based on what I did. If there's an administrative appeal,
6 presumably the plaintiff would say to get my privileges back I will never do that
7 again, and I'd like to get my privileges back. And that would have been it. So there
8 was an effective administrative remedy here, it just wasn't pursued.

9 Now, the constitutional arguments, I don't want to dismiss them, but
10 the first one is due process. The policy is void for vagueness. Exhibit 6 -- Exhibit 5
11 is the policy; Exhibit 5 to the opposition. Exhibit 6 is a snapshot, a picture of the
12 warning that's on the door. It couldn't be clearer. It says no firearms in the library.
13 In addition to that, in Exhibit 1, paragraph 10, the executive director of the library
14 says, look, if that policy causes problems for people, we make accommodations to
15 them. If people simply say, look, I can't go into a library without packing a firearm,
16 the library says, okay, we'll make accommodations to you. Tell us what you want;
17 we'll bring it to the parking lot. You just tell us what you need and we'll accommodate
18 you if you just can't come into the library unarmed. So that takes care of the due
19 process argument.

20 Lastly, SB175. If the Court looks at the three principal provisions of
21 SB175, what they say is a city shall not, a town shall not and a county shall not.
22 That's specifically what the Legislature said. The Legislature said it's us, it's the
23 Legislature that does this; cities shall not, counties shall not, towns shall not. As we
24 pointed out, the Library District is not a city, it is not a town and it is not a county. It

1 is an independent -- what is called a political subdivision, whose board of trustees is
2 made up by unelected appointees. So when they adopt this policy, it's not a city, it's
3 not a town and it's not a county. And, Your Honor, that has to be the interpretation
4 given to the provisions of SB175. I just -- and that's the reasonable interpretation.

5 And I leave you just with this. If the plaintiff's interpretation is correct,
6 if what the plaintiff says is only the Legislature may regulate the right to carry and
7 where one may possess or not possess a firearm, only the Legislature may do that
8 for open carry, there is no statute, Your Honor, regulating what may be done with
9 respect to the Regional Justice Center or other courthouses. You will search in vain
10 for a statute on that point. If they are correct, then citizens have the right to carry
11 AR15s into this courtroom, if the plaintiff's position is correct. And of course it's not.
12 That's absurd. But what they're saying is unless there is a statute enacted by the
13 Legislature, there is complete and uninhibited open carry access, and no other
14 body has the right to adopt regulations governing when you may and may not carry.
15 That's absurd. The Legislature has restricted cities, towns and counties. It has not
16 restricted library districts. It has not restricted courthouses or the Regional Justice
17 Center. And it would be absurd to adopt the argument the plaintiff is making.

18 In sum, the preliminary injunction seeks restoration of library privileges.
19 That's what it says. It says five times in the motion that's what we want. In order
20 to get that, the Court has to look at why the suspension was imposed, and it was
21 because of the disruptive behavior that the plaintiff engaged in. That's it. No one
22 said we're imposing that suspension on you because you carried a firearm. She
23 was leaving the library at that point. The disruptive behavior occurred when she
24 was asked not to bring the gun back and it's the disruptive behavior that led to the

1 suspension. If the Court has no questions, I'm done.

2 THE COURT: I don't. Thank you.

3 For the plaintiff?

4 MR. BARR: May I approach, Your Honor?

5 THE COURT: Yes, please, and show it to the defense, please.

6 MR. BARR: With all due respect to opposing counsel, the trespass notice
7 clearly states, in the library's hand, that Ms. Flores was trespassed, was banned for
8 firearms in the library. Post hoc reconstruction of events notwithstanding, it doesn't
9 say she was banned for disorderly conduct, it doesn't say she was banned for
10 blocking an entrance, it doesn't say she was banned for trespassing. And really it
11 sounds like the library district wants to ban her for exercising her constitutional right
12 to free speech, is what I'm hearing, for trying to educate the library staff about what
13 her constitutional rights are.

14 Really, all this case boils down to is does the library district have the
15 authority under the Legislature to ban firearms? The short answer is no. SB175
16 took away that right. And with all due respect, I just want to make a record, Your
17 Honor. I want to read a couple of provisions of SB175 into the record. (Reading)
18 "The purpose of this section is to establish state control over firearms to ensure that
19 such regulation and policies are uniform throughout this state. The regulation of the
20 possession, carrying of firearms is within the exclusive domain of the Legislature,
21 and any other law, regulation, rule or ordinance to the contrary is null and void."
22 There is not a clearer expression of legislative intent than this. But still it goes on.
23 There's instructions to the Court. "This section must be liberally construed to
24 effectuate its purpose." And yes, the answer is the Legislature has the authority to

1 permit open carry everywhere in this state in all public buildings. Now, courthouses
2 are a little different because you're a third branch of the government. You can
3 control the separation of powers issue there. The Court has the inherent authority
4 to control who can come in and out. That notwithstanding, the Legislature has the
5 ability to control access, guns in --

6 THE COURT: Okay. So, a lot of emphasis has been placed on -- there's
7 obviously a disagreement as to the reason behind the trespass notification. My
8 question is this. Based upon what's been presented, and the plaintiff has not
9 disputed this version of the facts, it wasn't when plaintiff was leaving the building
10 and the gun was noticed on her that she was immediately told don't bring your
11 gun in next time and here's your trespass notice for bringing it in. The facts seem
12 to indicate that she was told not to bring the gun in, she engaged in a series of
13 behavior, which was sitting in the doorway, and at that point after that disruptive
14 behavior occurred she then received the trespass notification.

15 MR. BARR: We do dispute that -- those events. First of all, you've got
16 double hearsay --

17 THE COURT: So, did she receive the -- because everything I've read
18 indicates it happened just as I've indicated, and you haven't really disputed that.
19 Are you telling me that they came up to her and said don't bring the gun in and
20 here's your trespass notice for bringing the gun in and that was pretty much
21 simultaneous?

22 MR. BARR: No. No, no, no. What ensued was a colloquy where my client
23 tried to educate the security guard and head librarian as to what the law is. No
24 different than if she were exercising her First Amendment rights to educate in a

1 public forum. So if she's being banned for educating, she's being banned for
2 exercising her First Amendment rights, then we have a different issue and we'll
3 amend and we'll add a constitutional claim for that. She was banned, as the notice
4 says, for firearms in the library. If she was banned for disorderly conduct, then that's
5 inherently vague. That's unconstitutional. You can't ban somebody for a rule that's
6 not written down on the paper. How can she know what she was banned for? If the
7 Library District's own paper says firearms in the library, then she can't be banned for
8 disorderly conduct. If they're saying she was banned for disorderly conduct, that's
9 a due process violation because then she had no notice of what she was banned
10 for. Does that make sense? She had no notice of why she was banned. The only
11 notice she has of why she was banned is what is written on this page, Your Honor.
12 And what is written on this page is firearms in the library.

13 So, if Mr. Kennedy and the Library District want to maintain that she
14 was banned for disorderly conduct, then the notice violates due process. It's
15 unconstitutionally vague.

16 THE COURT: Okay. Is there anything else, counsel?

17 MR. BARR: No, Your Honor. With that, we'll submit.

18 THE COURT: Any follow up by the Library?

19 MR. KENNEDY: Your Honor, I'd just point out that if you look at the Incident
20 Report itself, which is Exhibit -- I think it's Exhibit 2 to the opposition, the Incident
21 Report contains the times. It is Exhibit 2. It says at 11:30 a.m. is when the call was
22 made to Metro. That's down about ten lines from the bottom. Metro comes at 12:20
23 and this trespass notice has a time of 12:55 on it. So the Court is right, it's almost
24 an hour and a half after she is asked if you come back, don't bring your gun. It's

1 an hour and a half later she gets the trespass notice. And the Court's perception
2 is correct, it's because she and her three kids sat down in the doorway for over
3 an hour. So the exhibits clearly set out the timeline.

4 THE COURT: All right. If there's nothing else, I'm going to make a ruling
5 now. All right. I am going to deny the plaintiff's request for a preliminary injunction
6 for the following reasons. Taking into consideration all the factors the Court must
7 consider in issuing a preliminary injunction, I just don't feel that the plaintiff has met
8 those criteria. As far as the likelihood of success on the merits, the Court finds
9 that the plaintiff, at least at this stage of the game and with the evidence presented
10 has not made a strong showing of likelihood of success on the merits. There is
11 evidence indicating that the plaintiff's trespass from the library was the result not of
12 her carrying a gun, but was the result of her disruptive conduct after she was told
13 that she could not bring the gun into the facility, okay.

14 As far as the constitutional arguments, at this stage the evidence
15 indicates that the policy is not unconstitutionally vague. There is a sign on the door
16 with an indication that guns are a prohibited item within the library.

17 As far as irreparable harm, the Court wants to really focus on this.
18 There's been no showing of irreparable harm. I understand that the plaintiff says that
19 she wants to bring her gun into the library and that money damages are inadequate.
20 However, there's really no showing that money damages are inadequate. As I
21 started out with, I understand that it's more expensive, obviously, to download books
22 or buy them from the bookstore, but that's still always an option for an individual,
23 you know, versus getting the free books that you can get on loan from the library.
24 But it still means that money damages would be adequate. Perhaps her damages

1 later on down the road, again, would be the cost of having to buy books or, you
2 know, the cost of shipping if she orders books off the Internet. But certainly there's
3 other ways she could get the books that she feels that she's missing out on from
4 the library. And also, she could certainly have people go into the library and get the
5 books from the library if she wanted to get them from the library.

6 As far as the balancing of the equities, I think at this point the balancing
7 of the equities lies in favor of the defense for this reason. The library has an interest
8 in maintaining a safe and orderly environment. And again, as I already indicated,
9 it appears that the trespass notice occurred after -- not after the plaintiff was trying
10 to leave the library with the gun, but rather the trespass notification occurred after
11 she had engaged in what was believed by the Library District to be disorderly
12 conduct. And certainly the library, you know, has -- it's open to the public and they
13 have an interest in making sure the premises are orderly and that the rules are
14 applied consistently to everyone who decides to come within the library.

15 As far as public policy, again, I think that balances in favor on the
16 defense. Again, the Library District certainly has a policy of trying to apply the rules
17 equally to everyone. There is a notification on the door that guns are not allowed
18 within the library. Again, public policy would favor the libraries being an orderly place
19 for individuals from the community to come in to get books.

20 So for all those reasons, the motion for preliminary injunction is going
21 to be denied. Defendant as the prevailing party is going to do the order.

22 MR. KENNEDY: We will do the order and run it by counsel.

23 MR. BARR: Your Honor, clarification?

24 THE COURT: Yeah.

1 MR. BARR: Is it the Court's ruling then that SB175 does not preempt the
2 Library District's rule?

3 THE COURT: I'm not making -- you know, the showing is only whether or
4 not there's a likelihood of success on the merits and it's based upon -- the Court's
5 decision at this stage of the game, given the fact that discovery really hasn't started,
6 there have been really no motions filed, it's based upon the information that's been
7 provided to me as of this date. I have found that you have not made a strong
8 enough showing of likelihood of success on the merits to warrant the granting of a
9 preliminary injunction. In addition, I think that you've not made the requisite showing
10 as far as the other prongs that are required in order to grant a preliminary injunction.

11 MR. BARR: Again, with all due respect, Your Honor, so it's your position --
12 it's the Court's position that SB175 doesn't apply in this case?

13 THE COURT: I believe I've set forth my position.

14 MR. BARR: Thank you, Your Honor.

15 THE COURT: Thank you.

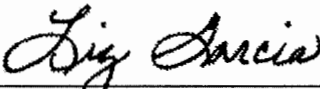
16 MR. KENNEDY: Thank you, Your Honor. We'll do the order.

17 THE COURT: Thank you.

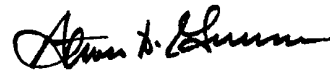
18 (PROCEEDINGS CONCLUDED AT 10:00 A.M.)

19 * * * * *

20
21 ATTEST: I do hereby certify that I have truly and correctly transcribed the
audio/video proceedings in the above-entitled case to the best of my ability.

22
23 

24 Liz Garcia, Transcriber
LGM Transcription Service



CLERK OF THE COURT

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8 **EIGHTH JUDICIAL DISTRICT COURT**

9 **CLARK COUNTY, NEVADA**

10 MICHELLE FLORES, an individual
Plaintiff,

11 v.

12 LAS VEGAS-CLARK COUNTY LIBRARY
13 DISTRICT, a political subdivision of the State
of Nevada; DOES I-X, inclusive; and ROES
14 I-X, inclusive,
Defendants.

Case No.: A-16-735496-C

Dept. No.: XXIII

15 AND RELATED COUNTERCLAIMS.
16

17 **REPLY TO COUNTERCLAIMS**

- 18 1. Answering Paragraphs 1, 2, 12, 13, 34, and 37 of Counterclaimant's Counterclaims,
19 Counterdefendant admits the allegations contained therein.
- 20 2. Counterdefendant is without sufficient knowledge or information to either admit or deny
21 the allegations in Paragraphs 6, 10, 11, 14, 15, 18, 19, 20, 21, 26, 29, 30, 32, 33, and 36 of
22 Counterclaimant's Counterclaims and on that basis denies them.
- 23 3. Counterdefendant denies the allegations in Paragraphs 16, 22, 23, 24, 25, 27, 28, and 31
24 of Counterclaimant's Counterclaims.
- 25 4. In answering the allegations contained in Paragraphs 7, 8, 9, and 17 of Counterclaimant's
26 Counterclaims, Counterdefendant affirmatively states that the documents referred to
27

1 therein speak for themselves. Counterdefendant denies any remaining allegations
2 contained therein.

3 5. Paragraphs 3, 4, 5, 38, and 39 of the Counterclaimant's Counterclaims contain legal
4 conclusions to which no response is required. To the extent a response is required,
5 Counterdefendant denies any allegations contained therein.

6
7 6. Answering Paragraph 35 of Counterclaimant's Counterclaims, Counterdefendant repeats
8 and re-alleges her answers to all preceding paragraphs and incorporate those answers
9 herein by reference.

10 **GENERAL DENIAL**

11 Counterdefendant denies each and every allegation in Counterclaimant's Counterclaims
12 to which Counterdefendant has not expressly admitted or to which Counterdefendant has not
13 otherwise responded.

14 **AFFIRMATIVE DEFENSES**

- 15
16 1. Counterclaimant's actions as described herein were unconstitutional.
17 2. SB 175 (2015) preempts all of Counterclaimant's regulations described herein.
18 3. Counterclaimant fails to state a claim upon which relief can be granted.
19 4. The complained-of-acts of this Counterdefendant were justified or privileged under the
20 circumstances.
21 5. Pursuant to NRCP 11, all possible affirmative defenses may not have been alleged herein
22 insofar as sufficient facts were not available after reasonable inquiry upon the filing of
23 Counterdefendant's Reply and, therefore, Counterdefendant reserve the right to amend
24 this Answer to allege additional affirmative defenses if subsequent investigation warrants.
25

26 **WHEREFORE**, Counterdefendant prays that this Court grant a declaratory judgment in
27 her favor; that Counterclaimant take nothing by way of the Counterclaims; and that the Court

1 award Counterdefendant reasonable costs and attorney's fees incurred herein; and grant such
2 other and further relief as the Court deems just and proper.

3 DATED this 23rd day of June, 2016.

4 ASHCRAFT & BARR | LLP

5
6 /s/ Jeffrey F. Barr
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Michelle Flores

12 **CERTIFICATE OF SERVICE**

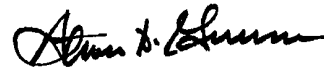
13
14 I certify that on this 23th day of June, 2016, I electronically filed and served the foregoing
15 Reply to Counterclaim by using the Eighth Judicial District Court E-File & Serve System,
16 and if necessary, by first class mail, postage pre-paid to the following:

17 BAILEY KENNEDY
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22 /s/ Justine Levy
23 An employee of ASHCRAFT & BARR | LLP
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EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

MICHELLE FLORES, an individual
Plaintiff,

v.

LAS VEGAS-CLARK COUNTY LIBRARY
DISTRICT, a political subdivision of the State
of Nevada; DOES I-X, inclusive; and ROES
I-X, inclusive,
Defendants.

Case No.: A-16-735496-C
Dept. No.: XXIII

**MOTION FOR PARTIAL SUMMARY
JUDGMENT ON PLAINTIFF'S
DECLARATORY RELIEF CLAIM**

-and-

**MOTION FOR SUMMARY
JUDGMENT ON
COUNTERCLAIMANT'S
DECLARATORY RELIEF CLAIM**

AND RELATED COUNTERCLAIMS.

Plaintiff and Counterdefendant MICHELLE FLORES files this Motion for Partial
Summary Judgment on Plaintiff's Declaratory Relief Claim and Motion for Summary
Judgment on Counterclaimant's Declaratory Relief Claim. This Motion is made and based

1 upon the attached points and authorities, the papers and pleadings on file, and any oral
2 argument the Court may entertain at any hearing.

3 DATED this 5th day of July, 2016.

4 ASHCRAFT & BARR | LLP

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13 Attorneys for Michelle Flores

14 **NOTICE OF MOTION**

15 TO: LAS VEGAS-CLARK COUNTY LIBRARY DISTRICT, Defendant; and

16 TO: Its Counsel of Record and all other interested parties.

17 PLEASE TAKE NOTICE that the undersigned will bring the above-referenced Motion
18 on for hearing in the Eighth Judicial District Court, Department 16 AUGUST
19 on the ____ day of
20 _____, 2016 at ____: 9:30A .m.

21 DATED this 5th day of July, 2016.

22 ASHCRAFT & BARR | LLP

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POINTS AND AUTHORITIES

I. INTRODUCTION

“[W]e want to make sure that the litigation [over SB 175 (2015)] is potentially painful enough that the local governments will not ignore the Legislature and dare someone to sue them.”

--Senator Greg Brower, Hearing on Senate Bill 175 (2015) Before Assembly Comm. on Judiciary, 78th Leg. (Nev., April 23, 2015) (emphasis added).

In 2015, Senator Greg Brower wrongly predicted that local governments would genteelly comply with Senate Bill 175 (2015). Senate Bill 175 (2015) was the latest in a long litany of legislation preempting any local government’s ability to regulate the possession of firearms. The Legislature intended the Bill to be the definitive statement “to establish state control over the regulation of and policies concerning firearms.” It declared that the Legislature, and the Legislature alone, has “the exclusive domain” to regulate the “possession and carrying of firearms.” The Bill further decreed that any other “law, regulation, rule, or ordinance” contrary to the Legislature’s will is “null and void.”

The Las Vegas-Clark County Library District (the “District”) is one of those recalcitrant local governments who have chosen to ignore the Legislature. The District promulgates a “null and void” rule that purports to regulate the possession of firearms in its facilities in defiance of Nevada law and the will of the Legislature (the “DIP Rule”). Despite Senator Brower’s warning, the District has rested smugly in its defiance and “dared someone to sue them.”

That “someone who dares to sue them” is Plaintiff Michelle Flores. This case is about the illegality of the DIP Rule, and Michelle is entitled to a declaratory judgment in her favor declaring the DIP Rule unlawful for three reasons: First, Nevada law unequivocally preempts the District’s DIP Rule. Next, the DIP Rule utterly violates Dillon’s Rule in that the District asserts authority it does not possess. Finally, the DIP Rule is simply unconstitutional. Here,

Michelle seeks partial summary judgment on her declaratory relief claim and on the District's declaratory relief counterclaim against her. In short, the Court should GRANT the instant motion.

II. UNDISPUTED FACTS

1. Plaintiff Michelle Flores ("Michelle") is a citizen of the State of Nevada. [Ver. Comp. ¶ 5.]
2. Michelle is lawfully entitled to possess a firearm in Nevada. [Ver. Comp. ¶¶ 10-11.]
3. Clark County and the City of Las Vegas formed the Las Vegas-Clark County Library District (the "District") pursuant to NRS ch. 379. [Ver. Comp. ¶ 13; Counterclaim ¶ 1.]
4. The District promulgates a policy called the Dangerous Items Policy (the "DIP Rule"). [Counterclaim ¶¶ 9-10.]
5. The DIP Rule prohibits the carrying of an open, holstered firearm in District facilities. [Counterclaim ¶ 15.]
6. The parties disagree over the enforceability of the DIP Rule. [Counterclaim ¶ 37.]

III. LEGAL ANALYSIS

A. SUMMARY JUDGMENT IS APPROPRIATE HERE

Summary judgment is appropriate "to obtain a declaratory judgment." NRCP 56(a). Summary judgment is also proper for a party "against whom...a declaratory judgment is sought." NRCP 56(b).

Here, Michelle seeks partial summary judgment on her declaratory relief claim and on the District's declaratory relief counterclaim against her. One, central issue dominates this case--the legality of the District's DIP Rule. Summary judgment is proper to adjudicate competing

1 declaratory relief claims, and for the reasons detailed below, the DIP Rule is illegal for three,
2 overarching reasons: First, Nevada law preempts all local laws and rules governing the
3 possession of firearms, including the DIP Rule. Second, the DIP Rule violates Dillon's Rule.
4 Third, the DIP Rule is unconstitutional. In short, Michelle is entitled to summary judgment.

5 **B. NEVADA LAW PREEMPTS THE DIP RULE**

6 **1. The History of Firearm Regulation in Nevada Is One of Preemption**

7
8 The history of the regulation of firearms in Nevada is one of preemption. Preemption
9 occurs when a state law supersedes a conflicting local law or rule. *See Lamb v. Mirin*, 90
10 Nev. 329, 332-33, 526 P.2d 80, 82 (1974).

11 As detailed below, firearms regulation has been through at least three cycles of
12 preemption. First, a 1982 amendment to the Nevada Constitution constrained the
13 Legislature's ability to regulate a citizen's right to carry firearms for security, defense,
14 hunting, recreation, and other lawful purposes. Next, in 1989, the Legislature passed AB 147,
15 which constrained the local governments from regulating the possession of firearms for all
16 laws and regulations passed after June 1989. Finally, with SB 175 in 2015, the Legislature
17 preempted all local governments from regulating the possession of firearms passed at any time
18 and reserved unto itself the right to existentially define the term "firearm."

19 20 **(a) A CONSTITUTIONAL AMENDMENT RESTRAINS THE LEGISLATURE**

21 In contrast to many states, Nevada has a relatively recent history of protecting the
22 fundamental right to bear arms. Article 1, Section 11(1) of the Nevada Constitution
23 guarantees Nevada citizens the right to carry a firearm for security, defense, lawful hunting,
24 recreational uses, and other lawful purposes, providing: "Every citizen has the right to keep
25 and bear arms for security and defense, for lawful hunting and recreational use and for other
26
27

1 lawful purposes.” The term, “bear,” means to “carry.” *Dist. of Columbia v. Heller*, 554 U.S.
2 570, 584 (2008).

3 The voters overwhelmingly added Article 1, Section 11(1) in 1982. *See Pohlman v. State*,
4 128 Nev. Ad. Op. 1, 268 P.3d 1264, 1269-70 (2012). Indeed, the purpose of this amendment
5 was to restrict the Legislature’s authority to regulate firearms to constitutional boundaries “so
6 that a future Legislature could not come in and easily change the law to allow some type of
7 control over firearms.” *Id.* (internal citations and quotations omitted). That is, Article 1,
8 Section 11(1) preempts even the Legislature’s otherwise plenary power to restrict the carrying
9 of firearms among the enumerated categories in the amendment.

11 (b) AB 147 PREEMPTS LOCAL FIREARMS REGULATION

12 In 1989, the Legislature preempted all local regulation of firearms by amending NRS chs.
13 244, 268, and 269 and providing, “Except as otherwise provided by specific statute, the
14 legislature reserves for itself such rights and powers as are necessary to regulate
15 the...possession...of firearms and ammunition in Nevada....” AB 147 (1989) *codified as*
16 1989 Nev. Stat. 308 (“AB 147”) and attached to this Motion as Exhibit 1.¹

18 Like the preemptive purpose of Article 1, Section 11(1) of the Nevada Constitution, AB
19 147 was to preempt local governments’ abilities to regulate firearms: “More specifically, a
20 local government would not be permitted to enact any law regarding the ‘possession...of
21 firearms....’” Legislative Counsel Bureau Interpretation of AB 147, attached as Exhibit I to
22

26
27 ¹ AB 147 exempted local ordinances passed before 1989 from its preemptive effects.

1 Hearing on AB 147 Before Assembly Comm. on Gov't Affairs, 65th Leg. (Nev., April 5, 1989)
2 (emphasis in original) attached to this Motion as Exhibit 2.²

3 The Attorney General agreed with legislative counsel's opinion, stating, "AB 147
4 prohibits all local governments in Nevada from enacting laws or ordinances, regardless of
5 how stringent or lenient they may be, relating to firearms and ammunition." Attorney
6 General's Interpretation of AB 147, attached as Exhibit I at *id.* and attached to this Motion as
7 Exhibit 3.
8

9 Finally, in his remarks before the Assembly Committee on Government Affairs,
10 Assemblyman Danny Thompson, sponsor of AB 147, confirmed the preemptive intent of the
11 bill, "The existing situation in Nevada, whereby conflicting and restrictive ordinances enacted
12 by various governmental entities, have resulted in a confusing maze. * * * AB 147 would give
13 Nevada uniformity in regulations, eliminating confusion and enhancing enforcement of any
14 statute the Legislature enacts." Remarks of Assemblyman Danny Thompson, attached as
15 Exhibit C at *id.* and attached to this Motion as Exhibit 4
16

17 (c) SB 175 CLARIFIES AND EXPANDS THE LEGISLATURE'S PREEMPTION

18 To remove all doubt as to the Legislature's preemptive intent when regulating firearms,
19 the Legislature passed SB 175 (2015) ("SB 175"), again by amending NRS chs. 244, 268, and
20 269. Sections 8-10 of SB 175 provides, in relevant part,

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

24 The regulation of the...possession [and] carrying...of firearms...in this
25 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.

26 ² The Legislative Counsel Bureau's interpretation of proposed legislation may be used to
27 determine legislative intent. See *Pohlabel v. State*, 128 Nev. Ad. Op. 1, 268 P.3d 127, 1271-
72 (2012).

1 This section must be liberally construed to effectuate its purpose.

2 SB 175 (2015) as codified by 2015 Nev. Stat. 328 and attached to this Motion as Exhibit 5.

3 The Legislative Counsel's Digest summarized the expansive preemptive effects of SB
4 175.³ [Exhibit 5.] The Digest first describes the then-state of Nevada law, stating, "Existing
5 law provides that, except as otherwise provided by specific statute, the Legislature reserves
6 for itself such rights and powers as are necessary to regulate the...possession...of
7 firearms...." *Id.*

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

14
15 Finally, the Digest discussed the remedy to redress a recalcitrant local government's
16 obstinate failure to repeal offensive laws and rules, stating, "Sections 8-10 also authorize any
17 person who is adversely affected by the enforcement of any such ordinance or regulation...to
18 file suit in the appropriate court for declarative and injunctive relief and damages." *Id.*

19 Similar to the Digest's interpretation of SB 175, Senator Greg Brower, a sponsor of SB
20 175, also understood the bill as a complete preemption on all local regulation of the possession
21 of firearms, stating, "Sections 8 through 10 [of SB 175] expand and clarify the Legislature's
22 right to regulate firearms...and to define the associated terms. These sections also stipulate
23

24
25 ³ A Legislative Counsel Digest is required of every bill introduced in the Legislature. NRS
26 218D.290. A Digest may provide evidence of legislative intent. *See Sandpointe Apts., LLC v.*
27 *Eighth Jud. Dist.*, 129 Nev. Ad. Op. 87, 313 P.3d 848, 858 (2013); *see also, Badger v. Eighth*
Jud. Dist., 132 Nev. Ad. Op. 39 (May 26, 2016) (Pickering, J. dissenting) (Legislative
Counsel's Digest "settles the point" of interpretation of statute).

1 that any ordinances or regulations made by political subdivisions of the state that are
2 inconsistent with the Legislature's rights are null and void and must be repealed." Hearing
3 on SB 175 Before Assembly Comm. on Judiciary, 78th Leg. (Nev., April 23, 2015) and
4 attached to this Motion as Exhibit 6. Senator Brower further emphasized the unambiguous
5 purpose of SB 175: "What this bill seeks to do in those sections is to say the state is going to
6 preempt the field with respect to the regulation of firearms for most purposes." *Id.*
7

8 In short, the history of firearm regulation in Nevada is one of preemption. A 1982
9 amendment to the Nevada Constitution constrained the Legislature's ability to regulate a
10 citizen's right to carrying firearms for security, defense, hunting, recreation, and other lawful
11 purposes. With AB 147 in 1989, the Legislature constrained the local governments from
12 regulating the possession of firearms for all laws and regulations passed after June 1989. With
13 SB 175 in 2015, the Legislature preempted all local governments from regulating the
14 possession of firearms regardless of when it was enacted and reserved unto itself the right to
15 existentially define the term "firearm." Nevada law unambiguously preempts any local
16 government's ability to regulate the possession of firearms.
17

18 **2. Nevada Law Unequivocally Preempts the DIP Rule**

19 Plainly put, Nevada law preempts the DIP Rule. The Legislature can preempt a local rule
20 in three ways: (a) Express Preemption; (b) Conflict Preemption; or (c) Field Preemption.
21 Here, under any iteration of the doctrine, the Legislature has preempted all local firearms
22 regulations, including the DIP Rule.
23

24 **(a) SB 175 EXPRESSLY PREEMPTS THE DIP RULE**

25 Express preemption occurs when the Legislature expresses its intent to preempt local
26 regulation by including explicit language in the statute. *See Pacificare of Nev., Inc. v. Rogers*,
27 127 Nev. Adv. Op. 71, 266 P.3d 596, 600 (2011) (discussing federal preemption). Here, SB

1 175 expressly preempts the DIP Rule for two reasons: First, the plain language of SB 175
2 demonstrates the Legislature's unambiguous intent to preempt the DIP Rule. Second, the
3 District is an instrumentality of both a county and city; thus, it is bound by the express,
4 preemptive language of SB 175.

5 (i) *The Plain Language of SB 175 Demonstrates its Preemptive Intent*
6

7 The plain language of a statute provides the best evidence of the Legislature's pre-emptive
8 intent. *Id.*; see also, *Chan v. City of Seattle*, 265 P.3d 169, 175 (Wash. Ct. App. 2011) (plain
9 meaning of state firearms statute governs legislature's preemptive intent). The courts must
10 presume that "a legislature says in a statute what it means and means in a statute what it says
11 there." *RTTC Communications, LLC v. The Saratoga Flier, Inc.*, 121 Nev. 34, 37, 110 P.3d
12 24, 26 (2005) (internal citations and quotations omitted). Thus, "when the language of a
13 statute is plain, its intention must be deduced from such language, and the Court has no right
14 to go beyond it, and where the language of a statute is susceptible of a sensible interpretation,
15 it is not to be controlled by any extraneous considerations." *Id.*
16

17 In *Chan*, for example, the City of Seattle Parks Department enacted a rule banning all
18 firearms from city parks in derogation of Washington state law. *Chan*, 265 P.3d at 174. The
19 trial court granted plaintiff's motion for summary judgment and issued an injunction,
20 enjoining enforcement of the rule; the appellate court affirmed. *Id.* at 171. The state law at
21 issue in *Chan* was broad and stripped local governments of authority to regulate firearms,
22 stating, in part, "The state of Washington hereby fully occupies and preempts the entire field
23 of firearms regulation within the boundaries of the state, including the...possession...of
24 firearms.... Local laws and ordinances that are inconsistent with, more restrictive than, or
25 exceed the requirements of state law shall not be enacted and are preempted and repealed."
26 *Id.* at 175 (internal quotations and citations omitted).
27

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

12
13 Here, even more compelling than the Washington statute in *Chan*, the plain, unambiguous
14 language of SB 175 explicitly preempts the DIP Rule. For example, Sections 8, 9, and 10 of
15 SB 175 explicitly set out the purpose of SB 175, “to establish state control over regulation
16 and policies concerning firearms” so as “to ensure that such regulation and policies are
17 uniform throughout this State.” (Emphasis added.)

18
19 Similar to the words “fully occupies and preempts the entire field of firearms regulation”
20 in *Chan*, Sections 8, 9, and 10 of SB 175, likewise, broadly preempt all local regulation of
21 firearms by providing, “The regulation of the...possession [and]...carrying...of firearms...in
22 this State and the ability to define such terms is within the exclusive domain of the
23 Legislature....” (Emphasis added.) Indeed, the Legislature has stripped local governments
24 of even the ability to define the terms, “possession and carrying of firearms.”

25
26 Like the retrospective repeal and prospective preemption of all local regulations in the
27 Washington statute, SB 175 similarly declares “any other law, regulation, rule, or ordinance

1 to the contrary is null and void.” (Emphasis added.) SB 175 also contains the Legislature’s
2 instructions to the courts, “This section must be liberally construed to effectuate its purpose.”

3 In short, the plain language of SB 175 deliberately establishes “state control” over the
4 “possession and carrying of firearms,” and any rule to the contrary, including the DIP Rule,
5 is “null and void.” There are few expressions of Legislative intent more explicit than the
6 preemption language in Sections 8, 9, and 10 of SB 175. Nevada law expressly preempts the
7 DIP Rule.
8

9 (ii) *SB 175 Applies to Instrumentalities of Counties and Cities, Like the District*

10 The District concedes that SB 175 explicitly applies to counties and cities. [Opp. to Mt.
11 for Prelim. Injunction 19:8-11.] For the reasons detailed below, the District is a creature of
12 both Clark County and the City of Las Vegas, so therefore, SB 175 applies to the District.
13 Thus, SB 175 expressly preempts the DIP Rule.
14

15 An instrumentality is an arm or an inferior constituent part. *See Johnson v. Univ. of Nev.*,
16 596 F. Supp. 175, 177 (D. Nev. 1984) (examining definition of state instrumentality for
17 Eleventh Amendment immunity purposes), *reasoning approved by, Simonian v. Univ. &*
18 *Community College Sys.*, 122 Nev. 187, 195, 128 P.3d 1057, 1062 n.33 (2006). To determine
19 whether an entity is an instrumentality of another government entity, the court looks at three
20 factors: (A) whether the constituent entity provides a government function; (B) whether the
21 constituent entity is comprehensively controlled by another entity; and (C) whether the
22 constituent entity is fiscally tied to another entity. *See id.*
23

24 Because the District meets all three of these factors, it is an instrumentality of Clark
25 County and the City of Las Vegas; therefore SB 175 expressly applies to the District.

26 First, it is undisputable that libraries, including the District, perform a public,
27 governmental function. *See NRS 379.002.*

1 Second, the District is controlled by Clark County and the City of Las Vegas. The
2 Legislature has delegated authority to counties and cities to create a consolidated library
3 district in certain populous counties. NRS 379.0221. Here, the District is such a consolidated
4 library. Clark County and the City solely approve the District's board of trustees, and they,
5 alone, may remove trustees. NRS 379.022. This is the epitome of control over the District.
6 In short, Clark County and the City of Las Vegas jointly control the District.
7

8 Third, the District is fiscally tied to Clark County and the City of Las Vegas. Clark County
9 and the City must jointly approve the District's budget pursuant to NRS 379.025(1)(f)(2).
10 Only Clark County may levy taxes to fund the District; the District has no independent taxing
11 authority. NRS 379.0227. Similarly, Clark County and the City must jointly approve of any
12 bond issuance for the District; the District has no independent authority to issue bonds. NRS
13 379.0225. Thus, the District is fiscally bound to Clark County and the City of Las Vegas.
14

15 In sum, the District would not exist but for Clark County and the City of Las Vegas
16 creating it. The District concedes that a county or a city may not pass any ordinance regulating
17 firearms. It follows then that any instrumentality of such county or city may not make any
18 rule regulating firearms either. Indeed, it is absurd for the Legislature to forcefully and
19 vociferously prohibit counties and cities from regulating the possession of firearms only to
20 allow that power to a creature of the same county and city. The District is an instrumentality
21 of Clark County and the City of Las Vegas. Therefore, SB 175 explicitly applies to the
22 District. As such, SB 175 expressly preempts the DIP Rule.
23

24 (b) CONFLICT PREEMPTION PREEMPTS THE DIP RULE

25 Even in the absence of express preemption, the inquiry does not end; courts must still
26 consider whether there is an actual conflict between state law and a local rule. *See Altria*
27 *Group, Inc. v. Good*, 555 U.S. 70, 76-77 (2008); *see also, PLIVA, Inc. v. Mensing*, 564 U.S.

1 604, 618 n.5 (2011) (“the absence of express pre-emption is not a reason to find no conflict
2 pre-emption”). This is the doctrine of conflict preemption. Conflict preemption occurs in
3 two ways: (i) where the local regulation directly conflicts with state law or (ii) where the
4 local regulation frustrates the purposes and objectives of state law. *See Lamb*, 90 Nev. at 333
5 and *Crowley v. Duffrin*, 109 Nev. 597, 604-05, 855 P.2d 536, 541 (1993). Both forms of
6 conflict preemption are present here.
7

8 (i) *The Dip Rule Directly Conflicts with Nevada Law*

9 A local regulation directly conflicts with state law if, among other things, the local
10 regulation prohibits an activity which state law allows. *Lamb*, 90 Nev. at 333. In *Lamb*, for
11 instance, a county prohibited certain taxicab practices that a Nevada statute permitted. The
12 district court granted plaintiff’s motion for an injunction, holding that State law preempted
13 the county’s ordinance. *Id.* The Nevada Supreme Court affirmed, declaring, “In no event
14 may a [local government] enforce regulations which are in conflict with the clear mandate of
15 the legislature.” *Id.*
16

17 Like *Lamb*, the DIP Rule in this case directly conflicts with the clear mandate of the
18 Legislature. Article 1, Section 11(1) of the Nevada Constitution guarantees the rights of
19 Nevada citizens “to keep and bear arms” for security, defense, hunting, recreation, and other
20 lawful purposes. AB 147 and SB 175 makes it exclusively the domain of the Legislature to
21 regulate the “carrying” of firearms, and “any other law, regulation, rule, or ordinance to the
22 contrary is null and void.” In short, AB 147 and SB 175 makes it the sole province of the
23 Legislature to regulate the carrying of firearms in this State.
24

25 The DIP Rule denies Nevada citizens the constitutional right to openly carry firearms.
26 Moreover, the District arrogates the authority to regulate the “possession” or “carrying” of
27 firearms in the District’s libraries to itself in complete derogation of the Legislature’s

1 authority. But AB 147 and SB 175 take away this power (and even the power to define
2 “possession and carrying of firearms”). Like *Lamb*, the District seeks to prohibit what the
3 Legislature and the Constitution permit. This cannot be countenanced. Like *Lamb*, the DIP
4 Rule is thus preempted under the doctrine of conflict preemption.

5
6 (ii) *The DIP Rule Frustrates Legislative Purpose*

7 A local regulation frustrates the purposes of a state law where the local regulation stands
8 as an obstacle to the accomplishment of the full objectives of the Legislature. See *Ray v.*
9 *Atlantic Richfield Co.*, 435 U.S. 151, 158 (1978); see also, *Crowley*, 109 Nev. 597, at 604-05
10 and *Fiscal v. City and County of San Francisco*, 70 Cal. Rptr.3d 324, 335 (Cal. Ct. App.
11 2011).

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

20 Here, like the firearms statutes in California in *Fiscal*, Nevada firearms law has undergone
21 a broad, evolutionary constitutional and statutory regime. Similar to city ordinance in *Fiscal*,
22 the DIP Rule frustrates the broad purpose of the Legislature, namely, (1) to ensure “state
23 control” over firearm regulation and (2) to ensure that firearm “regulation and policies are
24 uniform throughout this State.”
25
26
27

1 Senator Greg Brower, a sponsor of SB 175, confirmed this purpose at a Judiciary
2 Committee hearing considering SB 175, stating, “I will close by stating that our goals are
3 simply these:...(3) to ensure that our Second Amendment rights [i.e., the right to bear arms]
4 are administered in a fair and uniform way across the state, and to provide a means of redress
5 when that is not the case.” Hearing on SB 175 Before Assembly Comm. on Judiciary, 78th
6 Leg. (Nev., April 23, 2015). [Exhibit 6.]
7

8 Indeed, if the District is permitted to enforce the DIP Rule, firearm regulation and policies
9 would no longer be uniform throughout this State, and the result would be a “Balkanized
10 patchwork of inconsistent local regulations.”⁴ For example, the Elko-Lander-Eureka County
11 Library System could permit shotguns and prohibit handguns. Henderson Libraries could
12 impose no ban at all. The North Las Vegas Library District could ban only certain calibers.
13 Indeed, “state control” over the regulation of firearms would be meaningless if the DIP Rule
14 is permitted to stand. The DIP Rule makes it difficult for firearm owners to know where and
15 under what circumstances they could possess a gun. In short, the DIP Rule frustrates the
16 purpose of the Legislature to maintain uniform policies of firearm regulation; the doctrine of
17 conflict preemption therefore preempts the DIP Rule.
18

19 (c) FIELD PREEMPTION PREEMPTS THE DIP RULE

20 The final iteration of preemption is field preemption. If the Legislature occupies an entire
21 regulatory field by enacting a comprehensive regulatory scheme, state law preempts all local
22 regulation within that field. *See Douglas County Contractors Ass’n v. Douglas County*, 112
23 Nev. 1452, 1463-64, 929 P.2d 253, 260 (1996); *see also, Capital Area Dist. Library v. Mich.*
24
25
26

27 ⁴ *Capital Area Dist. Library v. Mich. Open Carry, Inc.*, 826 N.W.2d 736, 746 (Mich. Ct. App. 2012).

1 *Open Carry, Inc.*, 826 N.W.2d 736, 746 (Mich. Ct. App. 2012) (state's enactment of
2 comprehensive firearms regulation preempted local library's firearms policy).

3 In *Capital Area*, a library district passed a regulation banning firearms in its libraries in
4 contravention to a state law. *Capital Area*, 826 N.W.2d at 738. The trial court upheld the
5 ban, and the Michigan Court of Appeals reversed holding that Michigan law preempted the
6 regulation under the doctrine of field preemption. *Id.* at 747. The Michigan law stated, in
7 relevant part, "A local unit of government shall not...enact or enforce any ordinance or
8 regulation pertaining to, or regulate in any other manner...possession of pistols...except as
9 otherwise provided by federal law or a law of this state." *Id.* at 740 (internal citations and
10 quotations omitted). Although the appeals court found that the term, "local unit of
11 government" did not expressly include a library district, it surveyed dozens of provisions of
12 Michigan law and reluctantly concluded that field preemption preempted the policy,
13 declaring, "The extent and specificity of this statutory scheme, coupled with the Legislature's
14 clear policy choice,...demonstrates that the Legislature has occupied the field of firearm
15 regulation that the library's weapons policy attempts to regulate: the possession of firearms."
16 *Id.* at 746 (internal citations and quotations omitted).

17 Here, like *Capital Area*, field preemption preempts the DIP Rule, even (for argument's
18 sake) if SB 175 does not expressly include library districts. Similar to the Michigan law in
19 *Capital Area*, SB 175 is the latest in a long-litany of Legislative enactments designed
20 comprehensively to regulate firearms in this State. The Legislature's regulation of firearms
21 spans across dozens of chapters and hundreds of sections of the Nevada Revised Statutes, just
22 like Michigan's comprehensive regulatory scheme in *Capital Area*. See e.g., NRS 12.107;
23 NRS 41.0395; NRS 118B.200; NRS 171.146; NRS 179.121; NRS 193.165; NRS 202.300;
24 NRS 202.310; NRS 202.3673; NRS 205.060; NRS 212.160; NRS 213.090; NRS 244.364;
25
26
27

1 NRS 268.418; NRS 269.222; NRS 393.410; NRS 396.110; NRS 403.560; NRS 407.0475;
2 NRS 412.088; NRS 414.155; NRS 501.375; NRS 503.150; NRS 503.165; NRS 503.175; NRS
3 647.105; and NRS 706.1517. Similar to the court in *Capital Area*, this Court should likewise
4 conclude that SB 175 in one more law in an exhaustive Legislative scheme to regulate firearms
5 in Nevada which preempts the District's DIP Rule under the doctrine of field preemption.
6

7 Finally, Senator Brower made it abundantly clear that SB 175's purpose was to occupy
8 the entire field of firearm regulation, stating, "What [SB 175] seeks to do in those sections is
9 to say the state is going to preempt the field with respect to the regulation of firearms for most
10 purposes." Hearing on SB 175 Before Assembly Comm. on Judiciary, 78th Leg. (Nev., April
11 23, 2015) (emphasis added). [Exhibit 6.]

12 (d) CONCLUSION: NEVADA LAW PREEMPTS THE DIP RULE

13 Under any iteration of the preemption doctrine, Nevada law preempts the DIP Rule. The
14 Legislature has expressly preempted local governments and their instrumentalities from
15 regulating the open possession of firearms. The DIP Rule hopelessly conflicts with Nevada
16 law and the Legislature's purpose. Finally, the Legislature's enactment of a broad range of
17 regulations shows its intent to occupy the entire field of firearm regulation in this State. The
18 Court should GRANT Michelle's Motion because Nevada law preempts the DIP Rule.
19

20 **C. THE DIP RULE VIOLATES DILLON'S RULE**

21 The DIP Rule violates a long-standing, common-law rule called, "Dillon's Rule."
22 Dillon's Rule provides that a local government only possesses, and may only exercise, those
23 powers explicitly delegated to the local government by the Nevada Constitution, statute, or
24 other legislation; those powers necessarily implied by that express delegation of authority; or
25 those powers absolutely indispensable to such authority. *See Andrews v. Bd. of Cosmetology*,
26 86 Nev. 207, 208, 467 P.2d 96, 97 (1970) (administrative agency "has no general or common
27

1 law powers, but only such powers as have been conferred by law expressly or by
2 implication”); *Ronnow v. City of Las Vegas*, 57 Nev. 332, 342-43, 65 P.2d 133, 136 (1937);
3 *First Nat'l Bank v. Nye County*, 38 Nev. 123, 135-36, 145 P. 932, 936-37 (1914); *Lyon County*
4 *v. Ross*, 24 Nev. 102, 111-12, 50 P. 1, 3 (1897); *Rosenstock v. Swift*, 11 Nev. 128, 140 (1876);
5 *Tucker v. Virginia*, 4 Nev. 20, 26 (1868); and *Waitz v. Ormsby County*, 1 Nev. 370, 377
6 (1865). *See generally*, B. Chally, *Dillon's Rule in Nevada*, 21 Nev. L. 6 (2013).

7
8 Moreover, if there is any doubt about a local government's authority to exercise a power,
9 Dillon's Rule resolves that doubt against the local government. *See Ronnow*, 57 Nev. at 343.
10 That is, the court must deny that power. *See e.g., Waitz*, 1 Nev. at 377 (contract declared
11 “utterly void” when county borrowed money in violation of Dillon's Rule).

12 In Nevada law, the Legislature has exclusively retained the power to regulate the
13 possession of firearms. *See* SB 175 (2015) and AB 147 (1989). When the Legislature chooses
14 to delegate that authority to “special districts” or administrative agencies, it does so with very
15 specific statutes. For example, NRS 202.265 confers the authority on principals, child care
16 facility proprietors, and university presidents to allow the possession of firearms on their
17 campuses. Similarly, 392.466(6) permits a school board to establish regulations governing
18 when a pupil may possess a firearm at school. Likewise, NRS 407.0475 delegates to the
19 Administrator of the Division of State Parks the authority to promulgate regulations on the
20 possession of firearms in a State park. Finally, NRS 503.150 delegates to the Wildlife
21 Commission the authority to regulate the caliber of firearms that hunters may possess.
22

23 Here, the Legislature has not conferred any power to regulate the possession of firearms
24 to the District. The District can point to no specific statute which grants it this authority.
25 Without an express delegation of this power, Dillon's Rule provides that the District does not
26 possess it, and if there is any doubt as to whether the District possesses such authority, Dillon's
27

1 Rule resolves this doubt against the District. In short, the DIP Rule is illegal because it
2 violates Dillon's Rule.

3 **D. THE DIP RULE IS UNCONSTITUTIONAL**

4 Article 1, Section 11(1) of the Nevada Constitution guarantees Nevada citizens the right
5 to carry a firearm for security, defense, lawful hunting, recreational uses, and other lawful
6 purposes, providing: "Every citizen has the right to keep and bear arms for security and
7 defense, for lawful hunting and recreational use and for other lawful purposes." *See Pohl*
8 *label v. State*, 268 P.3d at 1269-70. The term, "bear," means to "carry." *Dist. of Columbia v.*
9 *Heller*, 554 U.S. 570, 584 (2008).

11 Here, the DIP Rule infringes on Michelle's constitutional right to bear arms. Michelle is
12 a citizen of Nevada. She is lawfully entitled to possess a firearm. The DIP Rule prohibits
13 Michelle from carrying an openly-holstered firearm in District facilities. As such, the DIP
14 Rule contravenes Article 1, Section 11(1) of the Nevada Constitution, and Michelle is entitled
15 to a declaratory judgment declaring the DIP Rule illegal.

17 **IV. CONCLUSION**

18 For the reasons detailed above, the Court should GRANT Michelle's Motion for Partial
19 Summary Judgment on her Declaratory Relief Claims and GRANT her Motion for Summary
20 Judgment on the District's Declaratory Relief Claims.

21 DATED this 5th day of July, 2016.

22 ASHCRAFT & BARR | LLP

23 /s/ Jeffrey F. Barr
24 JEFFREY F. BARR, ESQ.
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CERTIFICATE OF SERVICE

I certify that on this 5th day of July, 2016, I electronically filed and served the foregoing Motion for Partial Summary Judgment on Plaintiff's Declaratory Relief Claim and Motion for Summary Judgment on Counterclaimant's Declaratory Relief Claim by using the Eighth Judicial District Court E-File & Serve System, and if necessary, by first class mail, postage pre-paid to the following:

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EXHIBIT 1

✓ A.B. 147 (chapter 308)
Assembly Bill 147 reserves the power to regulate firearms to the state. The measure specifies, however, that the local governments may proscribe by ordinance or regulation the unsafe discharge of firearms.

The bill indicates that its provisions only limit local ordinances or regulations adopted on or after its effective date, and the measure becomes effective upon passage and approval.

1989 Summary of Legislation

ASSEMBLY BILL NO. 147--ASSEMBLYMEN THOMPSON, DINI, NEVIN
AND BERGEVIN

JANUARY 31, 1989

Referred to Committee on Government Affairs

SUMMARY--Reserves power to regulate firearms to state. (BDR 20-100)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State or on Industrial Insurance: No.

EXPLANATION--Matter in italics is new; matter in brackets [] is material to be omitted.

AN ACT relating to firearms; reserving the power to regulate firearms to the state; providing certain exceptions; and providing other matters properly relating thereto.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN SENATE
AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. Chapter 244 of NRS is hereby amended by adding thereto a
2 new section to read as follows:

3 1. *Except as otherwise provided by specific statute, the legislature*
4 *reserves for itself such rights and powers as are necessary to regulate the*
5 *transfer, sale, purchase, possession, ownership, transportation, registration*
6 *and licensing of firearms and ammunition in Nevada, and no county may*
7 *infringe upon those rights and powers.*

8 2. *A board of county commissioners may proscribe by ordinance or regu-*
9 *lation the unsafe discharge of firearms.*

10 3. *As used in this section, "firearm" means any weapon from which a*
11 *projectile is discharged by means of an explosive, spring, gas, air or other*
12 *force.*

13 Sec. 2. Chapter 268 of NRS is hereby amended by adding thereto a new
14 section to read as follows:

15 1. *Except as otherwise provided by specific statute, the legislature*
16 *reserves for itself such rights and powers as are necessary to regulate the*
17 *transfer, sale, purchase, possession, ownership, transportation, registration*
18 *and licensing of firearms and ammunition in Nevada, and no city may infringe*
19 *upon those rights and powers.*

20 2. *The governing body of a city may proscribe by ordinance or regulation*
21 *the unsafe discharge of firearms.*

22 3. *As used in this section, "firearm" means any weapon from which a*
23 *projectile is discharged by means of an explosive, spring, gas, air or other*
24 *force.*

25 Sec. 3. Chapter 269 of NRS is hereby amended by adding thereto a new
26 section to read as follows:

1 1. Except as otherwise provided by specific statute, the legislature
2 reserves for itself such rights and powers as are necessary to regulate the
3 transfer, sale, purchase, possession, ownership, transportation, registration
4 and licensing of firearms and ammunition in Nevada, and no town may
5 infringe upon those rights and powers.

6 2. A town board may proscribe by ordinance or regulation the unsafe
7 discharge of firearms.

8 3. As used in this section, "firearm" means any weapon from which a
9 projectile is discharged by means of an explosive, spring, gas, air or other
10 force.

(30)

EXHIBIT 2



State of Nevada
Office of the Attorney General
Carson City, Nevada 89710
February 17, 1989

BRIAN MCKAY
ATTORNEY GENERAL

HAND DELIVERED

The Honorable Joseph Dini
Speaker of the Assembly
Legislative Building
Capitol Complex
Carson City, Nevada 89710

Dear Speaker Dini:

In your letter of February 9, 1989, you set forth a series of questions regarding the potential effects of A.B. 147 if the same is enacted into law by the 1989 legislature. We are pleased to provide the following answers to each of your questions. With respect to said answers, we are using the word "local" to mean and include city, county, and town governments.

In Nevada, all local governments are creatures of the state legislature created through legislative enactments. As a general rule, the state legislature may, within constitutional limits, give local governments any powers the legislature considers appropriate for them, and it may likewise deny them any such powers.

Question 1: Would A.B. 147 repeal or make ineffective local discharge ordinances?

Answer: A.B. 147 would enact three new provisions of NRS in chapters 244, 268, and 269 respectively. For cities, counties, and towns A.B. 147 provides that except as otherwise provided by specific statute, the legislature reserves for itself such rights and powers as are necessary to regulate the transfer, sale, purchase, possession, ownership, transportation, registration and licensing of firearms and ammunition in Nevada, and no city, county, or town may infringe upon those rights and powers. This statute would preempt for state regulation all forms of governmental regulation involving firearms and ammunition in Nevada, with one exception. That exception allows cities, counties, and towns to prescribe by ordinance or regulation the unsafe discharge of firearms. We understand this to mean that cities, counties, and towns could continue to enact ordinances or regulations which would prohibit discharging firearms on the public streets or other public places, in urbanized areas, or into structures,

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vehicles, aircraft, or watercraft. Such unlawful discharge ordinances would be the only type of local ordinance or regulation permitted if A.B. 147 becomes law. Therefore, the answer to your question is A.B. 147 would not repeal or make ineffective local unlawful discharge ordinances of the type described herein.

Question 2: Would A.B. 147 repeal or make ineffective any hunting regulations?

Answer: A.B. 147 would not repeal any existing state statutes which regulate hunting. To the extent any particular state agency has been specifically granted, by statute, powers to regulate hunting, such regulations would remain in effect. However, where such powers have not been specifically granted to an agency of local government by a state statute, such regulations would not be valid if A.B. 147 becomes law.

Question 3: Would A.B. 147 repeal or make ineffective laws prohibiting possession of firearms by felons, mental incompetents, and other prohibited individuals?

Answer: A.B. 147 would not repeal or make ineffective any state statutes, but would invalidate any local ordinances or regulations on these subjects, since A.B. 147 preempts for state regulation only the question of possession of firearms and ammunition in Nevada.

Question 4: Would A.B. 147 repeal or make ineffective laws governing the carrying of concealed weapons?

Answer: A.B. 147 would not repeal or make ineffective any state statutes, but would invalidate any local ordinances or regulations on this subject since all aspects of the possession of firearms and ammunition in Nevada would be preempted for state regulation if A.B. 147 becomes law. However, a state statute, NRS 202.350, currently authorizes county sheriffs to issue permits for concealed weapons, and this state statute would not be affected by passage of A.B. 147, nor would the authority of county sheriffs to act under said state statute be affected.

Question 5: Would A.B. 147 repeal or make ineffective any law regulating loaded firearms?

Answer: A.B. 147 would not repeal or make ineffective any state statutes, but would invalidate all local ordinances or regulations concerned with the possession or transportation of firearms and ammunition which appear to include laws regulating loaded firearms.

Question 6: Does A.B. 147 provide to the legislature the right to regulate firearms under the provisions of the bill?

Answer: A.B. 147 does not appear to restrict the ability of the legislature to enact any laws it deems appropriate concerning the regulation of firearms. Indeed, the intent behind A.B. 147 appears to be to the contrary, i.e., A.B. 147 would reserve to the legislature alone the power to enact laws concerning firearms and ammunition, with the single exception of local ordinances and regulations for the unsafe discharge of firearms. The only limits upon legislative authority would be those found within the United States Constitution or the Nevada Constitution.

Question 7: Does A.B. 147 provide that no local political subdivision may enact laws or ordinances more stringent than the legislature reserves for itself?

Answer: With the one exception of allowing local ordinances and regulations controlling the unsafe discharge of firearms, A.B. 147 prohibits all local governments in Nevada from enacting any laws or ordinances, regardless of how stringent or lenient they may be, relating to firearms and ammunition. All local ordinances regarding such firearms and ammunition are prohibited by A.B. 147, since the mere existence of a local ordinance may tend to infringe upon the rights and powers reserved by A.B. 147 for the legislature itself.

Question 8: Does A.B. 147, if enacted, wipe out all county or local ordinances; and, does the bill provide that the legislature may enact similar legislation, if found warranted?

Answer: A.B. 147 would make invalid all local ordinances and regulations concerned with the transfer, sale, purchase, possession, ownership, transportation, registration and licensing of firearms and ammunition in Nevada, with only those ordinances and regulations prescribing the unsafe discharge of firearms being an exception to the general rule. The legislature of Nevada, subject to any constitutional restrictions, would have full authority to enact legislation similar to any local ordinances and regulations voided by enactment of A.B. 147 into law.

Question 9: Does A.B. 147 provide for uniformity in keeping with the Supreme Court's decision "that the regulation of firearms under Article [sic] 2 of the constitution is vested with the individual states"?

Answer: We assume your question refers to the second amendment to the United States Constitution which reads as follows:

A well-regulated militia, being necessary to the security of a free state, the right of the people to keep and bear arms, shall not be infringed.

Under Miller vs. Texas, 153 U.S. 535 (1894) the U.S. Supreme Court made it clear that the second amendment right of the people to keep and bear arms applied to the federal government only, leaving the states free to regulate in this area. A.B. 147 is not inconsistent with that concept. If A.B. 147 becomes law, presumably there would be uniformity throughout Nevada with regard to the regulation of firearms since only statewide statutes would have any application.

Question 10: Does A.B. 147, if passed, impair law enforcement in doing their job?

Answer: This office recognizes that each community in Nevada may have different needs, problems, regulations, and ordinances relating to the questions of firearms and ammunition. As a longtime and firm supporter of local law enforcement, this office must defer on this question to local enforcement officials, whose input no doubt would be valuable in the legislature's consideration of A.B. 147 and its implications for crime control within their respective jurisdictions.

Question 11: Do comment on the Haynes decision of the Supreme Court that a criminal, felon, is not required to register his/her firearms, as to do so would be a violation of their Fifth Amendments rights against self-incrimination?

Answer: The case of Haynes vs. United States, 390 U.S. 85 (1968) was decided in conjunction with two other cases, Marchetti vs. United States, 390 U.S. 39 (1968) and Grosso vs. United States, 390 U.S. 62 (1968), and dealt with the question of whether a person could be compelled to provide self-incriminating statements under statutes requiring reporting or registration in particular subject areas.

The petitioner in Haynes was convicted of violating 26 U.S.C. § 5851 of the National Firearms Act, which made it unlawful to possess certain firearms which had not been transferred or registered as required under section 5841 of the act at anytime. The court determined, based on legislative history and the types of weapons listed, that the sections were specifically aimed at those persons engaged in unlawful activities, i.e., those who required possession of the firearms without complying with the other requirements of the act.

The court noted that violation of section 5851 (and therefore 5841) created an almost certain risk of immediate criminal prosecution, not just a remote possibility. The primary reason for this cited by the court was that the information received under the registration requirements was shared with tax and other law enforcement officials. And, although other sections of the act set forth reporting and registration

The Honorable Joseph Dini
February 17, 1989
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requirements applicable to entities involved in primarily lawful firearms' activities, section 5851 as a practical matter would apply to only those who engaged in unlawful activity (such as the sale of unregistered weapons). Thus, it was extremely likely that the people to whom the section would apply would be incriminating themselves if they attempted to comply with the registration requirements. Since a person may not be compelled to give statements which would be self-incriminating, the court held that a properly made claim of the constitutional privilege against self-incrimination provided a full defense to criminal prosecutions for failure to comply with sections 5841 and 5851 of the National Firearms Act.

Applying the lessons of Haynes to Nevada, since possession of a firearm by a felon is a crime, the statute which requires all felons to register any firearms in their possession would require them to incriminate themselves and would therefore be unconstitutional under the Fifth Amendment. It is not entirely clear at this time whether a similar defense could be raised to a general registration law as the same might apply to a felon in possession of a firearm.

In conclusion, A.B. 147 has as its declared purpose the reservation to the state legislature alone of the power to regulate firearms and ammunitions in Nevada. The only exception to this broad statement is local ordinances and regulations which prescribe the unsafe discharge of firearms. Any efforts by a county, city, or town to enact legislation on the subject of firearms and ammunition would be subject to being declared void as infringing upon the rights and powers of the state legislature specifically reserved to the legislature by A.B. 147.

If we may be of further assistance on this or other matters of mutual concern, please advise.

Sincerely,


BRIAN MCKAY

BMCK/WEI/cj

EXHIBIT 3

STATE OF NEVADA
LEGISLATIVE COUNSEL BUREAU

LEGISLATIVE BUILDING
CAPITOL COMPLEX
CARSON CITY, NEVADA 89710

DONALD A. RHODES, Director
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LAWRENCE E. JACOBSEN, Senator, Chairman
Donald A. Rhodes, Director, Secretary

INTERIM FINANCE COMMITTEE (702) 687-6821
WILLIAM J. RAGGIO, Senator, Chairman
Daniel G. Miles, Fiscal Analyst
Mark W. Stevens, Fiscal Analyst

JOHN R. CROSSLEY, Legislative Auditor (702) 687-6815
ROBERT E. ERICKSON, Research Director (702) 687-6825
LORNE J. MALKIEWICH, Legislative Counsel (702) 687-6830

February 21, 1989

Assemblyman Joseph E. Dini, Jr.
Assembly Chambers

Dear Mr. Dini:

You have asked this office a number of questions regarding Assembly Bill No. 147 of this session. For the purpose of clarity, our response to your request has been structured in a question and answer format.

1. Would Assembly Bill No. 147 repeal or make ineffective local discharge ordinances?

No. Subsection 2 of each section of the bill authorizes the governing body of each county, city or town to "proscribe by ordinance or regulation the unsafe discharge of firearms." Therefore, local ordinances regulating the discharge of firearms would not be preempted by the bill. The governing body of a political subdivision would have the authority to regulate, on public safety grounds, the discharge of firearms.

2. [Would Assembly Bill No. 147] Repeal or make ineffective any hunting regulations?

No. The bill does not reserve exclusively to the state the power to regulate the use of firearms. Therefore, hunting regulations that mandate the particular type of firearm or ammunition that may be used to hunt will not be affected. Of course, if the legislature prohibits the ownership, possession or transportation of certain firearms, present hunting regulations will be rendered void to the extent they permit use of such prohibited weapons.

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Assemblyman Joseph E. Dini, Jr.
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Furthermore, if a local ordinance is adopted that is less restrictive than state statutes governing hunting (Title 45 of NRS), state statutes will control.

3. [Would Assembly Bill No. 147] Repeal or make ineffective any law prohibiting possession of firearms by felons, mental incompetents and other prohibited individuals?

Not laws, but perhaps ordinances. To the extent that the legislature does not specifically prohibit by statute the possession of firearms by any such persons, a local government ordinance that does prohibit possession by such persons would be void. For example, Nevada statutory law does not specifically prohibit a person lacking mental capacity from possessing a firearm. A provision in a local ordinance that prohibited such a person from possessing a firearm would be void. For the purposes of comparison, NRS 202.360 specifically prohibits a convicted felon from possessing a firearm. That provision would not be affected by the bill.

In those instances where an ordinance of a local government is the only regulation of a matter relating to firearms and the ordinance is rendered void by the preemptive effect of Assembly Bill No. 147, the legislature may enact a statute to address the lack of regulation. Such a statute may either set forth a regulatory scheme to be enforced exclusively at the state level, or may authorize local governments to take part in the regulation of the matter. Thus, if the legislature deemed it necessary to prohibit the possession of firearms by mental incompetents, it could enact a statute to that effect. If it deemed regulation of the matter by the local government an appropriate manner to address the situation, it could give local governments regulatory authority over the subject.

4. [Would Assembly Bill No. 147] Repeal or make ineffective any laws which govern the carrying of concealed weapons?

Assemblyman Joseph E. Dini, Jr.
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No. NRS 202.350 specifically prohibits the carrying of concealed weapons. That statute would not be affected by the bill. Furthermore, subsection 4 of NRS 202.350 authorizes the sheriff of a county to issue permits to certain persons to carry concealed weapons. Therefore, a county ordinance that authorizes a county sheriff to issue permits to carry concealed weapons is not preempted by the bill because it is authorized by specific statute.

5. [Would Assembly Bill No. 147] Repeal or make ineffective any laws which regulate loaded firearms?

No. A specific statute enacted by the legislature is an exception to the preemptive effect of the bill. Therefore, any statute that regulates loaded firearms would not be affected by Assembly Bill No. 147. For example, NRS 503.165, which states when it is unlawful to carry a loaded shotgun or rifle in a vehicle, is not affected by the bill. However, any ordinance enacted by a local government regulating loaded firearms would have to be specifically authorized by statute or it would be rendered void by Assembly Bill No. 147.

6. Does Assembly Bill No. 147 provide to the elected legislators the right to regulate firearms under the provisions of the bill?

Yes. The purpose and effect of the bill is to reserve to the members of the state legislature the exclusive right to regulate "the transfer, sale, purchase, possession, ownership, transportation, registration and licensing of firearms and ammunition" in the state. No existing power to legislate is taken away from the legislature. Instead, the legislature has manifested its intention to assume exclusive jurisdiction over the regulation of certain matters relating to firearms. Unless specifically authorized by statute, any ordinance enacted by a local government regarding those matters is void, regardless of whether the law conflicts with an existing state statute.

Assemblyman Joseph E. Dini, Jr.
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7. Does the bill No. 147 provide that no local political subdivision may enact laws or ordinances more stringent than that in which the State Legislature reserves for itself?

Yes. In most cases, political subdivisions of the state would be prohibited from enacting laws relating to firearms that are more stringent than those enacted by the legislature. More specifically, a local government would not be permitted to enact any law regarding the "transfer, sale, purchase, possession, ownership, transportation, registration and licensing of firearms and ammunition," unless specifically authorized by state statute. That is, a local government has no right to interfere with or complement the legislation of the state by prescribing additional regulations or auxiliary provisions for the same purpose. As an example, since Assembly Bill No. 147 authorizes local governments to regulate the unsafe discharge of firearms, local ordinances may be more stringent than state laws regulating the discharge of firearms. However, if a local government enacted an ordinance requiring the licensing of all handguns, such an ordinance would invade the exclusive province of the legislature and would be void unless specifically authorized by state statute.

8. Does the bill, if enacted, wipe out county or local ordinances; and, does the bill provide that the Legislature may enact similar legislation, if warranted?

Yes to both questions. Any local ordinance that regulates the transfer, sale, purchase, possession, ownership, transportation, registration, or licensing of firearms and ammunition would be rendered void by the bill, unless such an ordinance was specifically authorized by state statute. For example, two Clark County ordinances (Sections 200 and 210 of chapter 4 of title 12 of the Clark County Code) regulating the possession and transfer of firearms capable of being concealed, would be rendered void by Assembly Bill No. 147. They touch upon the subjects that the legislature has reserved for itself exclusively.

The legislature may enact legislation to take the place of any local ordinance rendered void by the preemptive nature of Assembly Bill No. 147 or it may specifically authorize local governments to adopt the ordinances rendered void by the bill. Assembly Bill No. 147 does not in any way constrain the legislature's prerogative to legislate upon the subject of firearms. Instead, it constrains the legislative autonomy of the political subdivisions of the state to regulate independently certain matters relating to firearms.

9. Does Assembly Bill No. 147 provide for uniformity in keeping with the Supreme Court's decision "that regulation of firearms under article 2 of the U.S. Constitution is vested with the individual states", there being at present 35 states which have adopted preemption statutes similar, or like Assembly Bill No. 147?

The Second Amendment to the Constitution of the United States prohibits the Federal Government from infringing upon the rights of the people to bear arms. However, this guarantee is not applied to the states through the Fourteenth Amendment. Therefore, each state has authority to regulate firearms as it deems appropriate. Section 11 of article 1 of the Nevada constitution limits the state's power to regulate firearms. As provided by that provision, "Every citizen has the right to keep and bear arms for security and defense, for lawful hunting and recreational use and for other lawful purposes." The state may reserve to itself the determination of the lawful use of firearms, and placing the authority to regulate firearms exclusively in the state legislature is not constitutionally offensive. Furthermore, there is no constitutional requirement that the political subdivisions of a state must be granted autonomy to regulate firearms.

10. Does this bill, if passed, restrict, or impair law enforcement from performing their jobs?

This question requires an interpretation of the practical consequences of vesting all regulatory authority over firearms in the state legislature. Assembly Bill No.

Assemblyman Joseph E. Dini, Jr.
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147 would not erect any legal impediments to the enforcement of any laws.

11. Finally, did not the Supreme Court rule in the "Haynes Decision", that a criminal, felon, and certain others who are not legally entitled to own or possess firearms, are not required to register under any registration act, or ordinance as per the Clark County Handgun Ordinance; as to do so would be a violation of their Fifth Amendment rights against self-incrimination?

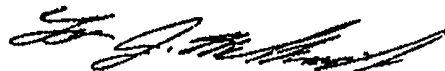
We are unaware of the case to which you refer. We will respond to your specific question if you can provide a citation to the case. However, Federal case law clearly indicates that the reporting requirements of the National Firearms Act (26 U.S.C. § 5801 et seq.), a Federal law that governs the registration and transfer of firearms, do not violate a person's privilege against self-incrimination under the Fifth Amendment to the United States Constitution. The Federal courts base their rulings on the fact that the National Firearms Act requires that no information provided in compliance with the provisions of the act may be used as evidence in a prosecution of the person applying for registration under the act. By analogy, a state or local law that required certain information of an applicant as a condition of registration of a firearm would not violate the applicant's privilege against self-incrimination if the registration provisions prohibited use of the required information in a prosecution of the applicant.

There is a string of precedent from individual states upholding the validity of laws regulating the acquisition or possession of firearms against the contention that such laws unconstitutionally require applicants to incriminate themselves. These cases emphasize that the statutes are regulatory rather than prohibitory in nature and have disclosure requirements designed to keep firearms out of the hands of the unfit, not to enmesh them in criminal prosecutions. Therefore, Nevada statutes or ordinances written and enforced similarly are likely to withstand constitutional challenge on the ground that they violate an applicant's privilege against self-incrimination.

Assemblyman Joseph E. Dini, Jr.
February 21, 1989
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Please contact our office if we can be of further assistance.

Very truly yours,



Lorne J. Malkiewich
Legislative Counsel

EXHIBIT 4

TESTIMONY ON AB 147
FIREARMS PRE-EMPTION BILL

I FIND MYSELF IN A UNIQUE POSITION TODAY, OPENING WITH TESTIMONY ABOUT A BILL THAT HAS ALREADY HAD MORE WRITTEN ABOUT IT THAN ALMOST ANY OTHER BILL THIS SESSION.

UNFORTUNATELY, MOST OF THE COMMENTS HAVE BEEN BASED ON MISCONCEPTIONS, HALF-TRUTHS AND ASSUMPTIONS. SO TO BEGIN, LET ME TELL YOU A LITTLE BIT ABOUT ASSEMBLY BILL 147.

- I HAD THIS BILL DRAFTED DURING THE 1987 SESSION AT THE REQUEST OF A CONSTITUENT, NOT A GUN GROUP, AND NOT THE NRA.

- MY CONSITTUENT CAME TO ME AND SAID, "LOOK WHAT'S GOING ON HERE. CLARK COUNTY HAS ONE SET OF RULES ABOUT BUYING AND REQISTERING GUNS, HENDERSON ANOTHER ONE. EVENTUALLY THERE ARE GOING TO BE 100 DIFFERENT LAWS IN THE STATE, EVERY CITY AND EVERY COUNTY IS GOING TO HAVE THEIR OWN LAW, WITH THEIR OWN LITTLE QUIRKS, AND PRETTY SOON NOBODY IS GOING TO BE ABLE TO FIGURE OUT WHAT THEY HAVE TO DO TO BUY OR OWN A GUN, AND WHETHER OR NOT THEY ARE IN VIOLATION OF ONE OR ANOTHER LAW EVERY TIME THEY CROSS A COUNTY OR CITY BORDER. IT'S GUYS LIKE ME WHO ARE GOING TO BE LABELED CRIMINALS JUST BECAUSE WE WANT TO HAVE A GUN." AND THAT IS WHY I REQUESTED THAT THIS BILL BE DRAFTED.

- NOW THE NRA, THE NEVADA RIFLE AND PISTOL ASSOCIATION AND ALOT OF OTHER ORGANIZATIONS AND PRIVATE CITIZENS SUPPORT THIS BILL. THAT IS THEIR RIGHT.

- THE POINT IS, AB 147 IS NOT PART OF SOME NEFARIOUS PLOT, OR SECRET SCHEME.

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EXHIBIT C

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- I REQUESTED THIS BILL BE DRAFTED SO THAT THE ORDINARY LAW-ABIDING CITIZENS OF THIS STATE CAN PURCHASE AND OWN GUNS, A RIGHT GUARANTEED IN THE NEVADA STATE CONSITITUTION.

- THE NEVADA STATE CONSTITUTION RECOGNIZES AND I QUOTE, "THE RIGHT OF THE PEOPLE TO KEEP AND BEAR ARMS FOR SECURITY AND DEFENSE, FOR LAWFUL HUNTING AND RECREATIONAL USE AND FOR OTHER LAWFUL PURPOSES."

- THE EXISTING SITUATION IN NEVADA, WHEREBY CONFLICTING AND RESTRICTIVE ORDINANCES ENACTED BY VARIOUS GOVERNMENTAL ENTITIES, HAVE RESULTED IN A CONFUSING MAZE. THIS, IT SEEMS TO ME, INHIBITS AND INTIMIDATES OUR CITIZENS, PREVENTING THEM FROM ENJOYING THEIR RIGHTS.

- LET ME GIVE YOU AN EXAMPLE:

- IN NORTH LAS VEGAS, (CITY ORDINANCE 7.23.100) THERE IS A 72 HOUR WAITING PERIOD, ANY PERSON WHO RECEIVES TITLE TO A PISTOL HAS 24 HOURS IN WHICH TO GO TO THE POLICE STATION TO REGISTER THEIR GUN.

- IN THE CITY OF LAS VEGAS, THE SAME PERIOD, BUT THE PERSON HAS TO GO TO THE SHERIFF, AND IN ONE SECTION, IT SAYS 'IMMEDIATELY' UPON RECEIPT, AND IN ANOTHER, IT SAYS, IF A PERSON IS APPREHENDED WITH AN UNREGISTERED GUN THAT "HE CAN PROVE HE PURCHASED WITHIN THE LAST 24 HOURS HE WILL NOT BE CITED." WHAT EVER HAPPENED TO "INNOCENT UNTIL PROVEN GUILTY?"

- NOW, IF YOU LIVE IN HENDERSON, THERE IS NO WAITING PERIOD, BUT THE ACCORDING TO 8.98.040 OF THE CITY ORDINANCES, THE SELLER MUST REGISTER TO WHOM HE IS SELLING THE GUN, BEFORE THE TITLE CHANGES HANDS. OH, AND THAT IS WITH THE HENDERSON CHIEF OF POLICE.

- JUST FOLLOW ALONG HERE.... IF YOU BUY A GUN IN LAS VEGAS, AND LIVE IN HENDERSON, WHO DO YOU INFORM..... AND DOES THE SELLER HAVE TO GO TO THE HENDERSON POLICE DEPARTMENT? AND FURTHER MORE, WHAT IF THE SELLER IS A PRIVATE PARTY..... ARE THEY GOING TO GO TO HENDERSON AND FIND THE POLICE DEPARTMENT AND REGISTER THE TRANSFER BEFORE THEY SELL THE GUN TO YOU? AND WHAT ABOUT AN OUT OF TOWN DEALER AT A GUN SHOW IN DOWNTOWN LAS VEGAS???

- OF COURSE THE UNINCORPORATED AREAS ARE AN ENTIRELY DIFFERENT STORY WITH THEIR ORDINANCE.

- I THINK YOU GET THE IDEA. NOW MULTIPLY THAT SITUATION BY EVERY LOCAL GOVERNMENTAL ENTITY IN NEVADA WHICH HAS THE RIGHT TO MAKE THEIR OWN ORDINANCES. MASS CONFUSION..... LAW-ABIDING CITIZENS ARE UNDERSTANDABLY CONFUSED,..... AND WOULD BE "UP IN ARMS", PARDON THE PUN.... IF THEY COULD JUST FIGURE OUT HOW TO BUY THEM.

- AB 147 WOULD GIVE NEVADA UNIFORMITY IN REGULATIONS, ELIMINATING CONFUSION AND ENHANCING ENFORCEMENT OF ANY STATUTES THE LEGISLATURE ENACTS.

THERE IS A SECOND ISSUE I WOULD LIKE TO ADDRESS: SOME LAW ENFORCEMENT AGENCIES ARE INSISTING THAT THEY NEED THESE REGISTRATION ORDINANCES TO APPREHEND CRIMINALS. THEY MAINTAIN THAT THEY CAN APPREHEND AND CONNECT CRIMINALS TO BURGLARIES BY TRACING SERIAL #S ON GUNS.
THE FACTS ARE:

- GANGS AND PROFESSIONAL CRIMINALS OFTEN FILE SERIAL #'S OFF OF GUNS, OR OTHERWISE ALTER THE NUMBERS.

- REGISTRATION LAWS MAY INHIBIT THE CITIZEN FROM REPORTING STOLEN GUNS, ESPECIALLY IF THEY ARE NEW TO THE AREA, UNFAMILIAR WITH THE REGISTRATION LAWS, AND THEN FIND OUT THAT THE STOLEN GUNS SHOULD HAVE BEEN REGISTERED. WHO WILL AGREE TO REPORT THE GUNS STOLEN, IF IT RESULTS IN SELF-INCRIMINATION.

FINALLY:

- I HAVE IN MY POSSESSION, A POSITION STATEMENT FROM SHERIFF MORAN CONCERNING AB 147, AND AB 288 OF THE 64TH SESSION. THEY ARE THE SAME BILLS.

- ON PAGE # 4, THERE IS A HEARTWARMING STORY ABOUT A GUN DEALER WHO WAS GRATEFUL FOR THE 72 HOUR WAITING PERIOD BECAUSE THEN HE COULD REFUSE TO SELL A GUN TO A LADY WHO TOLD HIM SHE WANTED TO USE IT TO KILL HER HUSBAND. FIRST OF ALL, IT SEEMS TO ME THAT ANYONE WITH GOOD SENSE COULD REFUSE TO SELL A GUN WHEN THEY KNOW ITS GOING TO BE USED TO COMMIT A CRIME. THERE DOES NOT NEED TO BE AN ORDINANCE TO PREVENT SOMEONE FROM DOING THAT.

- NOW ON PAGE #5 IT STATES THAT A FIRE-ARMS PRE-EMPTION BILL WOULD ALLOW JUVENILES OVER THE AGE OF FOURTEEN TO TO LEGALLY POSSESS HANDGUNS. UNDER FEDERAL LAW, JUVENILES MUST BE 18 TO BUY LONG GUNS AND AMMUNITION AND

21 TO BUY HANDGUNS AND AMMUNITION.

- IT ALSO STATES THAT THIS BILL WOULD ALLOW THE DISCHARGE OF FIREARMS IN CONGESTED AREA. THAT AGAIN IS SIMPLY NOT TRUE. ACCORDING TO AN OPINION ANALYSIS BY THE ATTORNEY GENERAL OF THE STATE OF NEVADA, THE ENACTING OF DISCHARGE ORDINANCES IS A POWER GIVEN TO THE LOCAL GOVERNMENTAL ENTITIES BY THE STATE, AND AS SUCH IS NOT AFFECTED BY THIS LEGISLATION.

PLEASE LISTEN CAREFULLY. ASK QUESTIONS AND EXAMINE THIS ISSUE.
DO NOT BE SWAYED BY PRE-PUBLICITY AND INACCURATE INFORMATION.

THIS IS A GOOD BILL FOR ALL NEVADANS. THANK YOU.

EXHIBIT 5

Senate Bill No. 175—Senators Roberson, Lipparelli, Hammond,
Brower, Settelmeyer; Farley, Goicoechea, Gustavson,
Hardy, Harris and Kieckhefer

Joint Sponsors: Assemblymen Hambrick, Wheeler and Shelton

CHAPTER.....

AN ACT relating to public safety; revising provisions governing justifiable homicide; prohibiting a person convicted in this State or any other state of a misdemeanor crime of domestic violence from owning or having in his or her possession or under his or her custody or control any firearm; requiring the Department of Public Safety to make certain determinations before issuing a list of states for purposes of reciprocity; prohibiting a person against whom an extended order for protection against domestic violence is issued from subsequently purchasing or otherwise acquiring any firearm during the period the extended order is in effect; revising provisions governing civil liability in actions involving the use of force; expanding the rights and powers reserved for the Legislature relating to the regulation of firearms and ammunition; requiring the governing bodies of certain political subdivisions of this State to repeal certain ordinances and regulations; authorizing a person adversely affected by the enforcement of such an ordinance or regulation to seek declarative and injunctive relief and damages; providing that such a person is entitled to certain damages; deleting certain provisions relating to the registration of firearms capable of being concealed; revising the applicability of certain provisions pertaining to the regulation of firearms by local governments; providing a penalty; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law provides that justifiable homicide is the killing of a human being in necessary self-defense, or in defense of habitation, property or person against a person who manifestly intends or endeavors to commit a felony or to enter the habitation of another for the purpose of assaulting a person who is in the habitation. (NRS 200.120) **Section 1** of this bill revises the definition of "justifiable homicide" to include specifically the killing of a person in defense of an occupied motor vehicle or in defense against any person who manifestly intends and endeavors to enter the occupied motor vehicle of another for the purpose of assaulting a person who is in the motor vehicle.

Existing law also provides that a killing is justifiable if the circumstances were sufficient to excite the fears of a reasonable person and the person killing really acted under the influence of those fears and not in a spirit of revenge. (NRS 200.130) **Section 2** of this bill establishes a rebuttable presumption that a killing is



justifiable under the standard set forth in NRS 200.130 if the person killing: (1) knew or reasonably believed that the person who was killed was entering unlawfully and with force, or attempting to enter unlawfully and with force, the habitation or property of another; (2) knew or reasonably believed that the person who was killed was committing or attempting to commit a crime of violence; and (3) did not provoke the person who was killed.

Existing law prohibits certain persons from owning or having in their possession or under their custody or control any firearm. A person who violates such a provision is guilty of a category B felony. (NRS 202.360) **Section 3** of this bill adds to such a list of persons a person who has been convicted in this State or any other state of a misdemeanor crime of domestic violence as defined in federal law.

Existing law authorizes a court to issue an extended order for protection against domestic violence. (NRS 33.030) **Section 5** of this bill provides that if such an extended order is issued, the adverse party is prohibited from purchasing or otherwise acquiring any firearm during the period that the extended order is in effect. A person who violates such a provision is guilty of a category B felony.

Existing law provides that in a civil action brought by or on behalf of a person against whom force which is intended or likely to cause death or bodily injury was used: (1) there is a presumption that the person who used such force had a reasonable fear of imminent death or bodily injury to himself or herself or another person if the person against whom such force was used was committing burglary or invasion of the home; and (2) that presumption must be overcome by clear and convincing evidence to the contrary for the civil action to be maintained. (NRS 41.095) **Section 7** of this bill extends that presumption to circumstances in which the person who used such force was in his or her motor vehicle and the other person was committing grand larceny of the motor vehicle with the use or threatened use of a deadly weapon. **Section 7** also enacts a provision, based upon Texas law, which provides that a person is immune to civil liability for using force which is intended or likely to cause death or bodily injury if the person was justified in using such force under the applicable provisions of Nevada criminal law. (Texas Civil Practice and Remedies Code § 83.001)

Existing law requires the Department of Public Safety to prepare annually a list of states that have: (1) requirements for the issuance of a permit to carry a concealed firearm that are substantially similar to or more stringent than the requirements set forth in this State; and (2) an electronic database which identifies each individual who possesses a valid permit to carry a concealed firearm by that state and which a law enforcement officer in this State may access at all times. Additionally, a state may only be included in the list if the Nevada Sheriffs' and Chiefs' Association agrees with the Department's inclusion of the state. (NRS 202.3689) Existing law also authorizes a person who possesses a permit to carry a concealed firearm that was issued by a state included in the list to carry a concealed firearm in this State in accordance with the laws of this State unless the person: (1) becomes a resident of this State; and (2) has not been issued a permit from the sheriff of the county in which he or she resides within 60 days after becoming a resident of this State. (NRS 202.3688) **Section 4.5** of this bill requires the Department to determine whether each state requires a person to complete any training, class or program for purposes of preparing the list.

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 transfer, sale, purchase, possession, ownership, transportation, registration and licensing of firearms and ammunition in this State, and further provides that no county, city or town may infringe upon those rights and powers. (NRS 244.364,



268.418, 269.222) **Sections 8-10** of this bill expand such rights and powers of the Legislature to include those necessary to: (1) regulate the carrying and storage of firearms, firearm accessories and ammunition; 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 and require the governing bodies of certain political subdivisions of this State to repeal any such ordinance or regulation. **Sections 8-10** also authorize any person who is adversely affected by the enforcement of any such ordinance or regulation on or after October 1, 2015, to file suit in the appropriate court for declarative and injunctive relief and damages. Such a person is entitled to certain damages depending on whether and when the relevant governing body of a political subdivision repeals such an ordinance or a regulation.

Existing law also requires certain political subdivisions of this State in a county whose population is 700,000 or more (currently Clark County), which adopted ordinances or regulations before June 13, 1989, that require the registration of firearms capable of being concealed, to make certain amendments to such registration provisions. (NRS 244.364, 268.418, 269.222) **Sections 8-10** additionally delete the provisions requiring certain political subdivisions of this State to make such amendments.

Assembly Bill No. 147 of the 1989 Legislative Session (A.B. 147) reserved for the Legislature the rights and powers necessary to regulate the transfer, sale, purchase, possession, ownership, transportation, registration and licensing of firearms and ammunition in this State. (Chapter 308, Statutes of Nevada 1989, p. 652) However, **section 5** of A.B. 147 provided that the preemptive effect of the bill applied only to ordinances or regulations adopted by certain political subdivisions on or after June 13, 1989. **Section 11** of this bill amends **section 5** of A.B. 147 to include and preempt ordinances or regulations adopted by certain political subdivisions before June 13, 1989.

EXPLANATION - Matter in *bolded italics* is new; matter between brackets ~~{omitted-material}~~ is material to be omitted.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. NRS 200.120 is hereby amended to read as follows:
200.120 1. Justifiable homicide is the killing of a human being in necessary self-defense, or in defense of *an occupied* habitation, ~~{property}~~ *an occupied motor vehicle* or person, against one who manifestly intends or endeavors ~~{, by violence or surprise,}~~ to commit a ~~{felony,}~~ *crime of violence*, or against any person or persons who manifestly intend and endeavor, in a violent, riotous, tumultuous or surreptitious manner, to enter the *occupied* habitation *or occupied motor vehicle*, of another for the purpose of assaulting or offering personal violence to any person dwelling or being therein.

2. A person is not required to retreat before using deadly force as provided in subsection 1 if the person:

(a) Is not the original aggressor;



(b) Has a right to be present at the location where deadly force is used; and

(c) Is not actively engaged in conduct in furtherance of criminal activity at the time deadly force is used.

3. *As used in this section:*

(a) *"Crime of violence" means any felony for which there is a substantial risk that force or violence may be used against the person or property of another in the commission of the felony.*

(b) *"Motor vehicle" means every vehicle which is self-propelled.*

Sec. 2. NRS 200.130 is hereby amended to read as follows:

200.130 1. A bare fear of any of the offenses mentioned in NRS 200.120, to prevent which the homicide is alleged to have been committed, ~~{shall not be}~~ *is not* sufficient to justify the killing. It must appear that the circumstances were sufficient to excite the fears of a reasonable person and that the ~~{party}~~ *person* killing really acted under the influence of those fears and not in a spirit of revenge.

2. *There is a rebuttable presumption that the circumstances were sufficient to excite the fears of a reasonable person and that the person killing really acted under the influence of those fears and not in a spirit of revenge if the person killing:*

(a) *Knew or reasonably believed that the person who was killed was entering unlawfully and with force, or attempting to enter unlawfully and with force, the occupied habitation or occupied motor vehicle, of another;*

(b) *Knew or reasonably believed that the person who was killed was committing or attempting to commit a crime of violence; and*

(c) *Did not provoke the person who was killed.*

3. *As used in this section:*

(a) *"Crime of violence" means any felony for which there is a substantial risk that force or violence may be used against the person or property of another in the commission of the felony.*

(b) *"Motor vehicle" means every vehicle which is self-propelled.*

Sec. 3. NRS 202.360 is hereby amended to read as follows:

202.360 1. A person shall not own or have in his or her possession or under his or her custody or control any firearm if the person:

(a) *Has been convicted in this State or any other state of a misdemeanor crime of domestic violence as defined in 18 U.S.C. § 921(a)(33);*



(b) Has been convicted of a felony in this *State* or any other state, or in any political subdivision thereof, or of a felony in violation of the laws of the United States of America, unless the person has received a pardon and the pardon does not restrict his or her right to bear arms;

~~[(b)]~~ (c) Is a fugitive from justice; or

~~[(c)]~~ (d) Is an unlawful user of, or addicted to, any controlled substance.

↪ A person who violates the provisions of this subsection is guilty of a category B felony and shall be punished by imprisonment in the state prison for a minimum term of not less than 1 year and a maximum term of not more than 6 years, and may be further punished by a fine of not more than \$5,000.

2. A person shall not own or have in his or her possession or under his or her custody or control any firearm if the person:

(a) Has been adjudicated as mentally ill or has been committed to any mental health facility; or

(b) Is illegally or unlawfully in the United States.

↪ A person who violates the provisions of this subsection is guilty of a category D felony and shall be punished as provided in NRS 193.130.

3. As used in this section:

(a) "Controlled substance" has the meaning ascribed to it in 21 U.S.C. § 802(6).

(b) "Firearm" includes any firearm that is loaded or unloaded and operable or inoperable.

Sec. 4. NRS 202.3688 is hereby amended to read as follows:

202.3688 1. Except as otherwise provided in subsection 2, a person who possesses a permit to carry a concealed firearm that was issued by a state included in the list prepared pursuant to NRS 202.3689 may carry a concealed firearm in this State in accordance with the requirements set forth in NRS 202.3653 to 202.369, inclusive.

2. A person who possesses a permit to carry a concealed firearm that was issued by a state included in the list prepared pursuant to NRS 202.3689 may not carry a concealed firearm in this State if the person:

(a) Becomes a resident of this State; and

(b) Has not been issued a permit from the sheriff of the county in which he or she resides within 60 days after becoming a resident of this State.

~~{3. A person who carries a concealed firearm pursuant to this section is subject to the same legal restrictions and requirements~~



~~imposed upon a person who has been issued a permit by a sheriff in this State.~~

Sec. 4.5. NRS 202.3689 is hereby amended to read as follows:

202.3689 1. On or before July 1 of each year, the Department shall:

(a) ~~{Examine the requirements for the}~~ *Determine whether each state requires a person to complete any training, class or program before the issuance of a permit to carry a concealed firearm in {each} that state . {and determine whether the requirements of each state are substantially similar to or more stringent than the requirements set forth in NRS 202.3653 to 202.369, inclusive.}*

(b) Determine whether each state has an electronic database which identifies each individual who possesses a valid permit to carry a concealed firearm issued by that state and which a law enforcement officer in this State may access at all times through a national law enforcement telecommunications system.

(c) Prepare a list of states that meet the requirements of paragraphs (a) and (b). A state must not be included in the list unless the Nevada Sheriffs' and Chiefs' Association agrees with the Department that the state should be included in the list.

(d) Provide a copy of the list prepared pursuant to paragraph (c) to each law enforcement agency in this State.

2. The Department shall, upon request, make the list prepared pursuant to subsection 1 available to the public.

Sec. 5. Chapter 33 of NRS is hereby amended by adding thereto a new section to read as follows:

1. If a court issues an extended order pursuant to NRS 33.030, the adverse party shall not subsequently purchase or otherwise acquire any firearm during the period that the extended order is in effect.

2. A person who violates the provisions of subsection 1 is guilty of a category B felony and shall be punished by imprisonment in the state prison for a minimum term of not less than 1 year and a maximum term of not more than 6 years, and may be further punished by a fine of not more than \$5,000.

Sec. 6. NRS 33.017 is hereby amended to read as follows:

33.017 As used in NRS 33.017 to 33.100, inclusive, *and section 5 of this act*, unless the context otherwise requires:

1. "Extended order" means an extended order for protection against domestic violence.

2. "Temporary order" means a temporary order for protection against domestic violence.



Sec. 7. NRS 41.095 is hereby amended to read as follows:

41.095 1. For the purposes of NRS 41.085 and 41.130, any person who uses ~~{, while}~~:

(a) *While* lawfully in his or her residence, ~~{or}~~ in transient lodging ~~{,}~~ *or in a motor vehicle that is not his or her residence*, force which is intended or likely to cause death or bodily injury is presumed to have had a reasonable fear of imminent death or bodily injury to himself or herself or another person lawfully in the residence, ~~{or}~~ transient lodging *or motor vehicle* if the force is used against a person who is committing burglary, ~~{or}~~ invasion of the home *or grand larceny of the motor vehicle with the use or threatened use of a deadly weapon* and the person using the force knew or had reason to believe that burglary, ~~{or}~~ invasion of the home *or grand larceny of the motor vehicle with the use or threatened use of a deadly weapon* was being committed. An action to recover damages for personal injuries to or the wrongful death of the person who committed burglary, ~~{or}~~ invasion of the home *or grand larceny of the motor vehicle with the use or threatened use of a deadly weapon* may not be maintained against the person who used such force unless the presumption is overcome by clear and convincing evidence to the contrary.

(b) *Force which is intended or likely to cause death or bodily injury is immune from civil liability in an action to recover damages for personal injuries to or the wrongful death of a person against whom such force was used if the use of such force was justified under the applicable provisions of chapter 200 of NRS relating to the use of such force.*

2. As used in this section ~~{, "residence"}~~:

(a) *"Deadly weapon" has the meaning ascribed to it in NRS 193.165.*

(b) *"Motor vehicle" means every vehicle which is self-propelled.*

(c) *"Residence" means any house, room, apartment, tenement or other building, vehicle, vehicle trailer, semitrailer, house trailer or boat designed or intended for occupancy as a residence.*

Sec. 8. NRS 244.364 is hereby amended to read as follows:

244.364 1. *The Legislature hereby declares that:*

(a) *The purpose of this section is to establish state control over the regulation of and policies concerning firearms, firearm accessories and ammunition to ensure that such regulation and policies are uniform throughout this State and to ensure the protection of the right to keep and bear arms, which is recognized by the United States Constitution and the Nevada Constitution.*



(b) The regulation of the transfer, sale, purchase, 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, 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.

2. Except as otherwise provided by specific statute, the Legislature reserves for itself such rights and powers as are necessary to regulate the transfer, sale, purchase, possession, *carrying*, ownership, transportation, *storage*, registration and licensing of firearms, *firearm accessories* and ammunition in Nevada ~~[,] and [no]~~ *to define such terms. No* county may infringe upon those rights and powers. ~~[As used in this subsection, "firearm" means any weapon from which a projectile is discharged by means of an explosive, spring, gas, air or other force.~~

~~—2.]~~ 3. A board of county commissioners may proscribe by ordinance or regulation the unsafe discharge of firearms.

~~[3. If a board of county commissioners in a county whose population is 700,000 or more has required by ordinance or regulation adopted before June 13, 1989, the registration of a firearm capable of being concealed, the board of county commissioners shall amend such an ordinance or regulation to require:~~

~~—(a) A period of at least 60 days of residency in the county before registration of such a firearm is required.~~

~~—(b) A period of at least 72 hours for the registration of a pistol by a resident of the county upon transfer of title to the pistol to the resident by purchase, gift or any other transfer.~~

~~—4. Except as otherwise provided in subsection 1, as]~~

4. *Any ordinance or regulation which is inconsistent with this section or which is designed to restrict or prohibit the sale, purchase, transfer, manufacture or display of firearms, firearm accessories or ammunition that is otherwise lawful under the laws of this State is null and void, and any official action taken by an employee or agent of a county in violation of this section is void.*

5. *A board of county commissioners shall repeal any ordinance or regulation described in subsection 4, and any such ordinance or regulation that is posted within the county must be removed.*

6. *A board of county commissioners shall cause to be destroyed any ownership records of firearms owned by private*



persons which are kept or maintained by the county or any county agency, board or commission, including, without limitation, any law enforcement agency, for the purposes of compliance with any ordinance or regulation that is inconsistent with this section. The provisions of this subsection do not apply to the ownership records of firearms purchased and owned by any political subdivision of this State.

7. Any person who is adversely affected by the enforcement of an ordinance or regulation that violates this section on or after October 1, 2015, may file suit in the appropriate court for declarative and injunctive relief and damages attributable to the violation. Notwithstanding any other provision of law, such a person is entitled to:

(a) Reimbursement of actual damages, reasonable attorney's fees and costs which the person has incurred if, within 30 days after the person commenced the action but before a final determination has been issued by the court, the board of county commissioners repeals the ordinance or regulation that violates this section.

(b) Liquidated damages in an amount equal to two times the actual damages, reasonable attorney's fees and costs incurred by the person if, more than 30 days after the person commenced the action but before a final determination has been issued by the court, the board of county commissioners repeals the ordinance or regulation that violates this section.

(c) Liquidated damages in an amount equal to three times the actual damages, reasonable attorney's fees and costs incurred by the person if the court makes a final determination in favor of the person.

8. This section must not be construed to prevent:

(a) A law enforcement agency or correctional institution from promulgating and enforcing its own rules pertaining to firearms, firearm accessories or ammunition that are issued to or used by peace officers in the course of their official duties.

(b) A court or administrative law judge from hearing and resolving a case or controversy or issuing an opinion or order on a matter within its jurisdiction.

(c) A public employer from regulating or prohibiting the carrying or possession of firearms, firearm accessories or ammunition during or in the course of an employee's official duties.

(d) The enactment or enforcement of a county zoning or business ordinance which is generally applicable to businesses



within the county and thereby affects a firearms business within the county, including, without limitation, an indoor or outdoor shooting range.

(e) A county from enacting and enforcing rules for the operation and use of any firearm range owned and operated by the county.

(f) A political subdivision from sponsoring or conducting a firearm-related competition or educational or cultural program and enacting and enforcing rules for participation in or attendance at any such competition or program.

(g) A political subdivision or any official thereof with appropriate authority from enforcing any statute of this State.

9. As used in this section:

(a) "Ammunition" includes, without limitation, fixed cartridge ammunition and the individual components thereof, shotgun shells and the individual components thereof, projectiles for muzzle-loading firearms and any propellant used in firearms or ammunition.

(b) "Firearm" ~~{means}~~ includes, without limitation, a pistol, revolver, rifle, shotgun, machine gun, submachine gun, black powder weapon, muzzle-loading firearm or any device which is designed to ~~{be used as a weapon from which}~~, able to or able to be readily converted to expel a projectile ~~{may be expelled}~~ through the barrel by the ~~{force}~~ action of ~~{any explosion or}~~ an explosive, other form of combustion ~~{~~

~~*(b) "Firearm capable of being concealed" includes all firearms having a barrel less than 12 inches in length.*~~

~~*(c) "Pistol" means a firearm capable of being concealed that is intended to be aimed and fired with one hand.} or expanding gases.*~~

(c) "Firearm accessories" means:

(1) Devices specifically designed or adapted to enable the wearing or carrying of a firearm or the storing in or mounting on a conveyance of a firearm; or

(2) Attachments or devices specifically designed or adapted to be inserted into or affixed on a firearm to enable, alter or improve the functioning or capability of the firearm.

(d) "Person" includes, without limitation:

(1) Any person who has standing to bring or maintain an action concerning this section pursuant to the laws of this State.

(2) Any person who:

(I) Can legally possess a firearm under state and federal law;



(II) Owns, possesses, stores, transports, carries or transfers firearms, ammunition or ammunition components within a county; and

(III) Is subject to the county ordinance or regulation at issue.

(3) A membership organization whose members include a person described in subparagraphs (1) and (2) and which is dedicated in whole or in part to protecting the legal, civil or constitutional rights of its members.

(e) "Political subdivision" includes, without limitation, a state agency, county, city, town or school district.

(f) "Public employer" has the meaning ascribed to it in NRS 286.070.

Sec. 9. NRS 268.418 is hereby amended to read as follows:

268.418 1. *The Legislature hereby declares that:*

(a) *The purpose of this section is to establish state control over the regulation of and policies concerning firearms, firearm accessories and ammunition to ensure that such regulation and policies are uniform throughout this State and to ensure the protection of the right to bear arms, which is recognized by the United States Constitution and the Nevada Constitution.*

(b) *The regulation of the transfer, sale, purchase, 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, 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.*

2. Except as otherwise provided by specific statute, the Legislature reserves for itself such rights and powers as are necessary to regulate the transfer, sale, purchase, possession, carrying, ownership, transportation, storage, registration and licensing of firearms, firearm accessories and ammunition in Nevada ~~and to define such terms. No city may infringe upon those rights and powers. As used in this subsection, "firearm" means any weapon from which a projectile is discharged by means of an explosive, spring, gas, air or other force.~~

~~2.]~~ 3. The governing body of a city may proscribe by ordinance or regulation the unsafe discharge of firearms.

~~3. If the governing body of a city in a county whose population is 700,000 or more has required by ordinance or regulation adopted before June 13, 1989, the registration of a~~



firearm capable of being concealed, the governing body shall amend such an ordinance or regulation to require:

~~—(a) A period of at least 60 days of residency in the city before registration of such a firearm is required.~~

~~—(b) A period of at least 72 hours for the registration of a pistol by a resident of the city upon transfer of title to the pistol to the resident by purchase, gift or any other transfer.~~

~~—4. Except as otherwise provided in subsection 1, as}~~

4. Any ordinance or regulation which is inconsistent with this section or which is designed to restrict or prohibit the sale, purchase, transfer, manufacture or display of firearms, firearm accessories or ammunition that is otherwise lawful under the laws of this State is null and void, and any official action taken by an employee or agent of a city in violation of this section is void.

5. The governing body of a city shall repeal any ordinance or regulation described in subsection 4, and any such ordinance or regulation that is posted within the city must be removed.

6. The governing body of a city shall cause to be destroyed any ownership records of firearms owned by private persons which are kept or maintained by the city or any city agency, board or commission, including, without limitation, any law enforcement agency, for the purposes of compliance with any ordinance or regulation that is inconsistent with this section. The provisions of this subsection do not apply to the ownership records of firearms purchased and owned by any political subdivision of this State.

7. Any person who is adversely affected by the enforcement of an ordinance or regulation that violates this section on or after October 1, 2015, may file suit in the appropriate court for declarative and injunctive relief and damages attributable to the violation. Notwithstanding any other provision of law, such a person is entitled to:

(a) Reimbursement of actual damages, reasonable attorney's fees and costs which the person has incurred if, within 30 days after the person commenced the action but before a final determination has been issued by the court, the governing body of the city repeals the ordinance or regulation that violates this section.

(b) Liquidated damages in an amount equal to two times the actual damages, reasonable attorney's fees and costs incurred by the person if, more than 30 days after the person commenced the action but before a final determination has been issued by the court, the governing body of the city repeals the ordinance or regulation that violates this section.



(c) Liquidated damages in an amount equal to three times the actual damages, reasonable attorney's fees and costs incurred by the person if the court makes a final determination in favor of the person.

8. This section must not be construed to prevent:

(a) A law enforcement agency or correctional institution from promulgating and enforcing its own rules pertaining to firearms, firearm accessories or ammunition that are issued to or used by peace officers in the course of their official duties.

(b) A court or administrative law judge from hearing and resolving a case or controversy or issuing an opinion or order on a matter within its jurisdiction.

(c) A public employer from regulating or prohibiting the carrying or possession of firearms, firearm accessories or ammunition during or in the course of an employee's official duties.

(d) The enactment or enforcement of a city zoning or business ordinance which is generally applicable to businesses within the city and thereby affects a firearms business within the city, including, without limitation, an indoor or outdoor shooting range.

(e) A city from enacting and enforcing rules for the operation and use of any firearm range owned and operated by the city.

(f) A political subdivision from sponsoring or conducting a firearm-related competition or educational or cultural program and enacting and enforcing rules for participation in or attendance at any such competition or program.

(g) A political subdivision or any official thereof with appropriate authority from enforcing any statute of this State.

9. As used in this section:

(a) "Ammunition" includes, without limitation, fixed cartridge ammunition and the individual components thereof, shotgun shells and the individual components thereof, projectiles for muzzle-loading firearms and any propellant used in firearms or ammunition.

(b) "Firearm" ~~{means}~~ includes, without limitation, a pistol, revolver, rifle, shotgun, machine gun, submachine gun, black powder weapon, muzzle-loading firearm or any device which is designed to ~~{be used as a weapon from which}~~, able to or able to be readily converted to expel a projectile ~~{may be expelled}~~ through the barrel by the ~~{force}~~ action of ~~{any explosion or}~~ an explosive, other form of combustion ~~{~~



~~(b) "Firearm capable of being concealed" includes all firearms having a barrel less than 12 inches in length.~~

~~(c) "Pistol" means a firearm capable of being concealed that is intended to be aimed and fired with one hand.] or expanding gases.~~

(c) "Firearm accessories" means:

(1) *Devices specifically designed or adapted to enable the wearing or carrying of a firearm or the storing in or mounting on a conveyance of a firearm; or*

(2) *Attachments or devices specifically designed or adapted to be inserted into or affixed on a firearm to enable, alter or improve the functioning or capability of the firearm.*

(d) "Person" includes, without limitation:

(1) *Any person who has standing to bring or maintain an action concerning this section pursuant to the laws of this State.*

(2) *Any person who:*

(I) *Can legally possess a firearm under state and federal law;*

(II) *Owens, possesses, stores, transports, carries or transfers firearms, ammunition or ammunition components within a city; and*

(III) *Is subject to the city ordinance or regulation at issue.*

(3) *A membership organization whose members include a person described in subparagraphs (1) and (2) and which is dedicated in whole or in part to protecting the legal, civil or constitutional rights of its members.*

(e) "Political subdivision" includes, without limitation, a state agency, county, city, town or school district.

(f) "Public employer" has the meaning ascribed to it in NRS 286.070.

Sec. 10. NRS 269.222 is hereby amended to read as follows:

269.222 1. *The Legislature hereby declares that:*

(a) *The purpose of this section is to establish state control over the regulation of and policies concerning firearms, firearm accessories and ammunition to ensure that such regulation and policies are uniform throughout this State and to ensure the protection of the right to keep and bear arms, which is recognized by the United States Constitution and the Nevada Constitution.*

(b) *The regulation of the transfer, sale, purchase, 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, 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.

2. Except as otherwise provided by specific statute, the Legislature reserves for itself such rights and powers as are necessary to regulate the transfer, sale, purchase, possession, *carrying*, ownership, transportation, *storage*, registration and licensing of firearms, *firearm accessories* and ammunition in Nevada ~~{,}~~ and ~~{no}~~ *to define such terms. No town may infringe upon those rights and powers. [As used in this subsection, "firearm" means any weapon from which a projectile is discharged by means of an explosive, spring, gas, air or other force.*

~~—2.]~~ 3. A town board may proscribe by ordinance or regulation the unsafe discharge of firearms.

~~{3. If a town board in a county whose population is 700,000 or more has required by ordinance or regulation adopted before June 13, 1989, the registration of a firearm capable of being concealed, the town board shall amend such an ordinance or regulation to require:~~

~~—(a) A period of at least 60 days of residency in the town before registration of such a firearm is required.~~

~~—(b) A period of at least 72 hours for the registration of a pistol by a resident of the town upon transfer of title to the pistol to the resident by purchase, gift or any other transfer.~~

~~—4. Except as otherwise provided in subsection 1, as}~~

4. *Any ordinance or regulation which is inconsistent with this section or which is designed to restrict or prohibit the sale, purchase, transfer, manufacture or display of firearms, firearm accessories or ammunition that is otherwise lawful under the laws of this State is null and void, and any official action taken by an employee or agent of a town in violation of this section is void.*

5. *A town board shall repeal any ordinance or regulation described in subsection 4, and any such ordinance or regulation that is posted within the town must be removed.*

6. *A town board shall cause to be destroyed any ownership records of firearms owned by private persons which are kept or maintained by the town or any town agency, board or commission, including, without limitation, any law enforcement agency, for the purposes of compliance with any ordinance or regulation that is inconsistent with this section. The provisions of this subsection do not apply to the ownership records of firearms purchased and owned by any political subdivision of this State.*



7. Any person who is adversely affected by the enforcement of an ordinance or regulation that violates this section on or after October 1, 2015, may file suit in the appropriate court for declarative and injunctive relief and damages attributable to the violation. Notwithstanding any other provision of law, such a person is entitled to:

(a) Reimbursement of actual damages, reasonable attorney's fees and costs which the person has incurred if, within 30 days after the person commenced the action but before a final determination has been issued by the court, the town board repeals the ordinance or regulation that violates this section.

(b) Liquidated damages in an amount equal to two times the actual damages, reasonable attorney's fees and costs incurred by the person if, more than 30 days after the person commenced the action but before a final determination has been issued by the court, the town board repeals the ordinance or regulation that violates this section.

(c) Liquidated damages in an amount equal to three times the actual damages, reasonable attorney's fees and costs incurred by the person if the court makes a final determination in favor of the person.

8. This section must not be construed to prevent:

(a) A law enforcement agency or correctional institution from promulgating and enforcing its own rules pertaining to firearms, firearm accessories or ammunition that are issued to or used by peace officers in the course of their official duties.

(b) A court or administrative law judge from hearing and resolving a case or controversy or issuing an opinion or order on a matter within its jurisdiction.

(c) A public employer from regulating or prohibiting the carrying or possession of firearms, firearm accessories or ammunition during or in the course of an employee's official duties.

(d) The enactment of enforcement of a town zoning or business ordinance which is generally applicable to businesses within the town and thereby affects a firearms business within the town, including, without limitation, an indoor or outdoor shooting range.

(e) A town from enacting and enforcing rules for the operation and use of any firearm range owned and operated by the town.

(f) A political subdivision from sponsoring or conducting a firearm-related competition or educational or cultural program



and enacting and enforcing rules for participation in or attendance at any such competition or program.

(g) A political subdivision or any official thereof with appropriate authority from enforcing any statute of this State.

9. As used in this section:

(a) "Ammunition" includes, without limitation, fixed cartridge ammunition and the individual components thereof, shotgun shells and the individual components thereof, projectiles for muzzle-loading firearms and any propellant used in firearms or ammunition.

(b) "Firearm" {means} includes, without limitation, a pistol, revolver, rifle, shotgun, machine gun, submachine gun, black powder weapon, muzzle-loading firearm or any device which is designed to {be used as a weapon from which}, able to or able to be readily converted to expel a projectile {may be expelled} through the barrel by the {force} action of {any explosion or} an explosive, other form of combustion {.

~~*(b) "Firearm capable of being concealed" includes all firearms having a barrel less than 12 inches in length.*~~

~~*(c) "Pistol" means a firearm capable of being concealed that is intended to be aimed and fired with one hand.} or expanding gases.*~~

(c) "Firearm accessories" means:

(1) Devices specifically designed or adapted to enable the wearing or carrying of a firearm or the storing in or mounting on a conveyance of a firearm; or

(2) Attachments or devices specifically designed or adapted to be inserted into or affixed on a firearm to enable, alter or improve the functioning or capability of the firearm.

(d) "Person" includes, without limitation:

(1) Any person who has standing to bring or maintain an action concerning this section pursuant to the laws of this State.

(2) Any person who:

(I) Can legally possess a firearm under state and federal law;

(II) Owns, possesses, stores, transports, carries or transfers firearms, ammunition or ammunition components within a town; and

(III) Is subject to the town ordinance or regulation at issue.

(3) A membership organization whose members include a person described in subparagraphs (1) and (2) and which is dedicated in whole or in part to protecting the legal, civil or constitutional rights of its members.



(e) *"Political subdivision" includes, without limitation, a state agency, county, city, town or school district.*

(f) *"Public employer" has the meaning ascribed to it in NRS 286.070.*

Sec. 11. Section 5 of chapter 308, Statutes of Nevada 1989, as amended by chapter 320, Statutes of Nevada 2007, at page 1291, is hereby amended to read as follows:

Sec. 5. ~~{1. Except as otherwise provided in subsection 2, the provisions of this act apply to ordinances or regulations adopted on or after June 13, 1989.~~

~~—2.} The provisions of this act {, as amended on October 1, 2007,} apply to ordinances or regulations adopted before, on or after June 13, 1989.~~

Sec. 12. 1. The provisions of NRS 202.360, as amended by section 3 of this act, apply to an offense committed before, on or after the effective date of this act.

2. The provisions of section 5 of this act apply to an extended order pursuant to NRS 33.030 issued on or after the effective date of this act.

Sec. 12.5. Records relating to the registration of any firearm capable of being concealed pursuant to any ordinance or regulation adopted by a political subdivision before June 13, 1989, must be destroyed within 1 year after the effective date of this act.

Sec. 13. (Deleted by amendment.)

Sec. 14. This act becomes effective upon passage and approval.



EXHIBIT 6

**MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON JUDICIARY**

**Seventy-Eighth Session
April 23, 2015**

The Committee on Judiciary was called to order by Chairman Ira Hansen at 8 a.m. on Thursday, April 23, 2015, in Room 3138 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4406 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda (Exhibit A), the Attendance Roster (Exhibit B), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at www.leg.state.nv.us/App/NELIS/REL/78th2015. In addition, copies of the audio or video of the meeting may be purchased, for personal use only, through the Legislative Counsel Bureau's Publications Office (email: publications@lcb.state.nv.us; telephone: 775-684-6835).

COMMITTEE MEMBERS PRESENT:

Assemblyman Ira Hansen, Chairman
Assemblyman Erven T. Nelson, Vice Chairman
Assemblyman Elliot T. Anderson
Assemblyman Nelson Araujo
Assemblywoman Olivia Diaz
Assemblywoman Michele Fiore
Assemblyman David M. Gardner
Assemblyman Brent A. Jones
Assemblyman James Ohrenschall
Assemblyman P.K. O'Neill
Assemblywoman Victoria Seaman
Assemblyman Tyrone Thompson
Assemblyman Glenn E. Trowbridge

COMMITTEE MEMBERS ABSENT:

None

Minutes ID: 929



GUEST LEGISLATORS PRESENT:

Senator David R. Parks, Senate District No. 7
Senator Ruben J. Kihuen, Senate District No. 10
Senator Greg Brower, Senate District No. 15

STAFF MEMBERS PRESENT:

Diane Thornton, Committee Policy Analyst
Brad Wilkinson, Committee Counsel
Lenore Carfora-Nye, Committee Secretary
Jamie Tierney, Committee Assistant

OTHERS PRESENT:

Sheryl Foster, Deputy Director, Programs, South, Department of Corrections
James Scally, Manager, Casa Grande Transitional Housing Center, Department of Corrections
Lynn Goya, County Clerk, Clark County
Nancy Parent, County Clerk, Washoe County
Margaret Flint, representing Chapel of the Bells and Arch of Reno Chapel
Marshal Willick, Private Citizen, Las Vegas, Nevada
Juanita Clark, representing Charleston Neighborhood Preservation
Loren Young, President and Chair, Las Vegas Defense Lawyers
John J. Jones, representing Nevada District Attorneys Association
Steve Yeager, representing Clark County Public Defender's Office
Janine Hansen, representing Nevada Families for Freedom
Vanessa Spinazola, Legislative and Advocacy Director, American Civil Liberties Union of Nevada
Carol Howell, President, Northern Sierra Ladies Gun Club, Carson City, Nevada
Robert Roshak, Executive Director, Nevada Sheriffs' and Chiefs' Association
Chuck Callaway, Police Director, Office of Intergovernmental Services, Las Vegas Metropolitan Police Department
Eric Spratley, Lieutenant, Legislative Services, Washoe County Sheriff's Office
Natasha Koch, Captain, Executive Officer, Nevada Highway Patrol, Department of Public Safety
Megan Bedera, representing Nevada Firearms Coalition
John Wagner, State Chairman, Independent American Party
Vernon Brooks, Private Citizen, Las Vegas, Nevada

illegally issued but it was very difficult to get the documents back. A lot of the material had nothing to do with the business; it was personal information regarding his political activities. I think it is always very important to do all that we can to protect the individual rights of citizens as are generally stated in the *Bill of Rights* and in our own affirmation of rights. We support this bill.

Vanessa Spinazola, Legislative and Advocacy Director, American Civil Liberties Union of Nevada:

Me too.

Chairman Hansen:

We will now move to opposition. Is there anyone in opposition? [There was no one.] Is there anyone in the neutral position? [There was no one.] Senator, is there anything you would like to add to the record?

Senator Brower:

No. Thank you for hearing the bill. I think it is important, and you have seen about as broad an array of support as we see in this building. That says something about the bill.

Chairman Hansen:

We will now close the hearing on Senate Bill 191 (1st Reprint), and open the hearing on Senate Bill 175 (1st Reprint).

Senate Bill 175 (1st Reprint): Makes various changes relating to public safety. (BDR 15-515)

Senator Greg Brower, Senate District No. 15:

I am pinch-hitting this morning for Senator Roberson, who is the primary sponsor of the bill. However, he was called away for a meeting. As the Chairman of the relevant committee in the Senate and a cosponsor of the bill, it is my pleasure to try to present it as well as the chief sponsor might have.

I am here today to present Senate Bill 175 (1st Reprint). This version combines several ideas this Legislature has previously discussed into one broad-based measure that will greatly improve public safety in our state. This bill covers two important subjects: self-defense and who can carry firearms in our state. First, I am going to talk about the sections of the bill related to self-defense. I will cover the sections addressing the firearms later. Along the way, I will also be highlighting some of the changes made on the Senate side, which were the product of a lot of discussions with many stakeholders from every possible

point of view on the issues. Even the former chairman of this Committee, Jason Frierson, added some very important and valuable input to the final product.

Many times we overlook the definitions contained in a bill, but it is important to note that section 1 amends the definition of justifiable homicide to include the killing of a person in self-defense while in a motor vehicle. That is essentially what section 1 is all about. To put it simply, the idea behind the bill is to make sure the classic carjacking scenario is addressed in the bill just as the castle doctrine scenario is addressed in the law. The definition was further amended to make it clear that justifiable homicide would be limited to occupied homes and occupied motor vehicles only. Frankly that constitutes a significant narrowing of the current law which arguably provides that one can kill another in defense of property regardless of whether the property in question was occupied. Most everyone who reviewed the law agreed that was simply too broad. Therefore, this bill narrows that scenario to an occupied vehicle or home.

Section 2 of the bill lays out the circumstances under which a killing is presumed justified. [Continued reading from prepared statement by Senator Michael Roberson (Exhibit E).]

Section 3 provides that a person who has been convicted in Nevada, or any other state, of misdemeanor domestic violence as defined in federal law cannot own or have in his or her possession, custody, or control any firearm. Doing so constitutes a category B felony, and section 12 makes this provision retroactive. Felons cannot possess a firearm under federal and state law. This bill adds to that list of prohibited persons such as those who have been convicted of domestic violence misdemeanors.

Sections 5 and 6 add provisions stipulating that anyone who has had an extended protection order against domestic violence issued against them by a court may not purchase or otherwise obtain a weapon during the time the order is in effect. Again, violation of these provisions is a category B felony. [Continued reading from prepared statement by Senator Michael Roberson (Exhibit E).]

Rather than requiring the Department of Public Safety (DPS) to engage in a quite laborious effort to analyze the concealed carry permit (CCW) requirements of every other state and make a reciprocity determination, the bill simplifies the process and requires DPS to determine which states require a training course, and those states have reciprocity under this bill. There is a proposed friendly amendment (Exhibit F) the sponsors agreed to with respect to section 4.5.

I think we will hear from the Nevada Sheriffs' and Chiefs' Association (NVSCA) about this later. The proposed amendment would remove lines 23 through 25 from section 4.5, which under current law requires NVSCA to agree with the list of recognized states provided by DPS for reciprocity. The proposal by NVSCA is that DPS is capable of making that decision and NVSCA need not agree with it. That proposed amendment (Exhibit F) was not proposed on the Senate side due to an oversight, but it is agreeable to the bill's sponsor.

Sections 8 through 10 expand and clarify the Legislature's right to regulate firearms, ammunition, and accessories and to define the associated terms. These sections also stipulate that any ordinances or regulations made by political subdivisions of the state that are inconsistent with the Legislature's rights are null and void and must be repealed. What this bill 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. As to not allow for inconsistencies between counties, the Legislature will make the regulation regarding firearms policy. The local governments cannot do so in any way that is inconsistent with state law.

Finally, these sections provide a legal avenue for anyone who believes they have been adversely affected by such an ordinance or regulation to file suit in the appropriate court, receive relief, and be awarded damages if they prevail.

Section 11 amends the law to eliminate the grandfather provision that has allowed Clark County to require registration of firearms, so that the Legislature will now have the sole authority to regulate firearms. Finally, Clark County must dispose of the records related to its firearm registration program no later than one year after the enactment of the bill.

On the Senate side, this bill was the subject of no small amount of controversy. I think the original bill was misunderstood by many. At the same time, many very valid points were raised during the hearing, which led to changes in the bill. This bill was passed unanimously out of the Senate Committee on Judiciary. There were some "no" votes on the floor. This is a compromise that is about as good as it can get on issues as potentially controversial as these. We understand that strong feelings arise whenever the subject of guns is broached. Despite the amendments in the Senate that addressed many of the concerns with the original bill, this Committee will likely hear from some who still oppose various provisions. We look forward to that continued dialogue.

I will close by stating that our goals are simply these: (1) to keep guns out of the hands of those who have proven their propensity to commit violence against those they supposedly love and should protect; (2) to allow law abiding gun

owners to appropriately defend themselves in their vehicles as they currently can in their homes; and (3) to ensure that our Second Amendment rights are administered in a fair and uniform way across the state, and to provide a means of redress when that is not the case. I thank you for your time. We certainly hope the Committee will give fair and due consideration to this bill. I look forward to answering your questions.

Chairman Hansen:

Regarding section 11 and the destruction of the blue card system, is that going to remove all of the blue card data after a year? What is the time frame?

Senator Brower:

It is more comprehensive than one year, as I understand it. I would like to defer the question to Chuck Callaway from the Las Vegas Metropolitan Police Department (Metro).

Assemblyman Elliot T. Anderson:

I wanted to talk with you about the remedies for filing a lawsuit for a breach of the preemption section. I am not necessarily against preemption because it falls into the line of what we do as a Dillon's Rule state. I wanted to talk about the remedies. I would expect Clark County to comply with this, particularly, and I would expect that all of the municipalities throughout all of the counties would also comply. Why is a cause of action necessary? I can understand injunctive relief if a county or municipality did violate the preemption section of this bill, but why damages? I do not know how you would actually quantify that anyway. Does that make sense?

Senator Brower:

It is a great question and was the subject of a lot of discussion on the Senate side. There are some who support this bill who feel very strongly that the local governments, towns, cities, and counties need to be appropriately incentivized to make sure that they take seriously the legislative preemption pronouncement that this bill makes. Do I believe that the cities, towns, and counties will not take this seriously and thus cause litigation? No, I do not. I would agree with you that it is extremely unlikely that we will see any litigation. The idea here is that we want to make sure that the litigation is potentially painful enough that the local governments will not ignore the Legislature and dare someone to sue them. I think what you see in terms of the remedies that made it into the final bill strikes the right balance.

Assemblyman Nelson:

I am looking at section 5 where it talks about the extended order. As you know, *Nevada Revised Statutes* (NRS) 33.030 contains content that the court

IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHELLE FLORES, AN
INDIVIDUAL,

Appellant,

v.

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

Respondent.

Supreme Court No: 72462

District Court No: A735496

JOINT APPENDIX VOLUME 2

DATED this 1st day of September, 2017.

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CLERK OF THE COURT

1 **OMSJ**
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Las Vegas-Clark County Library District

DISTRICT COURT

CLARK COUNTY, NEVADA

16 MICHELLE FLORES, an individual,
17
18 Plaintiff,
19
20 vs.
21

22 LAS VEGAS-CLARK COUNTY LIBRARY
DISTRICT, a political subdivision of the State of
23 Nevada; DOES 1-X, inclusive, and ROES A-Z,
24 inclusive,
25 Defendants.
26
27
28

AND RELATED COUNTERCLAIM.

Case No. A-16-735496-C
Dept. No. XXIII

**DEFENDANT/COUNTERCLAIMANT
LAS VEGAS-CLARK COUNTY
LIBRARY DISTRICT'S OPPOSITION
TO (1) PLAINTIFFS' MOTION FOR
PARTIAL SUMMARY JUDGMENT ON
PLAINTIFF'S DECLARATORY RELIEF
CLAIM AND (2) MOTION FOR
SUMMARY JUDGMENT ON
COUNTERCLAIMANT'S
DECLARATORY RELIEF CLAIM**

Date of Hearing: August 16, 2016
Time of Hearing: 9:30 a.m.

I. INTRODUCTION

Plaintiff Michelle Flores (“Ms. Flores”) asks the Court to declare that “the [Library] District’s rules and policies that prohibit the open possession of firearms in libraries are unconstitutional” (Compl. ¶ 69)¹ and that “NRS 244.364, 268.418, and NRS 269.222 (as amended in 2015) preempt the Library District from adopting, establishing, or otherwise creating any rule, regulation, or policy prohibiting the possession of a firearm, whether loaded or unloaded, or any ammunition or material for a firearm on the Library District’s property” (Answr. & Countercl. ¶ 38). Ms. Flores’ Motion² must be denied.

First, Ms. Flores has failed to offer any cogent argument or legal authority in support of her argument that Defendant/Counterclaimant Las Vegas-Clark County Library District’s (“Library District”) Dangerous Items Policy (the “Policy”) violates the Nevada Constitution. Accordingly, her claim for a declaratory judgment must be denied.

Second, Ms. Flores ignores well-settled principles of statutory construction which plainly limit the preemptive effect of NRS 244.364, NRS 268.418, and NRS 269.222 to cities, towns, and counties. Additionally, Ms. Flores misconstrues Dillon’s Rule and the legal authority regarding instrumentalities of the state, neither of which is applicable to the Library District. Consequently, the Court must grant the Library District’s claim for declaratory relief and issue a declaration that “NRS 244.364, 268.418, and 269.222 (as amended in 2015) do **NOT** prohibit the Library District from adopting, establishing, or otherwise creating any rule, regulation, or policy prohibiting the possession of a firearm, whether loaded or unloaded, or any ammunition or material for a firearm on the Library District’s property. (Answr. & Countercl. ¶ 38).

///

///

¹ In her Complaint, Ms. Flores’ Second Claim for Relief also requests a “declaratory judgment that the Trespass Notice is invalid.” (Compl. ¶ 70.) However, Ms. Flores’ Motion did not address the Trespass Notice or the resulting suspension of her library privileges. Accordingly, the Library District assumes that Ms. Flores is not seeking a declaratory judgment regarding the Trespass Notice. However, if Ms. Flores raises this issue in her reply brief, the Library District shall request an extension of the hearing date and seek leave to file a supplemental brief.

² Mot. for Partial Summ. J. on Pl.’s Declaratory Relief Claim and Mot. For Summ. J. on Counterclaimant’s Declaratory Relief Claim (“Motion”).

II. RELEVANT FACTS

A. THE UNDERLYING DISPUTE

On March 16, 2016, Ms. Flores violated the Dangerous Items Policy by openly carrying a holstered .38 caliber revolver³ into the Rainbow Branch of the Library District (the “Rainbow Library”⁴). (Compl. ¶ 32-33.) After using the Library District facilities for approximately one hour, Ms. Flores and her children checked out some items and proceeded toward the exit. (Compl. ¶ 32.) As they passed through the main doors, Ms. Flores was stopped by a Library District security guard who explained the Dangerous Items Policy, and told her she could not bring a handgun into the building on future visits. (Compl. ¶ 32.)

When Ms. Flores questioned the Policy, the Security Guard called over a librarian, Deborah Tinsler (“Ms. Tinsler”), who provided Ms. Flores with a more detailed explanation of the Library District’s policy. Ms. Tinsler reiterated the request that Ms. Flores not bring her weapon on future visits to the library.

Ms. Flores disputes the Library District’s authority to adopt and enforce the Dangerous Items Policy.⁵

B. THE LIBRARY DISTRICT’S DANGEROUS ITEMS POLICY

In accordance with its statutory obligations, values, and operating principles, the Library District adopted the “Dangerous Items Policy,” which prohibits the possession of weapons and other dangerous items on Library District premises. (Opp’n to Mot. for Prelim. Inj. Ex. 5.) It states:

NRS 379.040 (quoted below) requires the Trustees of the Las Vegas-Clark County Library District to guarantee that libraries are free and accessible to the public. The Library District bans bringing or possessing on Library District owned premises any dangerous item,

³ For the limited purpose of this Opposition, the Library District assumes the truth of the facts set forth in paragraphs 30-34 of Ms. Flores’ Complaint.

⁴ The Las Vegas-Clark County Library District consists of fourteen urban branches and eleven outlying branches, one of which is located at 3150 North Buffalo Drive, Las Vegas, Nevada 89128 (the “Rainbow Library”). (Opp’n to Mot. for Prelim. Inj. Ex. 1 at ¶ 9.)

⁵ As a result of the dispute, Ms. Flores became disruptive, and the Library District was forced to call the Las Vegas Metropolitan Police Department (“Metro”) and have Ms. Flores trespass from the property. However, Ms. Flores’ subsequent conduct and the Library District’s decision to trespass Ms. Flores are not material to the parties’ claims for declaratory relief.

including, without limitation, a deadly or dangerous weapon, loaded or unloaded, or ammunition or material for a weapon.

NRS 379.040 Library to be free and accessible to public; regulations of trustees. The library and reading room of any consolidated, county, district or town library must forever be and remain free and accessible to the public, subject to such reasonable regulations as the trustees of the library may adopt.

A “no firearms” sign is posted at all public entrances to libraries. The “no firearms” policy protects the health and safety of the Library District’s patrons, which include young children. The Library District will reasonably enforce its “no firearms” policy by asserting trespass claims against violators.

Patrons wishing to use Library District services while in possession of any dangerous item, including without limitation, a deadly or dangerous weapon, or ammunition or material for a weapon may consult with Library District Administration at 702.507.4400 and/or administration@lvccld.org about alternative sources of library services provided within Clark County by the Library District or others.

(Id.)

C. THE CLAIMS FOR DECLARATORY RELIEF

On April 22, 2016, Ms. Flores filed a Complaint requesting a declaratory judgment that “the [Library] District’s rules and policies that prohibit the open possession of firearms in libraries are unconstitutional.” (Compl. ¶ 69.)

On May 27, 2016, the Library District filed its Answer and asserted a counterclaim for declaratory relief and requested a :

[D]eclaratory judgment stating whether NRS 244.364, 268.418, and NRS 269.222 (as amended in 2015) preempts the Library District from adopting, establishing, or otherwise creating any rule, regulation, or policy prohibiting the possession of a firearm, whether loaded or unloaded, or any ammunition or material for a firearm on the Library District’s property.

(Answr. & Countercl. ¶ 38.)

D. SENATE BILL 175 (2015)

During the 2015 Legislative Session, the Nevada Legislature passed Senate Bill 175,⁶ (“SB

⁶ S.B. 175, 2015 Leg., 78th Sess., 2015 Nev. Stat. 328 (Nev. 2015), available at https://www.leg.state.nv.us/Session/78th2015/Bills/SB/SB175_EN.pdf (last visited July 26, 2016).

1 175”) which amended many statutory provisions regarding firearms.⁷ (Mot. Ex. 6.) It became
2 effective upon passage and approval, which occurred on June 2, 2015. (Id. at 9.) Sections 8, 9, and
3 10 of SB 175 relate to NRS 244.364, 268.418, and 269.222. (Mot. Ex. 5.) Each of these statutes
4 relates to the authority of a specific type of political subdivision (counties, towns, and cities) to
5 regulate firearms, firearm accessories, or ammunition.

6 The relevant sections of the three statutes are largely identical, differing primarily with
7 respect to the language defining the particular type of governmental entity⁸ to which each applies.

8 SB 175 added a new Subsection 1 to three existing statutes that each state:

9 1. The Legislature hereby declares that:

10 (a) The purpose of this section is to establish state control over the
11 regulation of and policies concerning firearms, firearm
12 accessories and ammunition to ensure that such regulation and
13 policies are uniform throughout this State and to ensure the
14 protection of the right to keep and bear arms, which is
15 recognized by the United States Constitution and the Nevada
16 Constitution.

17 (b) The regulation of the transfer, sale, purchase, possession,
18 carrying, ownership, transportation, storage, registration and
19 licensing of firearms, firearm accessories and ammunition in
20 this State and the ability to define such terms is within the
21 exclusive domain of the Legislature, and any other law,
22 regulation, rule or ordinance to the contrary is null and void.

23 (c) This section must be liberally construed to effectuate its
24 purpose.

25 SB 175 also amended the existing language of the former Subsection 1 (Subsection 2 as amended) of
26 each of the three statutes as follows:

27 ///

28 ///

24 ⁷ In addition to the sections at issue, SB 175 included sections pertaining to justifiable homicide, restrictions on
25 firearms ownership by perpetrators of domestic violence, and presumptions regarding use of deadly force in civil
26 litigation.

27 ⁸ “‘Governmental entity’ means (1) [a]n elected or appointed officer of this State or of a political subdivision of
28 this State; (b) [a]n institution, board, commission, bureau, council, department, division, authority or other unit of
government of this State, including, without limitation, an agency of the Executive Department, or of a political
subdivision of this State; (c) [a] university foundation, as defined in NRS 396.405; or (d) [a]n educational foundation, as
defined in NRS 388.750, to the extent that the foundation is dedicated to the assistance of public schools.” NRS
239.005.

- 1 2. Except as otherwise provided by specific statute, the Legislature
2 reserves for itself such rights and powers as are necessary to regulate
3 the transfer, sale, purchase, possession, carrying, ownership,
4 transportation, storage, registration and licensing of firearms, firearm
5 accessories and ammunition in Nevada [5] and [no] to define such
6 terms. . . .

7 In each statute, the last sentence of Subsection 2 (as amended) specifies the particular governmental
8 entity that is subject to the prohibition. NRS 244.364(2); 268.418(2); 269.222(2).

9 NRS 244.364(2): Except as otherwise provided by specific statute,
10 the Legislature reserves for itself such rights and powers as are
11 necessary to regulate the transfer, sale, purchase, possession, carrying,
12 ownership, transportation, storage, registration and licensing of
13 firearms, firearm accessories and ammunition in Nevada and to define
14 such terms. No county may infringe upon those rights and powers
15 (emphasis added).

16 NRS 268.418(2): Except as otherwise provided by specific statute, the
17 Legislature reserves for itself such rights and powers as are necessary
18 to regulate the transfer, sale, purchase, possession, carrying,
19 ownership, transportation, storage, registration and licensing of
20 firearms, firearm accessories and ammunition in Nevada and to define
21 such terms. No city may infringe upon those rights and powers
22 (emphasis added).

23 NRS 269.222(2): Except as otherwise provided by specific statute, the
24 Legislature reserves for itself such rights and powers as are necessary
25 to regulate the transfer, sale, purchase, possession, carrying,
26 ownership, transportation, storage, registration and licensing of
27 firearms, firearm accessories and ammunition in Nevada and to define
28 such terms. No town may infringe upon those rights and powers
(emphasis added.)

 Additionally, each of the statutes was also amended to: (1) require the repeal of any existing
ordinance or regulation, which is inconsistent with the statute or “which is designed to restrict or
prohibit the sale, purchase, transfer, manufacture or display of firearms, firearm accessories or
ammunition that is otherwise lawful under the laws of this State”; (2) deem any inconsistent
ordinance or regulation null and void; (3) expressly prohibit the governing body from enacting
inconsistent ordinances or regulations; (4) provide a judicial remedy for any “person who is
adversely affected by the enforcement of an [inconsistent] ordinance or regulation”; and (4)
expressly identify some specific restrictions and activities that fall outside the scope of the statute.
NRS 244.364(3), (4), (8); 268.418(3), (4), (8); 269.222 (3), (4), (8).

⁹ The underlined, italicized language was added. The bracketed language was deleted.

1 Finally, each of the three sections adds a definition of “political subdivision” which “includes,
2 without limitation, a state agency, county, city, town or school district.” NRS 244.364(9)(e);
3 268.418(9)(e); 269.222(9)(e).

4 III. ARGUMENT

5 A. LEGAL STANDARD

6 1. Summary Judgment

7 “[S]ummary judgment is appropriate ‘when the pleadings, depositions, answers to
8 interrogatories, admissions, and affidavits, if any, that are properly before the court demonstrate that
9 no genuine issue of material fact exists, and the moving party is entitled to judgment as a matter of
10 law.’” Cuzze v. Univ. & Cmty. Coll. Sys. of Nev., 123 Nev. 598, 602, 172 P.3d 131, 134 (2007)
11 (quoting Wood v. Safeway, Inc., 121 Nev. 724, 731, 121 P.3d 1026, 1029 (2005)). In determining
12 whether summary judgment is proper, the non-moving party is entitled to have the evidence and all
13 reasonable inferences accepted as true. Wiltsie v. Baby Grand Corp., 105 Nev. 291, 774 P.2d 432
14 (1989). Furthermore, Rule 56 also requires that “[e]vidence introduced in support of or opposition
15 to a motion for summary judgment must be admissible evidence.” Collins v. Union Fed. Sav. &
16 Loan Ass’n, 99 Nev. 284, 302, 662 P.2d 610, 621 (1983). See also Francis v. Wynn Las Vegas, LLC,
17 127 Nev. 657, 671, 262 P.3d 705, 715 (2011).

18 The Library District agrees with Ms. Flores; the Parties’ claims for declaratory relief are pure
19 issues of law that will turn on the interpretation of Nevada Statutes and the Nevada Constitution.
20 Each is appropriate for resolution by summary judgment.

21 2. Declaratory Relief

22 Nevada courts have the power to declare the parties’ “rights, status and other legal relations
23 whether or not further relief is or could be claimed.” NRS 30.030. Nonetheless, claims for
24 declaratory relief “must present an existing controversy, not merely the prospect of a future
25 problem.” Doe v. Bryan, 102 Nev. 523, 525, 728 P.2d 443, 444 (1986). Thus, declaratory relief
26 requires the following:

27 (1) there must exist a justiciable controversy; that is to say, a
28 controversy in which a claim of right is asserted against one who has
an interest in contesting it; (2) the controversy must be between

persons whose interests are adverse; (3) the party seeking declaratory relief must have a legal interest in the controversy, that is to say, a legally protectible interest; and (4) the issue involved in the controversy must be ripe for judicial determination.

Kress v. Corey, 65 Nev. 1, 26, 189 P.2d 352, 364 (1948).

Nevada's Uniform Declaratory Judgments Act expressly provides that declaratory relief may be sought by "[a]ny person . . . whose rights, status or other legal relations are affected by a statute, municipal ordinance, contract or franchise, may have determined any question of construction or validity arising under the instrument, statute, ordinance, contract or franchise and obtain a declaration of rights, status or other legal relations thereunder." NRS 30.040(1). Furthermore, "[t]he enumeration . . . does not limit or restrict the exercise of the general powers conferred in NRS 30.030 in any proceeding where declaratory relief is sought, in which a judgment or decree will terminate the controversy or remove an uncertainty." NRS. 30.070. However, "[t]he court may refuse to render or enter a declaratory judgment or decree where such judgment or decree, if rendered or entered, would not terminate the uncertainty or controversy giving rise to the proceeding." NRS 30.080.

The Library District concedes that all four prerequisites have been met and that the Court has the authority to decide each claim for declaratory relief. However, the Uniform Declaratory Judgments Act requires that if a "statute, ordinance or franchise is alleged to be unconstitutional, the Attorney General shall also be served with a copy of the proceeding and be entitled to be heard." NRS 30.130. There is no evidence that Ms. Flores has served the Attorney General.¹⁰

B. THE NEVADA CONSTITUTION DOES NOT PROVIDE AN UNFETTERED RIGHT TO CARRY A FIREARM AT ALL TIMES IN ALL PLACES

The Nevada Constitution states that "[e]very citizen has the right to keep and bear arms for security and defense, for lawful hunting and recreational use and for other lawful purposes." Nev. Const. art. I, § 11.

As the party seeking a declaration that "the [Library] District's rules and policies that prohibit the open possession of firearms in libraries are unconstitutional" (Compl. ¶ 69), Ms. Flores

¹⁰ Although not fatal to Ms. Flores' claim for declaratory relief, the Library District maintains that the Court should stay the Motion and vacate the hearing pending proof of service.

bears the burden of proof. Ms. Flores simply claims that the Dangerous Items Policy violates the Nevada Constitution because it infringes on her right to bear arms; owever, the right is not absolute, and Ms. Flores has not provided the Court with any “meaningful analysis or citation to salient authority” to support her position. *FDIC v. Rhodes*, 130 Nev. Adv. Op. 88, 336 P.3d 961, 968 (2014). When a party’s argument consists of a bare conclusory statement, without cogent argument, the court may reject it out of hand. *Id.* (“In the absence of a cogent argument about the dismissal of the contract-based claims, we do not address that issue.”); *Deja Vu Showgirls v. Dep’t of Tax.*, 130 Nev. Adv. Op. 73, 334 P.3d 392, 397 n.6 (2014) (“We reject appellants’ assertion that initiating administrative proceedings for their as-applied constitutional challenge to NLET before the Department would have been futile because they offer no cogent argument.”); *Weddell v. H2O, Inc.*, 128 Nev. Adv. Op. 9, 271 P.3d 743, 752 n.11 (2012) (“Because Weddell fails to provide this court with any cogent argument or persuasive legal authority in support of this allegation, this argument lacks merit.”); *Berry v. Feil*, 131 Nev. Adv. Op. 37, 357 P.3d 344, 346 n.2 (Nev. App. 2015) (“Given his failure to provide cogent arguments on this point, we do not address this assignment of error.”).

Ms. Flores’ argument also fails on the merits. Although the Nevada Supreme Court has provided little interpretation of Article 1, Section 11, of the Nevada Constitution, it is clear that the Constitution does not prevent reasonable restrictions on the right to own and carry a firearm. For example, Nevada expressly prohibits “carry[ing] or possess[ing a firearm] while on the property of the Nevada System of Higher Education, a private or public school or child care facility, or while in a vehicle of a private or public school or child care facility.” NRS 202.265(1). Likewise, Nevada requires a permit to carry a concealed firearm. NRS 202.3653 - 202.369. By Ms. Flores’ logic, these would all violate the Nevada Constitution.

These restrictions are similar to those permitted under the Second Amendment of the U.S. Constitution,¹¹ which does not “protect the right of citizens to carry arms for any sort of confrontation, just as . . . the First Amendment to protect the right of citizens to speak for any

¹¹ “A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.” U.S. Const. amend. II.

1 purpose.” *Dist. of Columbia v. Heller*, 554 U.S. 570, 595 (2008). In analyzing the scope of the
2 Second Amendment, the U.S. Supreme Court identified a list of “presumptively lawful” restrictions
3 that include “longstanding prohibitions on the possession of firearms by felons and the mentally ill,
4 or laws forbidding the carrying of firearms in sensitive places such as schools and government
5 buildings, or laws imposing conditions and qualifications on the commercial sale of arms.” *Id.* at
6 626-27 (emphasis added) (“We identify these presumptively lawful regulatory measures only as
7 examples; our list does not purport to be exhaustive.”).

8 Thus, it is evident that the right under the Nevada Constitution to “keep and bear arms” may
9 be limited. Additionally, the Nevada Supreme Court has frequently determined that constitutional
10 rights guaranteed under the Nevada Constitution are coterminous with their federal counterparts.
11 See e.g., *Hernandez v. Bennett–Haron*, 128 Nev. Adv. Op. 54, 287 P.3d 305, 310 (2012) (the
12 Nevada Constitution’s Due Process Clause “mirrors” its federal counterpart, and federal authority is
13 persuasive when performing due process analysis.); *Univ. & Cmty. Coll. Sys. of Nev. v. Nevadans*
14 *for Sound Gov’t*, 120 Nev. 712, 722, 100 P.3d 179 (2004) (“We have held that Article 1, Section 9
15 [of the Nevada Constitution] affords no greater protection to speech activity than does the First
16 Amendment of the United States Constitution.”); *Pattison v. Nevada*, No. 3:14-CV-00020-MMD,
17 2015 WL 5602632, at *10 (D. Nev. Sept. 23, 2015) (“The standard governing state law deliberate
18 indifference claims apparently mirrors the analysis of federal claims.”). In fact, the right to bear
19 arms in Nevada’s Constitution is narrower than the Second Amendment in at least one respect. The
20 Nevada Supreme Court recently noted that “Nevada is one of the 16 states that constitutionally limits
21 the right to bear arms to ‘citizens.’ The remaining 26 state constitutional provisions specify state
22 citizens or use the words ‘people,’ ‘person,’ ‘individual,’ or ‘men.’” *Pohlman v. State*, 128 Nev.
23 Adv. Op. 1, 268 P.3d 1264, 1270 n.7 (2012) (holding that NRS 202.360 prohibiting felons from
24 possessing firearms does not violate the Nevada Constitution).

25 As recognized in *Heller*, government buildings are among the “sensitive places.” Absent any
26 evidence that the Nevada Supreme Court would interpret the Nevada Constitution to reject *Heller’s*
27 recognition of “presumptively lawful regulatory measures,” *Heller*, 554 U.S. at 627, Ms. Flores’
28 argument fails.

1 **C. THE DANGEROUS ITEMS POLICY IS NOT PREEMPTED BY NRS 244.364,**
2 **268.418, AND 269.222**

3 Ms. Flores argues that the plain language of NRS 244.364, 268.418, and 269.222 expressly
4 preempts the Library District from adopting any rule relating to the possession of firearms on its
5 property. Ms. Flores is wrong, as this argument ignores the statutes' plain language, and well-
6 established rules of statutory construction.

7 Furthermore, Ms. Flores' arguments regarding the legislative history of NRS 244.364,
8 268.418, and 269.222 are irrelevant because the statutes are not ambiguous.¹² Notwithstanding , the
9 Legislative Counsel Digest recognizes that the Bill's preemptive effect is limited to counties, cities,
10 and towns.

11 After considering the plain language, the virtually identical provisions within each statute,
12 and the location of each statute within the larger statutory scheme, it is evident that the Legislature
13 intended for the restrictions to apply to each of the three specific types of political subdivisions, but
14 not all political subdivisions.

15 **1. The Plain Language of NRS 244.364, 268.418, and 269.222 Limits Their**
16 **Application to Cities, Counties, and Towns**

17 “If the Legislature’s intention is apparent from the face of the statute, there is no room for
18 construction, and this court will give the statute its plain meaning.” Clark Cnty. v. S. Nev. Health
19 Dist., 128 Nev. Adv. Op. 58, 289 P.3d 212, 215 (2012) (citing Madera v. SIIS, 114 Nev. 253, 257,
20 956 P.2d 117, 120 (1998)). See also Justin v. Second Jud. Dist. Ct. ex rel. Cnty. of Washoe, 132
21 Nev. Adv. Op. 47, *3, --- P.3d --- (2016) (“When the plain language of a statute establishes the
22 Legislature’s intent, [the Court] ‘will give effect to such intention.’” (quoting We the People Nev. v.
23 Miller, 124 Nev. 874, 881, 192 P.3d 1166, 1170–71 (2008))).

24 “If possible, legislative intent should be determined by looking at the act itself.” List v.
25 Whisler, 99 Nev. 133, 138–39, 660 P.2d 104, 107 (1983). Therefore, this Court must determine if
26

27 ¹² Additionally, many of Ms. Flores' arguments regarding the legislative history of NRS 244.364, 268.418, and
28 269.222 should be disregarded because Ms. Flores has failed to offer properly authenticated, admissible evidence to
support them.

1 there is any ambiguity.¹³ *State v. Quinn*, 117 Nev. 709, 713, 30 P.3d 1117, 1120 (2001). If there is
2 no ambiguity, the Court will proceed to interpret the statute based only on the plain language. See
3 *Williams v. United Parcel Servs.*, 129 Nev. Adv. Op. 41, 302 P.3d 1144, 1147 (2013) (“Our duty is
4 to interpret the statute’s language; this duty does not include expanding upon or modifying the
5 statutory language because such acts are the Legislature’s function.”); *In re Estate of Melton*, 128
6 Nev. Adv. Op. 4, 272 P.3d 668, 674 (2012) (the court “must give [a statute’s] terms their plain
7 meaning, considering its provisions as a whole so as to read them in a way that would not render
8 words or phrases superfluous or make a provision nugatory.” (quoting *S. Nev. Homebuilders v. Clark*
9 *Cnty.*, 121 Nev. 446, 449, 117 P.3d 171, 173 (2005))).

10 Although Ms. Flores refers generally to SB 175, the Bill did not amend only of a single
11 Chapter. Rather, SB 175 included unrelated amendments to statutes in seven different chapters:

- 12 • Ch. 33: Injunctions
- 13 • Ch. 41: Actions and Proceedings in Particular Cases Concerning Persons
- 14 • Ch. 200: Crimes Against the Person
- 15 • Ch. 202: Crimes Against Public Health and Safety
- 16 • Ch. 244: Counties: Government
- 17 • Ch. 268: Powers and Duties Common to Cities and Towns Incorporated Under
18 General or Special Laws
- 19 • Ch. 269: Unincorporated Towns

20 Thus, the Court’s inquiry into the plain meaning requires that it examine the language of the
21 individual statutes within the context of their chapter, title, and the NRS as a whole. *Karcher*
22 *Firestopping v. Meadow Valley Contractors, Inc.*, 125 Nev. 111, 113, 204 P.3d 1262, 1263 (2009)
23 (“Plain meaning may be ascertained by examining the context and language of the statute as a
24 whole.”).

25 Although each of the three statutes begins with a legislative statement of purpose, the
26 overarching prohibition is contained in subsection 2, which states:

27 Except as otherwise provided by specific statute, the Legislature
28 reserves for itself such rights and powers as are necessary to regulate
the transfer, sale, purchase, possession, carrying, ownership,
transportation, storage, registration and licensing of firearms, firearm
accessories and ammunition in Nevada and to define such terms. No

¹³ “[I]f the statutory language is capable of more than one meaning, it is ambiguous and the plain meaning rule is inapplicable and the drafter’s intent controls.” *Stockmeier v. Psych. Review Panel*, 122 Nev. 534, 540, 135 P.3d 807, 810 (2006).

1 [city / county / town] may infringe upon those rights and powers.
2 NRS 244.364(2); 268.418(2); 269.222(2) (emphasis added). Thus, each statute is tailored to a
3 particular type of governmental entity.

4 a. A Statute's Meaning Is Limited By Its' Defined Terms

5 "A statute's express definition of a term controls the construction of that term no matter
6 where the term appears in the statute." Nev. Pub. Emps. Ret. Bd. v. Smith, 129 Nev. Adv. Op. 65,
7 310 P.3d 560, 566 (2013) (citing Williams v. Clark Cnty. Dist. Atty, 118 Nev. 473, 485, 50 P.3d 536,
8 544 (2002)). See also Dep't of Bus. & Indus. v. Check City, 130 Nev. Adv. Op. 90, 337 P.3d 755,
9 758 (2014) ("the statutory definition must govern").

10 The Library District is a political subdivision. NRS 379.142.¹⁴ Each of the three statutes at
11 issue defines a "political subdivision" to "include, without limitation, a state agency, county, city,
12 town or school district." NRS 244.364(9)(e); 268.418(9)(e); 269.222(9)(e). The Library District, a
13 city, a town, and a county, are all separate and distinct types of political subdivisions, which are
14 created by statute. Had the Legislature meant for the prohibitions in NRS 244.364, NRS 268.418,
15 and NRS 269.222 to apply more broadly, it could have (and would have) chosen different language.
16 The Legislature could have stated that "no **political subdivision** may infringe upon those rights and
17 powers" or "no **governmental entity** may infringe upon those rights and powers" or "no **local**
18 **government** may infringe upon those rights and powers" or "no **public body** may infringe upon those
19 rights and powers." It did not; it said city, county, or town.

20 Furthermore, "Nevada follows the maxim 'expressio unius est exclusio alterius,' the
21 expression of one thing is the exclusion of another." State v. Javier C., 128 Nev. Adv. Op. 50, 289
22 P.3d 1194, 1197 (2012) (citing Cramer v. State, 126 Nev. 388, 394, 240 P.3d 8, 12 (2010)).
23 Therefore, the use of a defined term excludes anything beyond the scope of the definition. Each of
24 the three statutes must be interpreted to apply only to the specific type of political subdivision
25 specified within the statute.

26 ///

27
28 ¹⁴ Compl. ¶ 12 ("The District is a political subdivision of the State of Nevada.").

b. When Possible, Statutes Must Be Interpreted in Harmony With the Larger Statutory Scheme.

Finally, “it is the duty of [the] court, when possible, to interpret provisions within a common statutory scheme ‘harmoniously with one another in accordance with the general purpose of those statutes’ and to avoid unreasonable or absurd results, thereby giving effect to the Legislature’s intent.” *Torrealba v. Kesmetis*, 124 Nev. 95, 101, 178 P.3d 716, 721 (2008) (quoting *S. Nev. Homebuilders v. Clark Cnty.*, 121 Nev. 446, 449, 117 P.3d 171, 173 (2005)). Likewise, “provisions within a statute must be interpreted harmoniously with one another in accordance with the general purpose of [the] statute[] and should not be read to produce unreasonable or absurd results.” *State v. Harris*, 131 Nev. Adv. Op. 56, 355 P.3d 791, 792 (2015) (quoting *Washington v. State*, 117 Nev. 735, 739, 30 P.3d 1134, 1136 (2001)).

Statutory interpretation must consider the statute and statutory scheme “as a whole so as to read them in a way that would not render words or phrases superfluous or make a provision nugatory.” *Manuela H. v. Eighth Jud. Dist. Ct.*, 132 Nev. Adv. Op. 1, 365 P.3d 497, 501 (2016); see also *Stockmeier v. Psych. Review Panel*, 122 Nev. 534, 540, 135 P.3d 807, 810 (2006) (“We should interpret statutes to give meaning to each of their parts, such that, when read in context, none of the statutory language is rendered mere surplusage.”).

Like school districts, water districts, and other special districts, the Library District is a “special district,” which is formed by statute. Created by Chapter 379 of the Nevada Revised Statutes, the Library District is part of a special district—a form of “local government”¹⁵ created by the Legislature. NRS 354.474(1)(a). Library districts are separate and distinct entities from the county, town, and/or city that they serve. In fact, cities, towns, and counties are specifically excluded from the definition of special districts.¹⁶ However, they do fall under the broader heading

¹⁵ “‘Local government’ means every political subdivision or other entity which has the right to levy or receive money from ad valorem or other taxes or any mandatory assessments, and includes, without limitation, counties, cities, towns, boards, school districts and other districts organized pursuant to chapters 244A, 309, 318 and 379 of NRS, NRS 450.550 to 450.750, inclusive, and chapters 474, 541, 543 and 555 of NRS, and any agency or department of a county or city which prepares a budget separate from that of the parent political subdivision.” NRS 354.474(1)(a).

¹⁶ “‘Special district’ means a governmental entity that receives any portion of the proceeds of a tax which is included in the Account and which is not:

1. A county;

1 of “political subdivision.” NRS 379.142.

2 “When the legislature enacts a statute, this court presumes that it does so ‘with full
3 knowledge of existing statutes relating to the same subject.’” Nev. Power Co. v. Haggerty, 115 Nev.
4 353, 364, 989 P.2d 870, 877 (1999). Therefore, the Legislature’s decision to amend the existing
5 statutes demonstrates its intent to limit their application to counties, cities, and towns. Had the
6 Legislature intended to preempt rulemaking by all political subdivisions, it could have done so by
7 inserting the language into a chapter of general application. For example, the Legislature could have
8 rescinded NRS 244.364, 268.418, and 269.222 and added a single statute to Chapter 202, which
9 already contains the provisions governing the concealed carry of firearms.

10 When considering the statutory scheme as a whole, the chapter in which the statute is located
11 is relevant to its interpretation. E.g., MGM Mirage v. Nev. Ins. Guar. Ass’n, 125 Nev. 223, 231, 209
12 P.3d 766, 771 (2009) (“The only definition of ‘insurer’ that includes self-insured employers is found
13 in Nevada’s Worker’s Compensation Act under NRS 616A.270. Nevada’s workers’ compensation
14 laws are located in a separate title, not the insurance title. . . . Thus, we conclude that the
15 Legislature’s substantial use of ‘insurer’ to describe persons or entities in the business of insurance
16 militates in favor of concluding that the NIGA Act’s reference to ‘insurer’ plainly addresses an
17 insurance company.”). See also Studer v. Studer, 320 Conn. 483, 493-94, 131 A.3d 240, 248 (2016)
18 (“the title of a statute or regulation and its placement within a group of statutes or regulations may
19 provide some evidence of its meaning”).

20 The strong language in the new Section 1 leaves little question that the Legislature intended
21 for the amendment to apply broadly. However, the language was not contained within a chapter of
22 general application. Rather, it is included in three separate chapters, each of which applies only to
23 one type of political subdivision.

24 The location of each statute within the larger statutory scheme shows that the amendments
25 were meant to apply only to the three specific chapters in which the revised statutes are located.

-
- 26 2. A city;
27 3. A town; or
28 4. An enterprise district.”

NRS 360.650.

1 Most significantly, the Legislature did **not** include the language in any of the chapters relating to
2 other types of political subdivisions. Most importantly, the language was not added to Chapter 379,
3 which pertains to the Library District.

4 2. **The Legislature Intended Preemption to Apply Only to Cities, Towns,**
5 **and Counties**

6 “The burden of establishing pre-emption is on the party seeking to give the statute such
7 effect.” Davidson v. Velsicol Chem. Corp., 108 Nev. 591, 594, 834 P.2d 931, 933 (1992). The issue
8 raised in Ms. Flores Motion is conflict preemption—whether the Dangerous Items Policy is
9 expressly preempted by NRS 244.364, 268.418, and 269.222. The Library District therefore does
10 not address implied preemption. See id. (“Where Congress has expressly provided for pre-emption,
11 resort to the implied pre-emption doctrines is unnecessary; instead, the court need only determine the
12 scope of the pre-emption.”).

13 After considering the plain language, the virtually identical provisions within each statute,
14 and the location of each statute within the larger statutory scheme, it is evident that the Legislature
15 intended for the restrictions to affect only counties, cities, and towns (and not all political
16 subdivisions), but to apply broadly to each of the three specific types of political subdivisions.

17 Furthermore, interpreting the language in NRS 244.364, 268.418, or 269.222 to preempt
18 firearm regulation by multiple/all types of political subdivisions would necessarily render the other
19 statutes superfluous because any one statute would be sufficient. Arguello v. Sunset Station, Inc.,
20 127 Nev. Adv. Op. 29, 252 P.3d 206, 209 (2011) (“this court must give [a statute’s] terms their plain
21 meaning, considering its provisions as a whole so as to read them in a way that would not render
22 words or phrases superfluous or make a provision nugatory”).

23 3. **Ms. Flores’ Arguments Involving Extrinsic Evidence of Legislative**
24 **History Are Improper in the Absence of Ambiguity.**

25 “The starting point for determining legislative intent is the statute’s plain meaning; when a
26 statute is clear on its face, a court cannot go beyond the statute in determining legislative intent.”
27 Barber v. State, 131 Nev. Adv. Op. 103, 363 P.3d 459, 462 (2015) (quoting State v. Lucero, 127
28 Nev. 92, 95, 249 P.3d 1226, 1228 (2011)). See also State v. Harris, 131 Nev. Adv. Op. 56, 355 P.3d
791, 792 (2015) (“[W]hen the language of a statute is plain, its intention must be deduced from such

1 language, and the court has no right to go beyond it.” (quoting *State v. Colosimo*, 122 Nev. 950,
2 960, 142 P.3d 352, 359 (2006)); *Sheriff v. Burcham*, 124 Nev. 1247, 1253, 198 P.3d 326, 329 (2008)
3 (the Court “only look[s] beyond the plain language of the statute if that language is ambiguous or its
4 plain meaning clearly was not intended”).

5 Ms. Flores has not identified any ambiguity, and the Court need not (indeed, should not) look
6 beyond the plain meaning of the statutory language to determine the meaning of NRS 244.364,
7 268.418, and 269.222. Nonetheless, the statutes’ history does not weigh in Ms. Flores’ favor. The
8 statutes at issue have only been applied to cities, counties, and towns—never more broadly. Thus,
9 Ms. Flores’ argument regarding the legislative intent to expand the scope of the preemption is
10 irrelevant.

11 Although the Legislative Counsel’s Digest is also likely irrelevant,¹⁷ it too recognizes the
12 limited scope of the preemption. It states:

13 Assembly Bill No. 147 of the 1989 Legislative Session (A.B. 147)
14 reserved for the Legislature the rights and powers necessary to regulate
15 the transfer, sale, purchase, possession, ownership, transportation,
16 registration and licensing of firearms and ammunition in this State.
17 (Chapter 308, Statutes of Nevada 1989, p. 652) However, section 5 of
18 A.B. 147 provided that the preemptive effect of the bill applied only to
19 ordinances or regulations adopted by **certain political subdivisions** on
20 or after June 13, 1989. Section 11 of this bill amends section 5 of A.B.
21 147 to include and preempt ordinances or regulations adopted by
22 **certain political subdivisions** before June 13, 1989.

19 (Mot. Ex. 6 at 3.) Thus, NRS 244.364, 268.418, and 269.222 have always been limited in scope.
20 The recent amendments do nothing to expand the scope of the preemption beyond cities, counties,
21 and towns.

22 **D. THE DANGEROUS ITEMS POLICY DOES NOT VIOLATE DILLON’S**
23 **RULE**

24 “Historically under Nevada law, the exercise of powers by the governing body of an
25 incorporated city has been governed by a common-law rule on local governmental power known as

26 ¹⁷ “[I]t is only appropriate to consult the Legislative Counsel’s Digest to ascertain the intent of the Legislature
27 “[i]f the language of a statute is ambiguous.” *Sandpointe Apts. v. Eighth Jud. Dist. Ct.*, 129 Nev. Adv. Op. 87, 313 P.3d
28 849, 858 (2013) (quoting *Cal. Teachers’ Ass’n v. Governing Bd. of Cent. Union High Sch. Dist.*, 190 Cal. Rptr. 453, 457
(Cal. Ct. App.1983)). *State Indus. Ins. Sys. v. Bokelman*, 113 Nev. 1116, 1122, 946 P.2d 179, 183 (1997) (“Where the
language of the statute is plain and unambiguous, such that the legislative intent is clear, a court should not ‘add to or
alter [the language] to accomplish a purpose not on the face of the statute or apparent from permissible extrinsic aids
such as legislative history or committee reports.’”)

1 Dillon’s Rule, which is named after former Chief Justice John F. Dillon of the Iowa Supreme Court
2 who in a case from 1868 and in later treatises on the law governing local governments set forth the
3 common-law rule defining and limiting the powers of local governments.” NRS 244.137(1);
4 268.001(1). See also *City of Clinton v. Cedar Rapids & M.R.R. Co.*, 24 Iowa 455 (1868). It limits
5 the power of local governments to “[t]hose powers granted in express terms by the Nevada
6 Constitution or statute; . . . [t]hose powers necessarily or fairly implied in or incident to the powers
7 expressly granted; and . . . [t]hose powers essential to the accomplishment of the declared objects and
8 purposes of the county and not merely convenient but indispensable.” NRS 244.137(3), 244.137(3).
9 “Dillon’s Rule also provides that if there is any fair or reasonable doubt concerning the existence of
10 a power, that doubt is resolved against the [governing body] and the power is denied.” NRS
11 244.137(4), 244.137(4).

12 Ms. Flores asks this Court to apply Dillon’s Rule to the Library District, which is without any
13 precedent in Nevada law. The Nevada Supreme Court has never applied Dillon’s Rule to any form
14 of governmental entity other than a local government. Additionally, the Nevada Legislature recently
15 adopted statutes limiting the scope of Dillon’s Rule and expanding the authority of municipal
16 governments. NRS 244.137; 268.001. Finally, even if applicable, the Dangerous Items Policy
17 would not violate Dillon’s Rule because the Legislature has expressly granted the Library District
18 broad authority to adopt policies and regulations as necessary to manage the Library District.

19 “In Nevada’s jurisprudence, the Nevada Supreme Court has adopted and applied Dillon’s
20 Rule to county, city and other local governments,” NRS 244.137(2); 268.001(2), but has never
21 applied Dillon’s Rule to other types of political subdivisions. Nevada adopted Dillon’s Rule in
22 1924. *Red Arrow Garage & Auto Co. v. Carson City*, 47 Nev. 473, 225 P. 487, 488 (1924). Since
23 that time, the Nevada Supreme Court has applied Dillon’s Rule in many cases, but never to a special
24 district. *Ronnow v. City of Las Vegas*, 57 Nev. 332, 65 P.2d 133, 136 (1937);

25 Additionally, the Nevada Legislature has recently rejected the traditional, strict construction
26 of Dillon’s Rule because:

27 [A] strict interpretation and application of Dillon’s Rule unnecessarily
28 restricts [the governing body] from taking appropriate actions that are
necessary or proper to address matters of local concern for the

1 effective operation of city government and thereby impedes the
2 governing body from responding to and serving the needs of local
citizens diligently, decisively and effectively.

3 NRS 244.137(5); 268.001(5). Thus, the Nevada Legislature has increased the authority of county
4 commissioners and governing bodies of incorporated cities and incorporated towns when dealing
5 with matters of local concern.

6 Ms. Flores claims that when the Legislature chooses to delegate that authority to “special
7 districts” or administrative agencies, it does so with very specific statutes. (Mot. 20:12-22.) In
8 support of her contention, Ms. Flores claims that NRS 407.0475 “delegates to the Administrator of
9 the Division of State Parks the authority to promulgate regulations on the possession of firearms in a
10 State park,” and “NRS 503.150 delegates to the Wildlife Commission the authority to regulate the
11 caliber of firearms that hunters may possess.” (Mot. 20:19-23.) However, these statutes establish the
12 opposite.

13 NRS 407.0475 provides a broad grant of authority to the Administrator of the Division of
14 State Parks to “adopt such regulations as he or she finds necessary for carrying out the provisions of
15 this chapter and other provisions of law governing the operation of the Division,” NRS 407.0475(1),
16 but carves out the ability to regulate possession of firearms, NRS 407.0475(2)(c).¹⁸ Similarly, NRS
17 503.150 prohibits a person from using a handgun to hunt wildlife, but allows a person who is
18 hunting to carry a handgun for self-defense so long as it “[h]as a barrel length of less than 8 inches”
19 and “[d]oes not have a telescopic sight.”

20 Neither of these statutes grants authority to an administrative agency or special district.
21 Rather, these statutes suggest that a broad grant of authority allows a special district to regulate the
22 possession of firearms unless the right is specifically limited or retained. The Legislature has seen
23 fit to require the Board of Trustees of a consolidated library district to “[e]stablish bylaws and
24 regulations for the management of the library and their own management” and authorized the Board
25 to “[d]o all acts necessary for the orderly and efficient management and control of the library.”

26
27 ¹⁸ “Any regulations relating to the conduct of persons within the park or recreational facilities must: . . . (c) Not
28 establish restrictions on the possession of firearms within the park or recreational facility which are more restrictive than
the laws of this State relating to: (1) The possession of firearms; or (2) Engaging in lawful resistance to prevent an
offense against a person or property.” NRS 407.0475(2)(c)

1 NRS 379.025(1)(h), (2)(d). Moreover, the Legislature did not reserve or “carve-out” the authority to
2 adopt a policy related to the possession of firearms.

3
4 **E. THE LIBRARY DISTRICT IS NOT AN INSTRUMENTALITY OF CLARK
COUNTY AND THE CITY OF LAS VEGAS**

5 Finally, Ms. Flores claims that the Library District is an instrumentality of both a county and
6 city.” (Mot. 13:11-12.) As a preliminary matter, this legal concept is inapplicable to this case.
7 Furthermore, Ms. Flores’ claim reveals her flawed understanding of the “agency or instrumentality”
8 inquiry; a governmental entity cannot be an instrumentality of two separate governmental entities.

9 The finding that a person or entity is an agent or instrumentality of state is relevant to a claim
10 of sovereign immunity. E.g., *Edelman v. Jordan*, 415 U.S. 651, 663, (1974). A finding that a party
11 is an instrumentality of a state extends the state’s Eleventh Amendment Immunity to the party to
12 **preclude** liability because the “state is the real, substantial party in interest.” *Ariz. Students' Ass'n v.*
13 *Arix. Bd. of Regents*, No. 13-16639, 2016 WL 3082698, at *3 (9th Cir. June 1, 2016).

14 In this case, Ms. Flores argues that the Library District is an instrumentality as a basis to
15 **impose** liability, but has provided no legal authority to support this result. The law frequently
16 requires parties to make a different evidentiary showing that depends on the position and posture of
17 the party making the assertion.¹⁹ Ms. Flores has not established that the instrumentality analysis
18 should be or could be used for this purpose. Moreover, Ms. Flores has not established that an
19 instrumentality is automatically charged with all obligations imposed on the entity that is ultimately
20 responsible for its actions.

21 Even if the Court determines that an instrumentality can be liable for violation of a
22 requirement and/or restriction imposed on the other entity, the facts do not support its application.

23 In the Ninth Circuit, courts use the following factors to determine whether a governmental
24 agency is an arm of the state:

25 whether a money judgment would be satisfied out of state funds,
26 whether the entity performs central governmental functions, whether

27 ¹⁹ For example, the court imposes very different requirements before finding that a prior judgment has a
28 preclusive effect in subsequent litigation depending on whether the use is offensive or defensive and whether the party
was a participant in the previous proceeding. *Parklane Hosiery Co. v. Shore*, 439 U.S. 322, 3326-31 (1979).

1 the entity may sue or be sued, whether the entity has the power to take
2 property in its own name or only the name of the state, and the
corporate status of the entity.

3 Mitchell v. L.A. Cmty. Coll. Dist., 861 F.2d 198, 201 (9th Cir. 1988). However, “The most ‘crucial
4 question . . . is whether the named defendant has such independent status that a judgment against the
5 defendant would not impact the state treasury.” Johnson v. Univ. of Nev., 596 F. Supp. 175, 177 (D.
6 Nev. 1984) (quoting Ronwin v. Shapiro, 657 F.2d 1071, 1073 (9th Cir.1981)).

7 Additionally, the other relevant facts are contained within Chapter 379 and do not support a
8 finding that the Library District is an instrumentality of **either** Clark County or the City of Las
9 Vegas. First, a consolidated library district is supported by a tax levied specifically for its benefit
10 and the proceeds are placed in “a separate account established and administered by the trustees of a
11 consolidated library district in accordance with the provisions of NRS 354.603.” NRS 379.0227(1).
12 Thus, a judgment against the Library District would not be paid by Clark County or the City of Las
13 Vegas.

14 Additionally, the Board of Trustees for the Library District is specifically authorized to
15 “[m]aintain or defend any action in reference to the property or affairs of the library” and “[a]cquire
16 and hold real and personal property, by gift, purchase or bequest, for the library.” NRS
17 379025(1)(j), (l). It is governed by a Board of Trustees that includes individuals appointed by the
18 Clark County Commissioners and members of the Las Vegas City Council, NRS 379.0222(1), but
19 neither the County nor the City control the Library District’s actions.

20 Finally, the Library District is created by a **state** statute, which was passed by the Nevada
21 Legislature. If anything, these facts support a finding that the Library District is a state entity. In no
22 way do they (or could they) establish the alignment necessary to find that either Clark County or the
23 City of Las Vegas control the Library District.

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IV. CONCLUSION

For the reasons set forth above, the Library District requests that the Court deny Ms. Flores' Motion as to both claims and issue a judgment that "NRS 244.364, 268.418, and 269.222 (as amended in 2015) do **NOT** prevent the Library District from adopting, establishing, or otherwise creating any rule, regulation, or policy prohibiting the possession of a firearm, whether loaded or unloaded, or any ammunition or material for a firearm on the Library District's property." (Answr. & Countercl. ¶ 38)."

DATED this 28th day of July, 2016.

BAILEY ♦ KENNEDY

By: /s/ Kelly B. Stout

JOHN R. BAILEY

DENNIS L. KENNEDY

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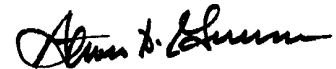
CERTIFICATE OF SERVICE

I certify that I am an employee of BAILEY ♦ KENNEDY and that on the 28th day of July, 2016, service of the foregoing **DEFENDANT/COUNTERCLAIMANT LAS VEGAS-CLARK COUNTY LIBRARY DISTRICT'S OPPOSITION TO PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT ON PLAINTIFF'S DECLARATORY RELIEF CLAIM AND (2) MOTION FOR SUMMARY JUDGMENT ON COUNTERCLAIMANT'S DECLARATORY RELIEF CLAIM** was made by mandatory electronic service through the Eighth Judicial District Court's electronic filing system and/or by depositing a true and correct copy in the U.S. Mail, first class postage prepaid, and addressed to the following at their last known address:

JEFFREY F. BARR, ESQ. ASHCRAFT & BARR LLP 2300 West Sahara Avenue, Ste. 1130 Las Vegas, NV 89102	Email: barrj@AshcraftBarr.com Attorneys for Plaintiff MICHELLE FLORES
--	---

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---	---

/s/ Jennifer Kennedy
Employee of BAILEY ♦ KENNEDY



CLERK OF THE COURT

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Las Vegas-Clark County Library District

14 DISTRICT COURT

15 CLARK COUNTY, NEVADA

16 MICHELLE FLORES, an individual,

17 Plaintiff,

18 vs.

19 LAS VEGAS-CLARK COUNTY LIBRARY
DISTRICT, a political subdivision of the State of
20 Nevada; DOES I-X, inclusive, and ROES A-Z,
inclusive,

21 Defendants.

23 AND RELATED CLAIMS.

Case No. A-16-735496-C

Dept. No. XXIII

25 **NOTICE OF ENTRY OF ORDER DENYING**
PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION

26 PLEASE TAKE NOTICE that an Order Denying Plaintiff's Motion for Preliminary
27 Injunction was entered on the 8th day of August, 2016.

28 ///

1 A true and correct copy of the Order is attached.

2 DATED this 9th day of August, 2016.

3 BAILEY ♦ KENNEDY

4
5 By: /s/ Kelly B. Stout

6 JOHN R. BAILEY

7 DENNIS L. KENNEDY

8 JOSEPH A. LIEBMAN

9 KELLY B. STOUT

10 AMANDA L. STEVENS

11 *Attorneys for Defendant*

12 Las Vegas-Clark County Library District

CERTIFICATE OF SERVICE

I certify that I am an employee of BAILEY ♦ KENNEDY and that on the 9th day of August, 2016, service of the foregoing **NOTICE OF ENTRY OF ORDER DENYING PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION** was made by mandatory electronic service through the Eighth Judicial District Court's electronic filing system and/or by depositing a true and correct copy in the U.S. Mail, first class postage prepaid, and addressed to the following at their last known address:

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12 *Attorneys for Defendant*
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13
14 DISTRICT COURT
15 CLARK COUNTY, NEVADA

16 MICHELLE FLORES, an individual,
17
18 Plaintiff,

Case No. A-16-735496-C
Dept. No. XXIII

19 vs.

20 LAS VEGAS-CLARK COUNTY LIBRARY
DISTRICT, a political subdivision of the State of
Nevada; DOES 1-X, inclusive, and ROES A-Z,
21 inclusive,

22 Defendants.
23

24 **ORDER DENYING PLAINTIFF'S MOTION**
25 **FOR PRELIMINARY INJUNCTION**

26 On June 21, 2016, at the hour of 9:30 a.m., the hearing on Plaintiff's Motion for Preliminary
27 Injunction came before the Court. Plaintiff Michelle Flores ("Ms. Flores") was represented by
28 Jeffrey F. Barr, of the law firm Ashcraft & Barr, LLP and Lee I. Iglody, of the law firm Iglody Law,

1 PLLC. Defendant Las Vegas-Clark County Library District (the "Library District") was represented
2 by Dennis L. Kennedy and Kelly B. Stout of the law firm Bailey ♦ Kennedy.

3 **I. FINDINGS OF FACT**

4 The Court makes the following findings of fact:

5 1. It is the mission of the Library District to "provide[] welcoming and inspiring spaces
6 for reading, learning and achieving, and the tools and resources that families, children, teens and
7 adults need to succeed."

8 2. The Library District strives to be a safe place for children and allows children over 10
9 years of age to use the facilities independently.

10 3. The Library District is committed to "[c]reat[ing] a sense of community by providing
11 a welcoming, inviting, secure environment for our public and staff."

12 **A. The Library Rules of Conduct.**

13 4. The Library District has adopted Rules of Conduct.

14 5. The Library District's Rules of Conduct attempt to ensure the safe, orderly, and
15 efficient administration of Library District business.

16 6. Rule 1 of the Rules of Conduct states that "[l]ibrary patrons shall be engaged in
17 normal activities associated with the use of a public library. Conduct that disturbs library users or
18 staff, or that hinders others from using the library or library materials is prohibited."

19 7. The Rules of Conduct further provide that "[d]epending on the seriousness of the
20 infraction, any patron who violates any of these Rules of Conduct may be trespassed from the
21 Library District for a period of up to one year."

22 8. The Rules of Conduct also state that "A patron who has been trespassed may have the
23 decision reviewed by appealing via written request to the Library Director within fourteen (14) days
24 of when the trespass was issued."

25 **B. The Dangerous Items Policy.**

26 9. The Library District has adopted a policy prohibiting weapons and other dangerous
27 items (the "Dangerous Items Policy").

28 ///

1 10. The Dangerous Items Policy prohibits patrons wishing to use Library District services
2 from possessing firearms or other dangerous weapons while on library premises.

3 11. Pursuant to the Dangerous Items Policy, the Library District has posted a notice
4 (“Firearms Notice”) on all public entrances which consists of a silhouette of a pistol in a circle with a
5 line through it, next to the words:

6 No Firearms Allowed
7 Violators Subject to Prosecution

8 12. The Library District provides alternative access to library services to any patron who
9 wishes to use Library District services while in possession of a firearm or dangerous item, including:

- 10 a. Curbside service for checking out and returning Library District materials;
11 b. Support and assistance with online services; and
12 c. Consideration of other reasonable requests.

13 C. Ms. Flores’ Suspension.

14 13. On March 16, 2016, Ms. Flores entered the Rainbow Branch of the Library District
15 with her three young children.

16 14. Ms. Flores and her children proceeded to use the Library District facilities for
17 approximately one hour before checking out some books and proceeding towards the exit.

18 15. As Ms. Flores was exiting the building, the Library District’s security guard observed
19 that she was carrying a handgun in a holster on her right hip.

20 16. As Ms. Flores was passing through the main doors, she was stopped by the Library
21 District security guard who explained that carrying a firearm violates the Library District’s policy
22 prohibiting dangerous items and informed Ms. Flores that during future visits, she could not bring a
23 handgun into the building.

24 17. When Ms. Flores began to argue with the security guard, he called for a librarian.

25 18. At approximately 11:20 a.m., Ms. Tinsler, an Adult Services Librarian, spoke with
26 Ms. Flores and explained that the Library District’s Dangerous Items Policy does not allow patrons
27 to carry firearms on Library District property.

28 19. Ms. Tinsler also directed Ms. Flores’ attention to the Firearms Notice posted on the
front doors.

1 20. Ms. Tinsler read Ms. Flores the Library District's Dangerous Items Policy prohibiting
2 dangerous weapons.

3 21. Because Ms. Flores' business at the Library District was completed, Ms. Tinsler
4 asked Ms. Flores to leave and not return with a firearm.

5 22. Ms. Flores became upset and continued to argue with Ms. Tinsler.

6 23. Ms. Tinsler explained that she is charged with enforcing the Dangerous Items Policy,
7 but she is not the proper person to speak with if Ms. Flores wished to dispute the Policy.

8 24. However, Ms. Tinsler provided Ms. Flores with the phone number for the Library
9 District's Administrative Offices and explained that it was the proper department if Ms. Flores
10 wanted to further discuss the Dangerous Items Policy.

11 25. Although Ms. Flores and her children had already completed their library business
12 and had been walking out of the building, she and her three children—ages 1, 3, and 5—sat down on
13 the floor in the main entrance (between the double set of entrance doors) and refused to leave the
14 library or move out of the doorway.

15 26. Ms. Tinsler explained that if Ms. Flores would not leave, she would have to call the
16 police.

17 27. Rather than leaving, which she was free to do, Ms. Flores insisted that the Library
18 District "go ahead and call Metro."

19 28. Ms. Tinsler placed a call to the Las Vegas Metropolitan Police Department ("Metro")
20 at approximately 11:30 a.m.

21 29. While waiting for Metro officers to arrive, Ms. Flores and her three young children—
22 all of whom were now crying—continued to sit in the entryway of the Rainbow Branch of the
23 Library District.

24 30. During that time:

25 a. Ms. Flores was repeatedly told that she was free to leave, but she refused to
26 vacate the premises;

27 b. Ms. Flores did not make any demands; and

28 c. Ms. Flores did not explain her purpose or objective in sitting in the main

entrance.

31. Two Metro officers arrived at approximately 12:20.

32. When the Metro officers arrived, Ms. Tinsler explained that the Library District merely wanted Ms. Flores to leave peacefully; if Ms. Flores complied, the Library District was not interested in seeking any punishment or imposing any consequences

33. Ms. Flores refused to leave voluntarily.

34. At approximately 12:55 p.m., the Metro officers issued Ms. Flores a citation for trespassing and the Library District suspended her privileges for a period of 12 months.

35. Due to Ms. Flores' violation of Rule 1 of the Rules of Conduct, the Library District issued Ms. Flores a Trespass Notice and suspended her privileges for one year —only after she had refused to leave the Library District premises for more than one hour.

36. The Library District also provided Ms. Flores with a notice that stated: "If you wish to appeal this decision, you must do so by written request to the Library Director within fourteen (14) days of the above date."

37. The Metro officers escorted Ms. Flores off the Library District's property and left shortly thereafter.

38. Ms. Flores did not file an appeal of her suspension.

II. CONCLUSIONS OF LAW

39. "[A] preliminary injunction is an extraordinary and drastic remedy, one that should not be granted unless the movant, *by a clear showing*, carries the burden of persuasion." *Mazurek v. Armstrong*, 520 U.S. 968, 972 (1997) (internal citations omitted).

40. Ms. Flores seeks a preliminary injunction to "restore . . . [her] library privileges." (Mot. 3:9-10.)

41. Because Ms. Flores' Motion seeks to compel the Library District to take an affirmative action (i.e., rescind her suspension), Ms. Flores seeks a mandatory injunction requiring an even higher burden of proof. *Leonard v. Stoebling*, 102 Nev. 543, 550-51, 728 P.2d 1358, 1363 (1986) ("Mandatory injunctions are used to restore the status quo, to undo wrongful conditions. A court should exercise restraint and caution in providing this type of equitable relief.").

1 42. As Ms. Flores' Motion for Preliminary Injunction does not seek injunctive relief
2 pursuant to any specific statutory provision, it shall be treated as a request for injunctive relief
3 pursuant to NRS 33.010(2), which provides that "[a]n injunction may be granted . . . [w]hen it shall
4 appear by the complaint or affidavit that the commission or continuance of some act, during the
5 litigation, would produce great or irreparable injury to the plaintiff.

6 43. To obtain a preliminary injunction, Ms. Flores must demonstrate:
7 a. A reasonable likelihood that she will prevail on the merits; and
8 b. A reasonable probability that if the non-moving party's conduct is allowed to
9 continue, it will cause irreparable harm for which there is an inadequate
10 remedy at law.

11 *Univ. & Cmty. Coll. Sys. of Nev. v. Nevadans for Sound Gov't.*, 120 Nev. 712, 721, 100 P.3d 179,
12 187 (2004). Furthermore, the Court must consider whether the threatened injury to the plaintiff
13 absent issuance of an injunction outweighs any potential harm that the injunction may cause the
14 defendant; and whether granting the injunction is contrary to the public interest. *Id.*

15 44. All four factors weigh against granting a preliminary injunction in this matter.

16 45. Ms. Flores has failed to demonstrate a likelihood of success on the merits because the
17 evidence demonstrates that the trespass and suspension of Ms. Flores' Library District privileges
18 were likely the result of Ms. Flores' disruptive conduct, which violated Rule 1 of the Rules of
19 Conduct and were not due to her disagreement with or violation of the Library District's Dangerous
20 Items Policy.¹

21 46. Irreparable harm is harm that "cannot adequately be remedied by compensatory
22 damages." *Hamm v. Arrowcreek Homeowners' Ass'n.*, 124 Nev. 290, 297, 183 P.3d 895, 901
23 (2008).

24 47. Ms. Flores has failed to establish that suspension of her library privileges will result
25 in irreparable harm.

26
27 ¹ Notwithstanding the handwritten description of the infraction on the Notice of Trespass ("firearms in the
28 library"), substantial evidence in the record supports the finding that Ms. Flores' library privileges were suspended due
to misconduct that violated the Rules of Conduct.

1 48. Ms. Flores has not identified any library service that she cannot obtain via alternative
2 means, such as purchasing books or having a neighbor or friend check out materials on her behalf.

3 49. Should Ms. Flores prevail on her claims, compensatory damages would be adequate
4 to compensate Ms. Flores for any damages suffered due to the suspension of her library privileges.

5 50. The hardship on the Library District if required to tolerate disorderly and disruptive
6 behavior greatly outweighs any inconvenience to Ms. Flores in securing alternatives to services
7 provided by the Library District.

8 51. Nevada's public policy regarding library access is evident from NRS 379.040, which
9 requires that the "library and reading room of any consolidated . . . district . . . must forever be and
10 remain free and accessible to the public."

11 52. The public interest weighs in favor of ensuring the safe and orderly operation of
12 Library District facilities so that they remain free and accessible to the public.

13 53. The public interest also weighs in favor of applying the Rules of Conduct equally to
14 all patrons.

15
16 **III. OTHER MATTERS**

17 54. A statute is unconstitutionally vague and subject to facial attack if it "(1) fails to
18 provide notice sufficient to enable persons of ordinary intelligence to understand what conduct is
19 prohibited and (2) lacks specific standards, thereby encouraging, authorizing, or even failing to
20 prevent arbitrary and discriminatory enforcement." *Silvar v. Eighth Jud. Dist. Ct. ex rel. Cnty. of*
21 *Clark*, 122 Nev. 289, 293, 129 P.3d 682, 684-85 (2006).

22 55. The Library District's Dangerous Items Policy "bans bringing or possessing on
23 Library District owned premises any dangerous item, including, without limitation, a deadly or
24 dangerous weapon, loaded or unloaded, or ammunition or material for a weapon."

25 56. The Library District's Firearms Notice is posted on all public entrances and clearly
26 states "No Firearms Allowed."

27 57. The Library District's Dangerous Items Policy and the Firearms Notice plainly
28 describe the conduct that is prohibited.

1 58. The Library District's Dangerous Items Policy is not unconstitutionally vague.

2 59. As the Court has determined that the Library District's decision to suspend Ms.
3 Flores' library privileges was not due to violation of the Dangerous Items Policy, the Court does not
4 reach Plaintiff's constitutional challenge to the Dangerous Items Policy. *Miller v. Burk*, 124 Nev.
5 579, 588-89, 188 P.3d 1112, 1119 (2008) (the Court does not "decide constitutional questions unless
6 necessary"); *Spears v. Spears*, 95 Nev. 416, 418, 596 P.2d 210, 212 (1979) ("This court will not
7 consider constitutional issues which are not necessary to the determination of an appeal.").

8 IV. ORDER

9 The Court, after reviewing Plaintiff's Motion; the Parties' memoranda, declarations, and
10 exhibits related thereto; and the pleadings and papers on file; having heard argument of counsel; and
11 good cause appearing, HEREBY ORDERS that Plaintiff's Motion for Preliminary Injunction is
12 DENIED. 8-4-16

13
14 
Stefany A. Miley, District Court Judge

15 Dated:

JUDGE STEFANY A. MILEY

16
17 RESPECTFULLY SUBMITTED BY:

18
19 By: 

20 JOHN R. BAILEY
21 DENNIS L. KENNEDY
22 JOSEPH A. LIEBMAN
KELLY B. STOUT
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11
12 **EIGHTH JUDICIAL DISTRICT COURT**

13 **CLARK COUNTY, NEVADA**

14 MICHELLE FLORES, an individual
Plaintiff,

15 v.

16 LAS VEGAS-CLARK COUNTY LIBRARY
17 DISTRICT, a political subdivision of the State
of Nevada; DOES I-X, inclusive; and ROES
18 I-X, inclusive,
Defendants.

Case No.: A-16-735496-C
Dept. No.: XXIII

19
20
21 **REPLY TO
DEFENDANTS' OPPOSITION TO
MOTION FOR PARTIAL SUMMARY
JUDGMENT ON PLAINTIFF'S
DECLARATORY RELIEF CLAIM
-and-
MOTION FOR SUMMARY
JUDGMENT ON
COUNTERCLAIMANT'S
DECLARATORY RELIEF CLAIM**

22 **AND RELATED COUNTERCLAIMS.**

23 Plaintiff and Counterdefendant MICHELLE FLORES files this Reply to Defendants'
24 Opposition to Motion for Partial Summary Judgment on Plaintiff's Declaratory Relief Claim
25 and Motion for Summary Judgment on Counterclaimant's Declaratory Relief Claim. This
26
27

1 Reply is made and based upon the attached points and authorities, the papers and pleadings on
2 file, and any oral argument the Court may entertain at any hearing.

3 DATED this 9th day of August, 2016.

4 ASHCRAFT & BARR | LLP

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14 POINTS AND AUTHORITIES

15 **I. INTRODUCTION**

16 The central issue in this case is whether the Las Vegas-Clark County Library District (the
17 “District”) has the authority to regulate the possession of firearms. The Nevada Constitution,
18 Nevada statutory law, and Nevada case law unanimously reject the District’s assertion that it
19 has this power. Despite the overwhelming authority against it, the District insists on
20 promulgating its “Dangerous Items Policy,” which purports to regulate the possession of
21 firearms (the “DIP Rule”).

22 Simply put, the DIP Rule is illegal, and nothing in the District’s Opposition changes this
23 conclusion. Here, Michelle seeks partial summary judgment on her declaratory relief claim
24 and on the District’s declaratory relief counterclaim against her. In short, the Court should
25 GRANT the instant motion.
26
27

II. LEGAL ANALYSIS

A. NEVADA LAW PREEMPTS THE DIP RULE

Plainly put, Nevada law preempts the DIP Rule, and the District's Opposition cannot withstand a preemption analysis. The Legislature can preempt a local rule in three ways: (1) Express Preemption; (2) Implied Conflict Preemption; or (3) Implied Field Preemption. Here, the Legislature has preempted all local firearms regulations under all three iterations of the doctrine.¹

1. SB 175 Still Expressly Preempts the DIP Rule

Statutes must be read to promote the intent of the Legislature, applying the plain meaning of the words used, unless that reading violates the spirit of the legislation or leads to absurd results. *See Anthony Lee R. v. State*, 113 Nev. 1406, 1414, 952 P.2d 1, 6 (1997).² Here, the express language of SB 175 sets out the preemptive intent of the Legislature to eliminate all local control of firearms regulation.

Section 8(1)(a) of SB 175 establishes "state control" over firearms to ensure "uniform" regulation "throughout this State," 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 and to ensure the

¹ Remarkably, the District's Opposition contains very little discussion of Express Preemption and absolutely no analysis of Conflict or Field Preemption. This is not an accident, and this failure alone is enough for the Court to grant the instant Motion. EDCR 2.20(e).

² Indeed, even where the language of a statute is unambiguous, it is appropriate to look at the legislative history to determine 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).

Moreover, 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).

1 protection of the right to keep and bear arms, which is recognized by the United
2 States Constitution and the Nevada Constitution.

3 A “uniform” state policy is one that has operates equally or the same throughout the state
4 under similar circumstances. *See State v. Cal. Mining Co.*, 15 Nev. 234, 251 (1880).

5 Section 8(1)(b) of SB 175 mandates that such “state control” is the “exclusive domain of
6 the Legislature,” declaring:

7 The regulation of the transfer, sale, purchase, possession, carrying, ownership,
8 transportation, storage, registration and licensing of firearms, firearm accessories
9 and ammunition in this State and the ability to define such terms is within the
10 exclusive domain of the Legislature, and any other law, regulation, rule or
11 ordinance to the contrary is null and void.

12 The term, “exclusive” means to shut out or to vest in one person alone. *See Black’s Law*
13 *Dictionary Free Online Legal Dictionary* 2d at <http://thelawdictionary.org/exclusive/>,
14 retrieved on August 7, 2016; *see also, In re Union Ferry Co.*, 98 N.Y. 139, 151 (N.Y. 1885)
15 (“An act does not grant an exclusive privilege...unless it shuts out or excludes others from
16 enjoying a similar privilege....”). Indeed, to eliminate all doubt, the Legislature then vitiates
17 any other firearm regulation in the State by declaring that “any rule to the contrary is null and
18 void.” This repeal by Legislative fiat includes the DIP Rule.

19 Finally, Section 8(1)(c) instructs the courts that “This section must be liberally construed
20 to effectuate its purpose.”

21 In short, Sections 8(1), 9(1), and 10(1) iterate the Legislature’s intent that SB 175 establish
22 “state control” over the regulation of firearms to ensure “uniform regulations and policies”
23 throughout the State, declaring that such control is the “exclusive domain of the Legislature”
24 and that all other rules and regulations to the contrary are repealed and “null and void.”

25 The District’s reading of SB 175 both violates the spirit of the legislation and leads to an
26 absurd result. The plain language of Sections 8(1), 9(1), and 10(1) of SB 175 apply broadly
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1 to all rule-and-regulation-making entities in the State. The plain language and spirit of SB
2 175 is to make firearm regulation “the exclusive domain of the Legislature” and “to establish
3 state control” and to ensure “uniform regulations.” Indeed, the District ignores this
4 preemptive language and turns statutory construction on its head: the District seeks to exempt
5 consolidated libraries from the SB 175’s reach. But the plain language does not provide this
6 exemption. The District seeks to apply the broad provisions of Sections 8(1), 9(1), and 10(1)
7 solely to counties, cities, and towns, but the Legislature does not employ these terms in the
8 preemptive language. (The terms “county, city, and town” are conspicuously absent from the
9 preemptive language of Sections 8(1), 9(1), and 10(1).)

11 Finally, the District’s reading leads to absurd results: firearm regulation cannot be the
12 “exclusive domain of the Legislature” if the District can also regulate guns; the words “state
13 control” and “uniform regulations” of firearm regulation are meaningless if the DIP Rule
14 stands. The Legislature cannot promote state control or uniform regulations over the
15 possession of firearms if the District simultaneously has this power.

17 Moreover and contrary to their assertions, the District is a creature of a county and a city.
18 NRS 379.0221. NRS 379.0221 does not, in and of itself, create consolidated library districts;
19 instead, this statute authorizes certain cities and counties to create such special districts. It is
20 absurd for the Legislature to take away the power of counties and cities to regulate firearms
21 only to allegedly delegate such power to a creature of a county and city.³

25 ³ Counties are “instrumentalities of government, or agents of the state, constituted for the
26 convenience of local administration in certain portions of the state’s territory.” *State v. Lincoln*
27 *Co. Power Dist.*, 60 Nev. 401, 409, 111 P.2d 528, 531 (1941). It follows, therefore, that a
consolidated library district constituted for the convenience of local administration of libraries
within the territories of its respective counties and cities is likewise an instrumentality.

1 Again, there are few expressions of Legislative intent more explicit than the preemption
2 language in Sections 8(1), 9(1), and 10(1) of SB 175. Nevada law expressly preempts the
3 DIP Rule.

4 **2. Implied Conflict Preemption Still Preempts the DIP Rule**

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

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

12 A local regulation directly conflicts with state law if, among other things, the local
13 regulation prohibits an activity which state law allows. “[A]llowances provided by the general
14 laws of the state may not, absent a special dispensation of the legislature, be prohibited by
15 local ordinances.” *Reno v. Reno Police Protective Ass’n*, 98 Nev. 472, 475, 653 P.2d 156,
16 158 (1982). In *Reno*, the district court dismissed a local government’s declaratory relief action
17 when that local government refused to comply with a general law of the State, claiming that
18 its enabling statute superseded the general law. *Id.* at 474. The Supreme Court affirmed the
19 district court’s order, holding that a general law of the State prevailed over a local enabling
20 statute. *Id.* at 475.

22 Like the errant local government in *Reno*, the District here erroneously seeks to invoke a
23 provision in its enabling statute as somehow trumping a general law of the State. The DIP
24 Rule in this case directly conflicts with the clear mandate of the Legislature. Article 1, Section
25 11(1) of the Nevada Constitution guarantees the rights of Nevada citizens “to keep and bear
26 arms” for security, defense, hunting, recreation, and other lawful purposes. AB 147 and SB
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1 175 makes it exclusively the domain of the Legislature to regulate the “carrying” of firearms,
2 and “any other law, regulation, rule, or ordinance to the contrary is null and void.” In short,
3 AB 147 and SB 175 makes it the sole province of the Legislature to regulate the carrying of
4 firearms in this State.

5 The DIP Rule denies Nevada citizens the constitutional right to openly carry firearms--a
6 right that can only be limited by the constitution and the Legislature alone. Moreover, the
7 District arrogates the authority to regulate the “possession” or “carrying” of firearms in the
8 District’s libraries to itself in complete derogation of the Legislature’s authority. But AB 147
9 and SB 175 take away this power (and even the existential power to define “possession and
10 carrying of firearms”).

11 Contrary to the District’s assertions, the issue here is not whether the Nevada Constitution
12 provides for an unfettered right to carry firearms. This is a straw-man argument.

13 Instead, the issue here is who regulates the possession of firearms. Nevada law is
14 unequivocal: Only the Legislature may regulate the possession of firearms. Indeed, like *Reno*,
15 absent an express delegation of the Legislature, the District seeks to regulate what the
16 Legislature and the Constitution permit by invoking its rule-making authority in its enabling
17 statute. This cannot be countenanced. Like *Reno*, the general law of SB 175 preempts the
18 DIP Rule under the doctrine of conflict preemption.

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21 **(b) The DIP Rule Frustrates Legislative Purpose**

22 A local regulation frustrates the purposes of a state law where the local regulation stands
23 as an obstacle to the accomplishment of the full objectives of the Legislature. *See Crowley*,
24 109 Nev. at 604-05. In *Crowley*, the district court granted summary judgment to a local
25 government who passed an ordinance paying attorney’s fees for representation of indigents
26 that was lower than state law permitted. *See id.* at 599. In reversing the district court’s order,
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1 the Supreme Court looked to the plain language of the state law and the legislative history
2 behind the law, holding that the local government's regulation of attorney's fees frustrated the
3 purpose of the state statute and was therefore preempted by the state law. *Id.* at 604.

4 Here, like *Crowley*, the DIP Rule frustrates the broad purpose of the Legislature, namely,
5 (1) to ensure "state control" over firearm regulation and (2) to ensure that firearm "regulation
6 and policies are uniform throughout this State." As in *Crowley*, both the plain language of
7 SB 175 and the Legislative history behind AB 147 and SB 175 confirm this purpose. The
8 District does not dispute that the DIP Rule frustrates the Legislative purpose behind SB 175;
9 it simply refused to address the issue. [Opp. 16:8-9.]

11 **3. Implied Field Preemption Still Preempts the DIP Rule**

12 The District again ignored the analysis of implied field preemption. If the Legislature
13 occupies an entire regulatory field by enacting a comprehensive regulatory scheme, state law
14 preempts all local regulation within that field. *See Douglas County Contractors Ass'n v.*
15 *Douglas County*, 112 Nev. 1452, 1463-64, 929 P.2d 253, 260 (1996).

16 In *Douglas County Contractors*, the district court granted summary judgment to a local
17 government and a school district upholding their scheme to impose a tax to fund schools, even
18 though no express provision in Nevada law granted such authority. *Id.* at 1454. In reversing
19 the district court's order, the Supreme Court looked to the comprehensive statutory structure
20 that governed school funding and concluded that this comprehensive statutory scheme
21 indicated the Legislature's desire to occupy the entire field of school funding. *Id.* at 1465.

22 Here, even more compelling than the statutory structure *Douglas County Contractors*, the
23 Legislature's regulation of firearms in this State spans dozens of chapters and hundreds of
24 sections. The District provides no analysis to dispute that the Legislature has intended to
25 occupy the entire field of firearm regulation in Nevada. In conclusion, the Legislature has
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1 occupied the entire field of firearm regulation, and the doctrine of field preemption preempts
2 the DIP Rule.

3 **B. THE DIP RULE STILL VIOLATES DILLON’S RULE**

4 The District fundamentally misapprehends Dillon’s Rule. Dillon’s Rule provides that a
5 special district “possesses and can exercise such powers only as are expressly conferred by
6 the law of its creation, or such as are necessary to the exercise of its corporate powers, the
7 performance of its corporate duties and the accomplishment of the purposes for which it was
8 created.” *Truckee-Carson Irr. Distr.*, 80 Nev. 263, 266, 392 P.2d 46, 47 (1964), quoting, *In*
9 *re Walter River Irr. Dist.*, 44 Nev. 321, 195 P. 327 (1921).⁴ “The Legislature’s plenary
10 authority operates to restrict and limit the exercise of all municipal powers, whether public or
11 governmental, proprietary or private.” *Crowley*, 109 Nev. at 605 (internal citations and
12 quotations omitted). “Irrigation districts, drainage districts, utilities districts, and other similar
13 organizations are not ‘municipal corporations,’ but are public agencies exercising
14 governmental functions....” *State v. Lincoln Co. Power Dist.*, 60 Nev. 401, 412, 111 P.2d
15 528, 533 (1941). If there is any doubt about a public agency’s authority to exercise a power,
16 Dillon’s Rule resolves that doubt against the local government. *See Ronnow v. City of Las*
17 *Vegas*, 57 Nev. 332, 343, 65 P.2d 133, 136 (1937). That is, the court must deny that power.
18 *See e.g., Waitz v. Ormsby County*, 1 Nev. 370, 377 (1865). In short, unless the Legislature
19 has made an express delegation of its authority to a special district, Dillon’s Rule precludes
20 the exercise of that authority.

21 In Nevada, the Legislature has never expressly delegated the authority to regulate firearms
22 to a consolidated library district. Indeed, with the passage of AB 147 and SB 175, the
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27 ⁴ The Nevada Supreme Court has applied Dillon’s Rule to special districts since at least
1921, contrary to the District’s erroneous assertion otherwise.

1 Legislature has exclusively retained the power to regulate the possession of firearms. *See* SB
2 175 (2015) and AB 147 (1989). When the Legislature chooses to delegate this authority to
3 regulate firearms to “special districts,” it does so with very specific statutes. For example,
4 NRS 202.265 confers the authority on principals, child care facility proprietors, and university
5 presidents to allow the possession of firearms on their campuses. Similarly, NRS 392.466(6)
6 permits a school board to establish regulations governing when a pupil may possess a firearm
7 at school.
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9 Here, the District turns Dillon’s Rule on its head, seeking to imply the specific power to
10 regulate firearms from a general statutory grant to manage libraries. [Opp. 19:23-25.]
11 Dillon’s Rule prohibits this reading. The power to regulate firearms is not the same as
12 regulating the library’s hours of operation. Dillon’s Rule requires an express grant of the
13 Legislature’s authority to regulate firearms. Without an express delegation of this power,
14 Dillon’s Rule provides that the District does not possess it, and if there is any doubt as to
15 whether the District possesses such authority, Dillon’s Rule resolves this doubt against the
16 District. In short, the DIP Rule is illegal because it violates Dillon’s Rule.
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III. CONCLUSION

For the reasons detailed above, the Court should GRANT Michelle's Motion for Partial Summary Judgment on her Declaratory Relief Claims and GRANT her Motion for Summary Judgment on the District's Declaratory Relief Claims.

DATED this 9th day of August, 2016.

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CERTIFICATE OF SERVICE

I certify that on this 9th day of August, 2016, I electronically filed and served the foregoing Motion for Partial Summary Judgment on Plaintiff's Declaratory Relief Claim and Motion for Summary Judgment on Counterclaimant's Declaratory Relief Claim by using the Eighth Judicial District Court E-File & Serve System, and if necessary, by first class mail, postage pre-paid to the following:

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CLERK OF THE COURT

TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA

MICHELLE FLORES,

Plaintiff,

vs.

LAS VEGAS-CLARK COUNTY
LIBRARY DISTRICT,

Defendants.

CASE NO. A-16-735496-C

DEPT. XXIII

BEFORE THE HONORABLE STEFANY MILEY, DISTRICT COURT JUDGE

TUESDAY, SEPTEMBER 13, 2016

TRANSCRIPT OF PROCEEDINGS

**PLAINTIFF AND COUNTER DEFENDANT MICHELLE FLORES' MOTION FOR
PARTIAL SUMMARY JUDGMENT ON PLAINTIFF'S DECLARATORY RELIEF
CLAIM AND MOTION FOR SUMMARY JUDGMENT ON COUNTERCLAIMANT'S
DECLARATORY RELIEF CLAIM**

APPEARANCES:

For the Plaintiff:

LEE I. IGLODY, ESQ.
JEFFREY F. BARR, ESQ.

For the Defendant:

DENNIS L. KENNEDY, ESQ.
KELLY B. STOUT, ESQ.

RECORDED BY: MARIA GARIBAY, COURT RECORDER

1 Tuesday, September 13, 2016 at 10:24 a.m.

2
3 THE CLERK: Page 1 for 10:30 calendar. It is Case Number A735496,
4 Michelle Flores versus Las Vegas-Clark County Library District.

5 THE COURT: All right, good morning everybody.

6 MR. KENNEDY: Good morning, Your Honor.

7 THE COURT: This is Plaintiff's motion for partial summary judgment. I do
8 have an opposition by the defense. Arguments?

9 MR. IGLODY: Yep.

10 THE COURT: No reply.

11 And I'm sorry, counsel, I don't know you.

12 MR. IGLODY: Yes. Your Honor, thank you. My name's Lee Iglody. I'm here
13 for the Plaintiff, Michelle Flores.

14 THE COURT: Okay, so you're arguing today?

15 MR. IGLODY: Yes.

16 THE COURT: All right

17 MR. IGLODY: May I proceed?

18 THE COURT: You may.

19 MR. IGLODY: All right. Thank you, Your Honor. I think we've thoroughly
20 briefed this. This would be the second round, essentially. The question as we see it
21 is what is the Clark County Las Vegas Library District and I think the parties agree
22 that the library district was created pursuant to an authorizing statute that was
23 passed by the legislature and that would be consistent with, as -- as we reference it,
24 the Dillon's Rule, which is that without express grant from the legislature, any
25 subsidiary state entity has no power to do anything.

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1 So the statute authorized Las Vegas and Clark County to join forces to
2 create a library district, gave Clark County and Las Vegas the authority to appoint a
3 board of trustees to manage the library, gave them the authority to collect a
4 proportion of taxes within their jurisdiction that was also expressly granted by the
5 legislature in order to raise funds for the operation the library. It gives them the
6 authority of course to approve the library budget, but the day-to-day operations of
7 the library are supervised by the board of trustees that are appointed one half each
8 by the City of Las Vegas and the County of Clark.

9 Now, briefly the -- the argument boils down to well what is the library
10 district in consideration of SB175 which is of course the law that we're relying upon
11 in our claim that they do not have the right to regulate the open possession of
12 firearms on their premises. The position that we've briefed for Your Honor and
13 which I'm just briefly going to elaborate on is if Section 1 of the Constitution says
14 only the legislature can create laws and the legislature exercised its powers to
15 create Clark County, to create Las Vegas, to give them the authorization to create
16 their own library district, we think it would be incorrect to argue that the library district
17 is not a subsidiary entity of the City of Las Vegas and the County of Clark.

18 The *Lann versus Merrin* (phonetic) case that we cited in our brief is
19 pretty clear that no subsidiary entity created by a county or city can have powers
20 that the county or city don't have. And so in the statute, SB175, the legislature says,
21 and I'll just quote briefly. It says our intention here is to make sure that only the
22 legislature can create laws affecting possession, carry, registration, transport, et
23 cetera, et cetera firearms.

24 They specifically say that in this state an ability define such terms is
25 when the exclusive domain of the legislature and any other law, regulation, rule or

1 ordinance to the contrary is null and void. And then in Section C of -- Section 1(c)
2 which is repeated throughout each legislative amendment that was created through
3 SB175 they say this section must be literally construed to effectuate its purpose.

4 So what do we have here now? We have an entity that was created by
5 a subsidiary entity that was created by the legislature and the legislature expressly
6 says you, Clark County, you, City of Las Vegas, are not allowed to have any rules
7 regarding possession, carry, registration, et -- transport of firearms and so on and so
8 son. And we want you to literally construe it.

9 Now in Section 7 of the same statute, SB175, they actually have
10 authorization for any citizen, such as our client, Michelle Flores, affected adversely
11 by anything contrary to SB175, and this is Section 7, has a right to go file to the
12 appropriate court, which we maintain this will be the appropriate court
13 jurisdictionally, for a declarative and injunctive relief and damages attributable to the
14 violation. So Michelle Flores is right to come to this Court to ask for the enforcement
15 of 175 -- SB175 we think is -- is -- is indisputable, right? Uncontradicted.

16 So then the question goes back to where I started, what is the library
17 district? The library district is subsidiary entity of the city and the county and city
18 and county are subsidiary entities of the legislature. Legislature has with absolute
19 clarity and no ambiguity said we will be the exclusive regulator of firearms --

20 THE COURT: So -- okay, so for as far as your argument that it's a subsidiary,
21 which statute are you relying upon?

22 MR. IGLODY: Well, and that's part of the problem which is pointed out in their
23 opposition. Besides the *Lann versus Mirren* case that we have, all we have is
24 Dillon's Rule which we cited cases in that proposition which is unless specifically --
25 for example, the prison system or the school district or things of that nature, unless

1 specifically carved out by the legislature, you only have what we expressly give you.
2 You can't impliedly have certain powers. The legislature has to give them to you.
3 And with SB175, there can't be any question of express authority.

4 THE COURT: Okay, so my question's a little bit more simplistic.

5 MR. IGLODY: Okay.

6 THE COURT: You're basically arguing the library would fall under the county,
7 city, everything else which is specifically addressed in Senate Bill 175, but you've
8 got to have a vehicle under which the library district would -- would be tied to the -- I
9 mean, let's see, let me rephrase this. You have to have some kind of vehicle by
10 which the -- the library district is tied to the city, county, et cetera. You're arguing it's
11 a subsidiary. I think in the motion the word instrumentality was used, but what
12 statute?

13 Because there's other arguments, there's their argument which is the
14 library's a political subdivision as set forth in NRS 379.142 and political subdivision
15 in that statute defines several entities, including state agencies, county, city, town,
16 school district, et cetera that are political subdivisions. Okay? So there's a
17 multitude of things that are political subdivisions, but when Senate Bill 175 was
18 enacted, they didn't just carte blanche take all the political subdivisions under that
19 statute and include it in Senate Bill. It was very specific. It included the city, county
20 -- I think it was township or something else.

21 So do you see what I'm asking? You -- what is your statute to tie the
22 library district to the limitations set forth in Senate Bill 175 that pertains to the
23 county, city, et cetera?

24 MR. IGLODY: Yeah, let me just clarify because that is obviously an excellent
25 question which is the reason that we're here, right? The -- the question is because

1 the statute, SB175, does not say library or particularly address NRS 379 which is
2 library authorizing statute, why does SB175 apply to library? Am I correctly
3 summarizing that question?

4 THE COURT: Basically because that Senate Bill's pretty specific what it
5 applies to. And so if the library district's under 379, the library district's not the only
6 thing under 379. So is your argument that basically everything that's created under
7 379 would be also subject to the limitations set forth in Senate Bill 175 or is it just
8 the library that's subject to the limitations set forth in 175?

9 MR. IGLODY: We would say that anything that's created by the legislature,
10 and under Dillon's Rule legislature can create anything at all, that under 379 which is
11 the authorizing statute for the library that if you're asking for what the statutory tie
12 would be, the library could not exist unless the legislature gave it express authority
13 to exist and because it's a creature of the legislature and the legislature has clearly
14 said nobody shall make rules except us, we're saying Dillon's Rule to us is the
15 cleanest path to the result, but also under field preemption, which we also
16 thoroughly briefed, you get to the same result.

17 Now, if I can briefly --

18 THE COURT: So hold on.

19 MR. IGLODY: Go ahead.

20 THE COURT: I just want to make sure I understand. So your argument's
21 pretty broad in that it's Senate Bill 175 is not just limited to the entities specifically
22 indicated. It's basically -- it is meant to apply to any type of governmental entities
23 and that would include the courthouses, the government buildings, the -- the school
24 districts, the universities, everything.

25 MR. IGLODY: Well, what --

1 THE COURT: I'm trying to figure out what you're saying because it seems
2 like you're -- you're kind of picking and choosing.

3 MR. IGLODY: No, it's a very legitimate question and allow me to clarify
4 because I think that they -- they very -- did a very good job pointing out look we have
5 a problem here which is if it was a city, no question, if was a county, no question. I
6 mean the -- you know, why -- why does it apply to library? And our argument is,
7 once again, and -- and it does take that one extra step to get there we -- and we
8 appreciate that that's why you Judge -- Your Honor has to make the ruling --

9 THE COURT: But I feel like it's a leap so I need the -- I need --

10 MR. IGLODY: Well --

11 THE COURT: -- to know how you get there.

12 MR. IGLODY: And that's -- once again, if I may briefly I'm going to refer to
13 that Michigan district library case that we cited in our briefs --

14 THE COURT: That was a different. That was the one I believe where they
15 were very express and they actually used the words that there was preemption. Our
16 statute in my opinion is -- is not quite as specific.

17 MR. IGLODY: Well, that's good to know because we felt that under the -- the
18 SB175 the library clearly -- I mean library. The legislature --

19 THE COURT: Let me make sure I'm looking at the same one.

20 MR. IGLODY: The legislature clearly said nobody else shall be making laws
21 about firearms regulation in this state except us, unless otherwise provided for like I
22 said like the carveout for the school district, the carveout for the jails, things like that.
23 And so our position is yes, maybe the drafters of the legislation could have said the
24 word preemption, but the word preemption is the same thing as we intend that
25 nobody else in the state shall make rules except us unless we clearly provide for it,

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1 which brings us back to Dillon's Rule which if there's no express grant, there is no
2 grant. That's our argument, Your Honor.

3 THE COURT: I guess I'm still not getting my question answered which is how
4 do you tie the library district to the entities that are specifically indicated in Senate
5 Bill 175?

6 MR. IGLODY: They were created by Clark County and Las Vegas. Las
7 Vegas and Clark County can't confer rights and abilities to the library district they
8 themselves do not possess.

9 THE COURT: And that's notwithstanding the fact that it's -- the library is
10 defined as a political subdivision under 379 --

11 MR. IGLODY: Yeah.

12 THE COURT: -- and the all -- and not all the entities that are defined as a
13 political subdivision under 379 would likewise be tethered to the language of Senate
14 Bill 175.

15 MR. IGLODY: Right, our position is -- well of course I'm just presenting to you
16 our position. Our position is yeah, if the city does not have the power, it cannot
17 create a subsidiary entity that has that power. That's our position, Your Honor.

18 THE COURT: Okay, so your position is basically that the city and county
19 create the library -- I mean I guess in some aspects but the -- the library district it
20 looks like it's actually created -- it's not -- it's -- it's a creature of statute.

21 MR. IGLODY: It was an authorizing statute which is to say 379 I think it's
22 0222 says if a city and county want to get together to create a -- a district, a library
23 district, they may do so. That's the enabling statute. The city and county chose to
24 avail themselves of what they were allowed to do in the enabling statute and then
25 created the library district subject to the enabling statute which provides they appoint

1 the board of trustees, they approve the budget, they collect the taxes, they give the
2 taxes to the library district. In day-to-day operations library -- you know, we don't
3 want the county commission deciding what time the library opens and closes, things
4 of that nature.

5 And so what we're saying is -- and which I understand, Your Honor, it's
6 -- it would be better if they had crafted the statute with some more language, but
7 they're pretty clear, city and county you don't have these powers and they also say
8 nobody else in the state has these powers unless we expressly them give them to
9 you. Our position is the library, at least as of October 1st, 2015, did not have the
10 express grant of authority to regulate firearms in the state of Nevada. That's our
11 position in -- in that regard, Your Honor.

12 THE COURT: Okay. One more argument you brought up and I don't know if
13 you're going to pursue it would be the constitutionality and that usually does require
14 the Attorney General's Office to be a party.

15 MR. IGLODY: And that's also an excellent question, Your Honor, and we
16 appreciate that. Now, the situation we have here is that our position is that SB175
17 covers Michelle Flores's action here asking this Court to enforce what we believe to
18 be the legislature's law that they passed regarding firearms regulation which would
19 apply to the library.

20 They bring up a very good question which is like well wait a second, if
21 you're going to take the constitutional route, shouldn't like the Attorney General have
22 a right to opine on that? At this point, Your Honor, we'd like to rely strictly on SB175
23 because we don't dispute the constitution gives the right of the legislature to
24 interpret the scope and breadth of the right to carry firearms in the state of Nevada
25 pursuant to our constitution so we would like to rely on SB175. But if Your Honor

1 would like to invite the Attorney General to opine, we of course would not oppose
2 that.

3 THE COURT: Well they would have to opine because they get to defend the
4 statutes.

5 MR. IGLODY: Well then the question becomes are we talking about a statute,
6 ordinance or franchise under 30.130, and I guess we'd want clarification on that
7 because once again we're saying the statute is clear. We're asking the statute to be
8 enforced. We're not questioning the statute itself for example --

9 THE COURT: Okay, so basically is it more of an -- sorry to cut you off, more
10 alternative argument that really would be -- should be heard after there's a decision
11 on these other issues?

12 MR. IGLODY: When you say other issues, what do you mean?

13 THE COURT: Well, all these other issues as far as whether the library district
14 is tied to the language set forth in Senate Bill 175.

15 MR. IGLODY: Well, yes, of course we would say that's -- that's the major
16 decision that needs to be made.

17 THE COURT: Okay. Okay. Is there anything else?

18 MR. IGLODY: No, I'm -- thank you, Your Honor.

19 THE COURT: All right, counsel for the defense?

20 MR. KENNEDY: Thank you, Your Honor. Dennis Kennedy for the Defendant
21 Library District. First off with respect to the notice to be given to the Attorney
22 General, we -- we reference back to paragraph 69 of the complaint and -- and our
23 counterclaim paragraph 38 both parties have teed up the issue of constitutionality of
24 the restrictions. So I -- I think it's pretty clear that the Attorney General should have
25 been notified of this. Both the complaint and the counterclaim raise those issues.

1 THE COURT: I think it's kind of a counterargument because he's not first
2 arguing that it's unconstitutional, he's just arguing that the library district is tethered
3 to the language of Senate Bill 175.

4 MR. KENNEDY: Okay. And that -- that's fair enough.

5 THE COURT: I mean the better way to say it would be likewise subject the
6 restrictions set forth in Senate Bill 175 as it's some kind of subset of the agency
7 specifically indicated in 175.

8 MR. KENNEDY: Okay. And I'll -- I'll -- I'll start by -- by jumping ahead in the
9 argument to -- to address I guess what's -- what is now the principal point that was
10 made by the Plaintiff and that is that somehow the library district has been created
11 by the city and the county and that it is therefore tied back to Senate Bill 175. The
12 library district is -- is a special district created in Chapter 379 of the -- of the statutes.
13 It is -- it's animated and populated by appointees from the city and county, but that
14 doesn't make any difference, they -- they didn't create it. It's created by the
15 legislature.

16 With respect to the argument that the library district doesn't have any
17 authority to adopt rules and regulations, the -- the enabling statutes and 379.040
18 says the library and reading room of any consolidated county, district or town library
19 must forever be free and remain free and accessible to the public subject to such
20 reasonable regulations as the trustees of the library may adopt. So that puts a stake
21 in the heart of the Dillon's Rule argument because that argument says well, if they
22 don't have any express authority to adopt regulations, they may not do so. The
23 legislature has given them that authority --

24 THE COURT: In 379?

25 MR. KENNEDY: Yes, .040, the enabling statute, and of course what the

1 library district then did was it adopted the dangerous items policy along with some
2 other policies that are before the Court as an exhibit to the complaint.

3 So that -- that really takes care of the Dillon's Rule argument and those
4 are the two principal arguments that the Plaintiff is making today, the first being that
5 the library district is subject to SB175 because it is a creature of the city and county.
6 That's clearly incorrect in light of Chapter 379 and second, that the library district
7 has no authority to adopt any rules or regulations. 379.040 is quite to the contrary.
8 It grants the library district that authority.

9 And that gets -- gets us to the heart really of the issue that's before the
10 Court and that is what's the effect of Senate Bill 175 and the Court hit the nail on the
11 head with one of its questions and that is don't they -- don't they talk about the term
12 governmental entities in -- in the statute and the answer's yes they do. There are
13 some references to all governmental entities in the statute in Senate Bill 175, but
14 Sections 8, 9 and 10 which we're talking about here are specific to county, cities and
15 towns. And what that tells us, and it's pretty rudimentary principles of statutory
16 construction, is the legislature knew exactly what it was doing. It could have
17 prohibited anyone and everyone from adopting any kind of restriction on the carrying
18 of weapons, opened or concealed, but it didn't do that. It just said cities, counties
19 and towns. And of course we know the library is -- is not a city, a county or a town.

20 And the last point that I will make is the argument about field
21 preemption that the legislature has somehow preempted the field and that it is the
22 sole and exclusive authority on the issue of -- of carrying weapons in the state of
23 Nevada and as -- as -- as we all know that's plainly incorrect because -- and we --
24 we printed them off. There's -- there's an order of the chief judge of the district court
25 and an order of the supreme court saying no weapons in the courtrooms. I was in

1 the supreme court on Friday and there it is right on the door by order of the supreme
2 court and --

3 THE COURT: Actually I think it's on our doors, too.

4 MR. KENNEDY: Yes, it is and if -- if the legislature is the sole and exclusive
5 authority on this issue, then of course that would mean that -- that courts have no
6 ability to prohibit the open carry of weapons in the courtroom. Of course we know
7 that's not true.

8 So what we do know is that the legislature has certain powers in this
9 area and it has elected to exercise those powers in Senate Bill 175 with respect to
10 counties, cities and towns. And that's what it did and we're not fighting over its
11 power to do that, but we are saying that when you exercise that power in that sort of
12 a restricted way that it doesn't apply to entities or in this case special districts; i.e.,
13 the library district, which are -- fall clearly outside the definition of -- of those three
14 terms. That's why this motion ought to be denied, the Plaintiff's motion ought to be
15 denied and the Defendant's cross-motion for summary judgment on that issue
16 should be granted, Your Honor, and if the Court has no questions, I'm done.

17 THE COURT: I don't have any questions.

18 MR. KENNEDY: Thank you.

19 THE COURT: Plaintiff, you have any additional questions?

20 MR. IGLODY: I'm sorry?

21 THE COURT: Do you have additional questions?

22 MR. IGLODY: Well I was -- I was just going to address briefly his arguments
23 if I could?

24 THE COURT: Sure.

25 MR. IGLODY: Thank you. I guess I'll start by pointing out that the constitution

1 the State of Nevada creates three branches. One of them's the judicial, one of
2 them's the executive and one of them's legislative. I don't think anybody disputes
3 that within the bounds of the constitution the -- what do you call it, the judicial branch
4 has broad authority to regulate its own affairs, its own members and such. We
5 would not agree that the library district is in any way, shape or form similar to the
6 entirely separate branch of government which is the judicial branch, but what I'd like
7 to do briefly because he -- he brings up a very good point and we acknowledge that
8 it's a good point which is again, it doesn't say library. So once again, the question is
9 when we're looking at preemption, right? We're looking at the language in the
10 statute that would indicate to a court interpreting the legislative intent what did
11 legislature want to do.

12 Now, we disagree slightly that the Michigan legislature was much
13 clearer, although they did use magic words. The --

14 THE COURT: Preemption?

15 MR. IGLODY: No, no, but I mean -- you know, this one the problems we have
16 as attorneys, right, especially with contracts which what I normally do. And here it's
17 -- it's unambiguous and they acknowledge actually in their opposition that -- that the
18 legislature said the purpose of this section is to make sure that the policies
19 regarding firearms are uniform throughout the state, which is Henderson Library
20 allows open carry but Clark County doesn't. That's one issue.

21 And they say the only party or legislature is the only one that has the
22 power, the exclusive domain, exclusive domain -- they don't say exclusive domain,
23 but if the library doesn't agree with us that's okay. They say exclusive domain. We
24 and only we with unless there's an express statutory grant.

25 So when you go on to Section -- when you go on to Section -- he

1 mentioned Section 8. When you got on to Section 8(g), they say yeah, political
2 subdivision, if they're authorized by statute, may regulate firearms and then go on to
3 define political subdivision includes without limitation, once again broadly construed,
4 right, a state, a county, city, county, school district, et cetera.

5 We're saying if we're doing -- if we're not going to go with Dillon and
6 we're going to go for field preemption, express preemption, conflict preemption,
7 right? The same concept applies. The legislature was absolutely unambiguous.
8 We -- we, the legislature, not anybody else, we will have the exclusive domain over
9 regulation, carry, transport, et cetera of firearms.

10 And so we submit to Your Honor yes, it would have been much easier
11 case if they specifically said oh and this applies to library district too, but it seems to
12 us that if we don't get there through Dillon, which we maintain that we do, we get
13 there through field preemption because how much more clear could the legislature
14 have been when they say we will have the exclusive domain to create uniform laws
15 in this state unless we statutorily expressly grant you a different right, such as a
16 school district, prisons, things of that nature.

17 And -- and Your Honor, I think that -- that would cover it.

18 THE COURT: Okay.

19 MR. IGLODY: Thank you.

20 THE COURT: I will issue a written decision. Thank you for your time.

21 MR. KENNEDY: All right. Thank you, Your Honor.

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MR. BARR: Thank you, Your Honor.

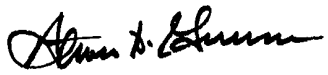
THE COURT: Have a good day.

[Proceedings concluded at 10:48 a.m.]

ATTEST: I hereby certify that I have truly and correctly transcribed the audio/visual proceedings in the above-entitled case to the best of my ability.



Tracy A. Gegenheimer, CER-282, CET-282
Court Recorder/Transcriber


CLERK OF THE COURT

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14 DISTRICT COURT

15 CLARK COUNTY, NEVADA

16 MICHELLE FLORES, an individual,
17 Plaintiff,

Case No. A-16-735496-C
Dept. No. XXIII

18 vs.

19 LAS VEGAS-CLARK COUNTY LIBRARY
DISTRICT, a political subdivision of the State of
20 Nevada; DOES I-X, inclusive, and ROES A-Z,
inclusive,

21 Defendants.
22

23 AND RELATED CLAIMS.
24

25 **NOTICE OF ENTRY OF DECISION AND ORDER**

26 PLEASE TAKE NOTICE that a Decision and Order was entered in the above-captioned
27 matter on the 26th day of October, 2016.

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A true and correct copy of the Decision and Order is attached.

DATED this 4th day of November, 2016.

BAILEY ♦ KENNEDY

By: /s/ Dennis L. Kennedy

JOHN R. BAILEY

DENNIS L. KENNEDY

JOSEPH A. LIEBMAN

KELLY B. STOUT

AMANDA L. STEVENS

Attorneys for Defendant

Las Vegas-Clark County Library District

CERTIFICATE OF SERVICE

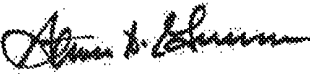
I certify that I am an employee of BAILEY ♦ KENNEDY and that on the 4th day of November, 2016, service of the foregoing **NOTICE OF ENTRY OF DECISION AND ORDER** was made by mandatory electronic service through the Eighth Judicial District Court's electronic filing system and/or by depositing a true and correct copy in the U.S. Mail, first class postage prepaid, and addressed to the following at their last known address:

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Las Vegas, Nevada 89102 MICHELLE FLORES

/s/ Jennifer Kennedy
Employee of BAILEY ♦ KENNEDY

DISTRICT COURT
CLARK COUNTY, NEVADA


CLERK OF THE COURT

MICHELLE FLORES,

Plaintiff,

CASE NO.: A735496

DEPARTMENT XXIII

LAS VEGAS-CLARK COUNTY
LIBRARY DISTRICT,

DECISION & ORDER

Defendant.

I. INTRODUCTION

On July 5, 2016, Plaintiff Michelle Flores filed her Motion for Partial Summary Judgment on Plaintiff's Declaratory Relief Claim and on Counterclaimant's Declaratory Relief Claim. Defendant filed an opposition on July 28, 2016, and Plaintiff filed a reply on August 9, 2016. The motion came on for hearing before this Court on September 13, 2016, and after oral argument by both parties, the Court indicated it would render a written decision. Having considered the law as well as the filings and oral argument of the parties, this Court hereby renders the following decision and order.

II. BACKGROUND FACTS

The undisputed material facts of this case are as follows. Plaintiff, Michelle Flores, entered a Clark County library openly carrying a firearm. She conducted her business at the library without any issue. However, on her way out of the library, a security guard stopped her and informed her that she should not bring her firearm into the library on her next visit. Ms. Flores disagreed with the security guard's instruction, and the security guard asked a

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1 nearby librarian to explain the library's "Dangerous Items Policy," which prohibited patrons
2 from bringing "dangerous items" such as firearms into the library.
3

4 Ms. Flores continued to disagree with the policy, and refused to leave the premises.
5 Eventually, the police were called and Ms. Flores was escorted off the property. As she was
6 leaving, the librarian gave Ms. Flores a Notice of Trespass, informing her that she was
7 banned from the library for 1 year. On the notice was written "firearms in the library."
8

9 However, numerous other facts are in dispute, most significantly the "actual" reason
10 for Plaintiff's ban from the library. Plaintiff contends it is due to her bringing the firearm
11 into the library in contravention of the "Dangerous Items Policy," whereas Defendant
12 contends it was due to Plaintiff causing a disturbance by refusing to leave.
13

14 III. DISCUSSION

15 A. Summary Judgment

16 It is well-settled in Nevada that "summary judgment is only appropriate when a
17 review of the record viewed in a light most favorable to the nonmoving party reveals no
18 triable issues of material fact and judgment is warranted as a matter of law." *Scialabba v.*
19 *Brandise Construction Company, Inc.*, 112 Nev. 965, 968, 921 P.2d 928, 930 (2006) (citing
20 *Butler v. Bogdanovich*, 101 Nev. 449, 451, 705 P.2d 662, 663 (1985); see also *Wood v.*
21 *Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005); NRCP 56(c). The movant
22 has the burden of demonstrating that there is no genuine issue of material fact and cannot
23 "build a case on the gossamer threads of whimsy, speculation, and conjecture." *Wood v.*
24 *Safeway, Inc.*, 121 Nev. 724, 121 P.3d 1026 (Nev. 2005); NRCP 56(c). The non-movant is
25 "entitled to have the evidence and all reasonable inferences accepted as true." *Id.* (quoting
26 *Willsie v. Baby Grand Corp.*, 105 Nev. 291, 292, 774 P.2d 432, 433 (1989)).
27
28

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1 An issue of fact is genuine when it materially alters the outcome of the proceedings and "a
2 rational trier of fact could return a verdict for the nonmoving party." *Wood*, 121 Nev. at
3 731, 121 P.3d at 1031. Moreover, all doubts must be resolved against the moving party and
4 his supporting affidavits and depositions, if any, must be scrutinized carefully by the court,
5 even as to inferences. *See, e.g., Hoffmeister Cabinets of Nevada, Inc. v. Bivins*, 87 Nev. 282,
6 284, 486 P.2d 57, 58 (1971).

8 *B. Senate Bill 175*

9
10 In 2015, the Nevada legislature passed Senate Bill 175 ("SB 175"), which amended
11 various chapters of the NRS in part relating to the legislature's powers to regulate firearms
12 throughout the State of Nevada. Of note are sections 1 and 2 of the three statutes amended
13 by SB 175 sections 8, 9, and 10, which are NRS 244.364, NRS 268.418, and NRS 269.222.
14 As amended, section 1 of each statute is identical and provides as follows:

15 1. The Legislature hereby declares that:

16 (a) The purpose of this section is to establish state control over the regulation of
17 and policies concerning firearms, firearm accessories and ammunition to ensure
18 that such regulation and policies are uniform throughout this State and to ensure
19 the protection of the right to keep and bear arms, which is recognized by the
20 United States Constitution and the Nevada Constitution.

21 (b) The regulation of the transfer, sale, purchase, possession, carrying, ownership,
22 transportation, storage, registration and licensing of firearms, firearm accessories
23 and ammunition in this State and the ability to define such terms is within the
24 exclusive domain of the Legislature, and any other law, regulation, rule or
25 ordinance to the contrary is null and void.

26 (c) This section must be liberally construed to effectuate its purpose.
27
28

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1 Section 2 of each statute are identical other than specifying county, city, or town:

2 NRS 244.364(2). "Except as otherwise provided by specific statute, the Legislature
3 reserves for itself such rights and powers as are necessary to regulate the transfer,
4 sale, purchase, possession, carrying, ownership, transportation, storage, registration
5 and licensing of firearms, firearm accessories and ammunition in Nevada and to
6 define such terms. No county may infringe upon those rights and powers."

7 NRS 268.418(2). "Except as otherwise provided by specific statute, the Legislature
8 reserves for itself such rights and powers as are necessary to regulate the transfer,
9 sale, purchase, possession, carrying, ownership, transportation, storage, registration
10 and licensing of firearms, firearm accessories and ammunition in Nevada and to
11 define such terms. No city may infringe upon those rights and powers."

12 NRS 269.222(2). "Except as otherwise provided by specific statute, the Legislature
13 reserves for itself such rights and powers as are necessary to regulate the transfer,
14 sale, purchase, possession, carrying, ownership, transportation, storage, registration
15 and licensing of firearms, firearm accessories and ammunition in Nevada and to
16 define such terms. No town may infringe upon those rights and powers."

17 Plaintiff argues the above statutes, as amended by SB 175, either explicitly or
18 implicitly disempower the Library District from adopting any firearm regulations such as the
19 "Dangerous Items Policy." Thus, Plaintiff asserts, the Library's Dangerous Items Policy
20 must be declared null and void and Plaintiff's ban from the library must be overturned.
21 Plaintiff describes this as "preemption," and cites case law regarding federal preemption of
22 state laws. However, unlike the dual sovereignty that exists between the States and the
23 Federal Government, political subdivisions of the State such as counties, cities, towns, and
24 library districts are extensions of the State itself and created via the state constitution (see
25 Nev. Const. art VIII) and state statutes (see e.g. NRS Chapter 243). As a result, this Court
26 simply looks to the language of the relevant state statutes in determining their applicability.

27 In the context of federal preemption, "Where Congress has expressly provided for
28 pre-emption, resort to the implied pre-emption doctrines is unnecessary; instead the court
need only determine the scope of the pre-emption." *Davidson v. Velsicol Chem. Corp.*, 108

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1 Nev. 591, 594 (1992). Here, the SB 175 does contemplate express preemption of certain
2 local rules. Thus, even applying federal preemption principles, the Court need only examine
3 the scope of the express preemption in SB 175, based on rules of statutory interpretation.
4

5 When interpreting a statute, legislative intent "is the controlling factor." *State v.*
6 *Lucero*, 127 Nev. 92, 95 (2011). "The starting point for determining legislative intent is the
7 statute's plain meaning; when a statute is clear on its face, a court can not go beyond the
8 statute in determining legislative intent" *Id.* Additionally, "[t]he maxim 'expressio Unius Est
9 Exclusio Alterius', the expression of one thing is the exclusion of another, has been
10 repeatedly confirmed in this State." *E.g., Galloway v. Truesdell*, 83 Nev. 13, 26 (1967).
11

12 It is certainly true that each of the three statutes amended by sections 8-10 of SB 175
13 begins in section 1 with a broad statement of legislative "purpose" which does not limit
14 itself by the political subdivision. However, section 2, the actual legislative mandate,
15 specifies that "no county/city/town" may infringe upon the state legislature's rights and
16 powers to regulate firearms; library districts are not included. Additionally, the statutes
17 modified by SB 175 are in chapters 244, 268, and 269, entitled "*Counties: Government*,"
18 "*Powers and Duties Common to Cities and Towns*," and "*Unincorporated Towns*."
19

20 Plaintiff nevertheless argues that the sections apply to all political subdivisions
21 beneath the State level (including Library Districts) pursuant to the language in section 1.
22 This Court disagrees. In addition to amending sections 1 and 2 mentioned above, SB 175
23 also amended those statutes to define "political subdivision" as including "without
24 limitation, a state agency, county, city, town or school district." NRS 244.364(9)(e); NRS
25 268.418(9)(e); NRS 269.222(9)(e). Although not stated explicitly therein, a library district
26 is defined as a political subdivision in NRS 379.142, suggesting that a library district is
27 contemplated in subsection (9)(e) via its recognition that the list is not exhaustive.
28

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DISTRICT JUDGE

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1 Thus, SB 175 amended each of the three abovementioned statutes with a definition
2 of "political subdivision" that recognized that other political subdivisions exist on par with
3 counties, cities, and towns, such as school and library districts. In light of this recognition,
4 the legislature failed to indicate any intent to have the effects of sections 8-10 apply to any
5 other type of political subdivision, such as amending NRS chapter 379 ("Public Libraries")
6 or a chapter of more general applicability.

7
8 Therefore, **COURT FINDS** NRS 244.364, NRS 268.418, and NRS 269.222, by their
9 express terms, do not apply to a public library district.

10
11 Plaintiff also asserts that even if those three statutes only apply to the political
12 subdivisions that they name, the library district is still covered as an "instrumentality" of the
13 city and the county. Plaintiff relies on federal case law regarding Eleventh Amendment
14 sovereign immunity. In particular, Plaintiff cites *Johnson v. University of Nevada*, 596
15 F.Supp. 175, 177-78 (D. Nev. 1984), which suggests that relevant factors in determining
16 whether an entity is an "instrumentality" of the State for sovereign immunity purposes are
17 whether the constituent entity provides a government function, whether the constituent
18 entity is comprehensively controlled by another entity, and whether the constituent entity is
19 fiscally tied to another entity.

20
21 However, it also held that "[t]he most crucial question ... is whether the named
22 defendant has such independent status that a judgment against the defendant would not
23 impact the state treasury." *Id.* at 177. In *Johnson*, the court was tasked with deciding
24 whether the University of Nevada Reno or its Board of Regents was an instrumentality of
25 the State. The court noted that pursuant to the state constitution, funding for the University
26 came from the State's general fund. Therefore, damages against the University "would be
27 chargeable to the State and would therefore be an award against the State." *Id.*

28
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1 Plaintiff argues that the Library District satisfies these factors. First, Plaintiff points
2 out that the library does perform a public function. Second, Plaintiff argues that the District
3 is controlled by Clark County and the City of Las Vegas because it was created by the city
4 and county pursuant to NRS 379.0221 and those two entities together have sole control over
5 the members of the Library District's board of trustees. Finally, Plaintiff also asserts that the
6 Library District is fiscally tied to the city and county because they must jointly approve its
7 budget and any bond issuance, and only the county can levy taxes to fund the District.
8

9
10 Assuming *arguendo* that the instrumentality analysis under the Eleventh Amendment
11 applies in this case to place the same restrictions on a Library District as are placed on cities
12 and counties by SB 175, this Court is unpersuaded that the Library District qualifies as an
13 instrumentality. The primary question is the fiscal relationship of the Library District to the
14 city and the county; in particular, the concern is which entity's account would be charged if
15 a monetary judgment is obtained against the Library District. Here, the county may be the
16 entity to actually levy the tax, but instead of entering the general county fund, the money is
17 used for creating and maintaining the "fund for the consolidated library." NRS 379.0227(1).
18

19 "All claims for indebtedness incurred or created by the trustees of any consolidated,
20 county, district or town library must: ... (c) be paid out of the appropriate library fund."
21 NRS 379.030(1). This is quite unlike the University in *Johnson* that drew from the State's
22 general fund, which would thereby cause a judgment against the University to have the same
23 effect as a judgment against the State. As a result, regardless of which entity levies the tax or
24 approves the budget or bonds, the Library District is simply not fiscally tied to the city and
25 the county in the powerful way that the University in *Johnson* was fiscally tied to the State.
26

27 The same level of control does not exist either. In *Johnson*, the University was
28 governed by "fairly comprehensive programs of controls and mandates." This included

1 annual reports to the governor for all money received and disbursed, the need for direct
2 legislative appropriations of funds for support and maintenance, and approval from the state
3 board of examiners before payment of any kind of claims. *Johnson*, 596 F.Supp. at 178.

4
5 Here, however, although the city and county have a role in the management of the
6 District such as by appointing trustees, the Library District makes its own sets of bylaws and
7 regulations. NRS 379.025(1)(h); NRS 379.040. An example of such a regulation is the very
8 "Dangerous Items Policy" at issue herein. Additionally, the library district is controlled in
9 large part by *state* statutes, not local laws. Even the involvement of the city and county in
10 the District's affairs are controlled by state statutes such as NRS 379.0222, NRS 379.0225,
11 NRS 379.025, and NRS 379.030.

12
13 But even more problematically for Plaintiff, this Court is not persuaded that the
14 Eleventh Amendment instrumentality analysis is even relevant to the issues herein. First,
15 Plaintiff provides no legal authority for usage of this concept in analyzing the preemptive
16 effect of a state statute on seemingly conflicting local rules. Instead, the Plaintiff baldly
17 asserts that it would be "absurd" for restrictions placed on specifically identified parent
18 entities to not also apply to a "creature" of those entities.

19
20 This Court disagrees. It is not foreign to our system of government for one entity to
21 take part in establishing another entity which then possesses powers the former does not. For
22 example, inferior federal courts are established by Congress, U.S. Const. art. III § 1, yet
23 pursuant to the same constitutional provision and the core principal of separation of powers,
24 they possess judicial powers which Congress itself does not have. The fact that the city and
25 county have some influence in the management of the Library District makes no difference,
26 as being interrelated yet distinct is the basis of checks and balances, another core principal.

27
28 Finally, extending Plaintiff's logic, the city and county, as "creatures" of the state legislature

STEFANY A. MILEY
DISTRICT JUDGE

DEPARTMENT TWENTY THREE
LAS VEGAS NV 89101-2400

1 (see Nev. Const. art VIII), would have its same rulemaking powers. But by denying certain
2 powers to cities, counties, and towns which the State retains, SB 175 itself recognizes that
3 this is not the case, and accordingly that such a doctrine is simply inapplicable here.
4

5 Therefore, **COURT FINDS** the Eleventh Amendment instrumentality analysis is
6 irrelevant to the issues herein, and the Library District does not qualify anyway.

7 **COURT FURTHER FINDS** the three statutes amended by SB 175, NRS 244.364,
8 NRS 268.418, and NRS 269.222, do not preclude the Library District from implementing
9 and enforcing the Dangerous Items Policy.
10

11 *C. Dillon's Rule*

12 Dillon's Rule is a common-law doctrine, codified in only two legislative declaration
13 sections of the Nevada Revised Statutes, holding that a local government possesses and may
14 exercise only powers expressly granted to it by constitution or statute, powers necessarily or
15 fairly implied in or incident to the powers expressly granted, and powers indispensable to
16 accomplishing objectives and purposes. See NRS 244.137(3); NRS 268.001(3). When there
17 is any "fair or reasonable doubt" concerning whether a power exists, it is resolved against
18 the local government. See NRS 244.137(4); NRS 268.001(4).
19

20 Plaintiff cites NRS 202.265, NRS 392.466, NRS 407.0475, and NRS 503.150, as
21 examples of the state legislature specifically delegating the ability to regulate firearms to a
22 local governing body. Plaintiff argues that because there is no similar specific delegation to
23 the Library District, Dillon's Rule operates in this case to preclude the Library District's
24 ability to regulate the possession of firearms in public libraries, thereby rendering the
25 Dangerous Items Policy null and void. Plaintiff's argument is unpersuasive.
26

27 Although the legislative declarations contained in NRS 244.137 and NRS 268.001
28 indicate that the rule has been applied to certain local governments, no case law has been

STEPHANY A. MILEY
DISTRICT JUDGE

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LAS VEGAS, NV 89101-2406

1 provided and none can be found in which the Nevada Supreme Court applied Dillon's Rule
2 to Library Districts or any type of political subdivision other than counties, cities, and towns.
3 That absence is telling when considered alongside the fact that the legislative declarations
4 regarding Dillon's Rule exist in only two NRS chapters (which relate specifically to
5 counties, cities, and towns), and the broad legislative grant of regulatory power to Library
6 District trustees found in NRS 379.025(1)(h) and NRS 379.040.
7

8 Moreover, Plaintiff's application of Dillon's Rule would imply that a common-law
9 doctrine can operate to abrogate a statutory mandate, an absurd result. The regulatory power
10 granted in NRS 379.025(1)(h) and NRS 379.040 is broad. Therefore, extending Plaintiff's
11 logic, because the only powers under Dillon's Rule must be express and specific, Library
12 District trustees must have no power to make any regulations. This is clearly contrary to the
13 intent of the legislature in enacting the language "the trustees of any consolidated . . . library
14 . . . shall: (h) *Establish bylaws and regulations for the management of the library . . .*" and
15 "the library and reading room . . . must forever be and remain free and accessible to the
16 public, *subject to such reasonable regulations as the trustees of the library may adopt.*"
17 NRS 379.025(1)(h); NRS 379.040.
18

19 Therefore, COURT FINDS Dillon's Rule has no applicability, and does not preclude
20 the Library District from implementing and enforcing the "Dangerous Items Policy."
21

22 *D. Nevada and U.S. Constitution*
23

24 Finally, Plaintiff argues the Dangerous Items Policy violates Nevada's Constitutional
25 protection of the right to bear arms. The Nevada constitution provides "[e]very citizen has
26 the right to keep and bear arms for security and defense, for lawful hunting and recreational
27 use and for other lawful purposes." Nev. Const. art. 1 § 11(1). Because the Dangerous Items
28

STEFANY A. MILEY
DISTRICT JUDGE

DEPARTMENT TWENTY THREE
LAS VEGAS, NV 89101-8908

1 Policy inhibits the right of the people to keep and bear arms (by preventing people from
2 carrying a firearm into the library), Plaintiff argues, it violates the Nevada Constitution.

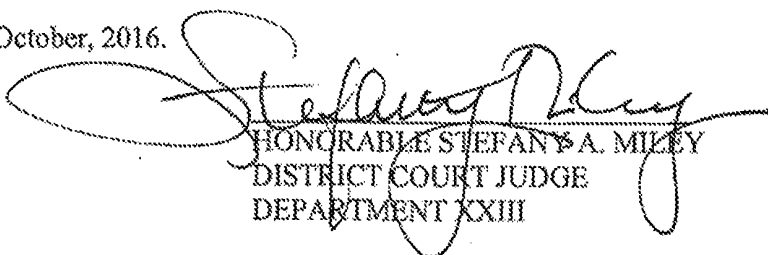
3
4 NRS 30.130 provides that "[w]hen declaratory relief is sought, all persons shall be
5 made parties who have or claim any interest which would be affected by the declaration, and
6 no declaration shall prejudice the rights of persons not parties to the proceeding. In any
7 proceeding which involves the validity of a municipal ordinance or franchise . . . if the
8 statute, ordinance or franchise is alleged to be unconstitutional, the Attorney General shall
9 also be served with a copy of the proceeding and be entitled to be heard." No proof is on file
10 that the Attorney General was served with the instant motion, and the Attorney General did
11 not appear at the hearing on this motion. Thus, this Court cannot issue a declaration which
12 prejudices the rights of the Attorney General, i.e., by declaring the Dangerous Items Policy
13 unconstitutional. In turn, whether or not Plaintiff's argument on this issue is correct, this
14 Court cannot grant Plaintiff's motion on that basis.

15
16
17 Therefore, without ruling upon the merits of Plaintiff's constitutional argument, the
18 Court denies Plaintiff's motion as to this issue as well.

19 IV. ORDER

20 For all of the foregoing reasons, COURT HEREBY ORDERS Plaintiff's Motion for
21 Partial Summary Judgment on Plaintiff's Declaratory Relief Claim and Motion for Summary
22 Judgment on Counterclaimant's Declaratory Relief Claim, filed July 5, 2016, DENIED.

23
24
25 Dated this 26th day of October, 2016.

26
27
28

HONORABLE STEFANY A. MILEY
DISTRICT COURT JUDGE
DEPARTMENT XXIII

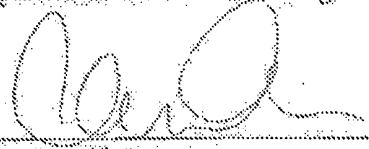
STEFANY A. MILEY
DISTRICT JUDGE

DEPARTMENT TWENTY THREE
LAS VEGAS NV 89101-2408

CERTIFICATE OF SERVICE

I hereby certify that on or about the date signed, a copy of this Decision and Order was electronically served and/or placed in the attorney's folders maintained by the Clerk of the Court and/or transmitted via facsimile and/or mailed, postage prepaid, by United States mail to the proper parties as follows: Lee I. Igloody, Esq. and Dennis L. Kennedy, Esq.

By: _____


Carmen Alper
Judicial Executive Assistant

STEPHEN A. HILLEY
DISTRICT JUDGE

DEPARTMENT TWENTY-THREE
LAS VEGAS NV 89101-0023


CLERK OF THE COURT

1 **NTSO**
2 JOHN R. BAILEY
3 Nevada Bar No. 0137
4 DENNIS L. KENNEDY
5 Nevada Bar No. 1462
6 JOSEPH A. LIEBMAN
7 Nevada Bar No. 10125
8 KELLY B. STOUT
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21 AStevens@BaileyKennedy.com
22 *Attorneys for Defendant*
23 Las Vegas-Clark County Library District

24 **DISTRICT COURT**

25 **CLARK COUNTY, NEVADA**

26 MICHELLE FLORES, an individual,
27 Plaintiff,

Case No. A-16-735496-C
Dept. No. XXIII

28 vs.

29 **LAS VEGAS-CLARK COUNTY LIBRARY**
30 **DISTRICT**, a political subdivision of the State of
31 Nevada; DOES I-X, inclusive, and ROES A-Z,
32 inclusive,

33 Defendants.

34 **AND RELATED CLAIMS.**

35 **NOTICE OF ENTRY OF STIPULATION AND ORDER**
36 **FOR FINAL JUDGMENT**

37 PLEASE TAKE NOTICE that a Stipulation and Order for Final Judgment was entered on the
38 8th day of February, 2017.

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A true and correct copy of the Stipulation and Order is attached.

DATED this 9th day of February, 2017.

BAILEY ♦ KENNEDY

By: /s/ Kelly B. Stout

JOHN R. BAILEY

DENNIS L. KENNEDY

JOSEPH A. LIEBMAN

KELLY B. STOUT

AMANDA L. STEVENS

Attorneys for Defendant

Las Vegas-Clark County Library District

CERTIFICATE OF SERVICE

I certify that I am an employee of BAILEY ♦ KENNEDY and that on the 9th day of February, 2017, service of the foregoing **NOTICE OF ENTRY OF STIPULATION AND ORDER FOR FINAL JUDGMENT** was made by mandatory electronic service through the Eighth Judicial District Court's electronic filing system and/or by depositing a true and correct copy in the U.S. Mail, first class postage prepaid, and addressed to the following at their last known address:

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Email: barrj@AshcraftBarr.com

ASHCRAFT & BARR LLP

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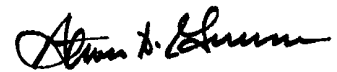
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Attorneys for Plaintiff
MICHELLE FLORES

/s/ Josephine Baltazar

Employee of BAILEY ♦ KENNEDY



CLERK OF THE COURT

1 **SOFJ**

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12 *Attorneys for Defendant*

Las Vegas-Clark County Library District

14 DISTRICT COURT

15 CLARK COUNTY, NEVADA

16 MICHELLE FLORES, an individual,

17 Plaintiff,

Case No. A-16-735496-C

Dept. No. XXIII

18 vs.

19 LAS VEGAS-CLARK COUNTY LIBRARY
DISTRICT, a political subdivision of the State of
20 Nevada; DOES I-X, inclusive, and ROES A-Z,
inclusive,

21 Defendants.

22
23 AND RELATED CLAIMS.

<input type="checkbox"/> Voluntary Dismissal	<input type="checkbox"/> Summary Judgment
<input type="checkbox"/> Involuntary Dismissal	<input type="checkbox"/> Stipulated Judgment
<input checked="" type="checkbox"/> Stipulated Dismissal	<input type="checkbox"/> Default Judgment
<input type="checkbox"/> Motion to Dismiss by Deft(s)	<input type="checkbox"/> Judgment of Arbitration

25 **STIPULATION AND ORDER FOR FINAL JUDGMENT**

26 On October 26, 2016, the Court entered a Decision and Order denying Plaintiff Michelle
27 Flores' ("Ms. Flores") Motion for Partial Summary Judgment on Plaintiff's Declaratory Relief
28 Claim and Motion for Summary Judgment on Counterclaimant's Declaratory Relief Claim ("Motion

1 for Partial Summary Judgment”). Although not a final decision on all claims, the Court’s findings in
2 the Decision and Order are effectively dispositive of all claims in this action. Accordingly, the
3 Parties¹ hereby stipulate to the following Findings of Fact, the dismissal of all claims not resolved by
4 the Decision and Order, and entry of Final Judgment in this action.

5
6 **I. FINDINGS OF FACT.**

7 1. On April 22, 2016, Ms. Flores initiated the instant action against the Library District
8 relating to Ms. Flores’ March 16, 2016 visit to the Library District’s Rainbow Branch,² during which
9 she was issued a Notice of Trespass, which suspended her Library District privileges and banned her
10 from visiting any Library District property for a period of one year.

11 2. Ms. Flores’s Complaint asserted a violation of Nevada Senate Bill 175,³ which was
12 codified as NRS 244.364, 268.418, and 269.222, and Article 1, Section 11(1) of the Nevada
13 Constitution.

14 3. Ms. Flores sought monetary damages; a declaration that “the District’s rules and
15 policies that prohibit the open possession of firearms in libraries are unconstitutional”; a declaration
16 “that the Trespass Notice is invalid”; and an injunction “to invalidate the Trespass Notice and to
17 permit [Ms. Flores] to return to the [Library District]. (Compl. ¶¶ 69, 70, 77.)

18 4. On April 29, 2016, Ms. Flores filed a Motion for Preliminary Injunction to restore her
19 Library District privileges.

20 5. On June 21, 2016, the Court held a hearing on Ms. Flores’ Motion for Preliminary
21 Injunction and denied her request for an injunction allowing her to return to Library District
22 properties.

23 6. In its written Order Denying Plaintiff’s Motion for Preliminary Injunction,⁴ which is
24 expressly incorporated herein by reference, the Court found as follows:

25 ¹ The “Parties” include Ms. Flores and Defendant Las Vegas-Clark County Library District (“Defendant” or
26 “Library District”).

27 ² The “Rainbow Branch” is located at 3150 North Buffalo Drive, Las Vegas, Nevada 89128.

28 ³ S.B. 175, 2015 Leg., 78th Sess. (Nev. 2015), *available at* http://www.leg.state.nv.us/Session/78th2015/Bills/SB/SB175_EN.pdf

⁴ Notc. of Entry of Order Denying Pl’s Mot. for Prelim. Inj., Aug. 9, 2016.

- a. “Ms. Flores has failed to demonstrate a likelihood of success on the merits because the evidence demonstrates that the trespass and suspension of Ms. Flores’ Library District privileges were likely the result of Ms. Flores’ disruptive conduct, which violated Rule 1 of the Rules of Conduct and were not due to her disagreement with or violation of the Library District’s Dangerous Items Policy.” (Order Denying Pl.’s Mot. for Prelim. Inj. ¶ 45.)
- b. “Ms. Flores has failed to establish that suspension of her library privileges will result in irreparable harm.” (*Id.* at ¶ 47.)
- c. “The hardship on the Library District if required to tolerate disorderly and disruptive behavior greatly outweighs any inconvenience to Ms. Flores in securing alternatives to services provided by the Library District.” (*Id.* at ¶ 50.)
- d. “The public interest weighs in favor of ensuring the safe and orderly operation of Library District facilities so that they remain free and accessible to the public” and “[t]he public interest also weighs in favor of applying the Rules of Conduct equally to all patrons.” (*Id.* at ¶¶ 52-53.)

7. On May 27, 2016, Defendant filed an Answer and asserted a Counterclaim for Declaratory Relief, which requested “a declaratory judgment stating whether NRS 244.364, 268.418, and NRS 269.222 (as amended in 2015) preempts the Library District from adopting, establishing, or otherwise creating any rule, regulation, or policy prohibiting the possession of a firearm, whether loaded or unloaded, or any ammunition or material for a firearm on the Library District’s property.”⁵

8. On July 5, 2016, Ms. Flores filed a Motion for Partial Summary Judgment, which sought summary judgment on the following claims:

- a. Ms. Flores’ request for a “declaratory judgment that the District’s rules and policies that prohibit the open possession of firearms in libraries are unconstitutional”; and

⁵ Def. Las Vegas-Clark Cnty. Library Dist.’s Answer to Pl. Michelle Flores’ Verified Compl. and Countercl., May 27, 2016.

b. The Library District's request for "a declaratory judgment stating whether NRS 244.364, 268.418, and NRS 269.222 (as amended in 2015) preempts the Library District from adopting, establishing, or otherwise creating any rule, regulation, or policy prohibiting the possession of a firearm, whether loaded or unloaded, or any ammunition or material for a firearm on the Library District's property."

9. On October 26, 2016, the Court issued a Decision and Order, which is expressly incorporated herein by reference, that denied Ms. Flores' Motion for Partial Summary Judgment on the Parties' respective Declaratory Relief claims, and contained the following findings:

- a. "NRS 244.364, NRS 268.418, and NRS 269.222, by their express terms, do not apply to a public library district." (Decision & Order 6:8-10.)
- b. "[T]he Eleventh Amendment instrumentality analysis is irrelevant to the issues herein, and the Library District does not qualify anyway." (*Id.* at 9:5-6.)
- c. "[T]he three statutes amended by SB 175, NRS 244.364, NRS 268.418, and NRS 269.222, do not preclude the Library District from implementing and enforcing the Dangerous Items Policy." (*Id.* at 9:7-10.)
- d. "Dillon's Rule has no applicability, and does not preclude the Library District from implementing and enforcing the 'Dangerous Items Policy.'" (*Id.* at 10:20-21.)
- e. "No proof is on file that the Attorney General was served with the instant motion, and the Attorney General did not appear at the hearing on this motion. Thus, this Court cannot issue a declaration which prejudices the rights of the Attorney General, i.e., by declaring the Dangerous Items Policy unconstitutional." (*Id.* at 11:9-15.)

II. DISMISSAL OF ALL REMAINING CLAIMS WITHOUT PREJUDICE.

10. Although the scope of the Decision and Order denying Ms. Flores' Motion for Partial Summary Judgment was limited to two causes of action for declaratory relief, the findings are effectively dispositive of all claims in this action.

11. The Court's finding that Ms. Flores failed to comply with NRS 30.130 and is not "entitled to a declaratory judgment that the District's rules and policies that prohibit the open possession of firearms in libraries are unconstitutional" effectively precludes any finding on her claim that the Library District's Dangerous Items Policy violates the Nevada Constitution.

12. The Court's finding that "NRS 244.364, NRS 268.418, and NRS 269.222, by their express terms, do not apply to a public library district" (Decision & Order 6:8-10) is dispositive of her claim for violation of SB 175.

13. The Court's finding that "the three statutes amended by SB 175, NRS 244.364, NRS 268.418, and NRS 269.222, do not preclude the Library District from implementing and enforcing the Dangerous Items Policy" (*id.* at 9:7-10) is dispositive of her claim for "a declaratory judgment that the Trespass Notice is invalid" and her claim for injunctive relief.

14. In light of the Court's Decision and Order, Plaintiff hereby agrees to dismiss all of the following claims without prejudice:⁶

- a. Plaintiff's First Claim for Relief for violation of SB175;
- b. Plaintiff's First Claim for Relief for violation of the Nevada Constitution;
- c. Plaintiff's Second Claim for Relief for a "declaratory judgment that the Trespass Notice is invalid"; and
- d. Plaintiff's Third Claim for Relief for Injunctive Relief.

III. STIPULATED ORDER AND FINAL JUDGMENT.

THE PARTIES HEREBY STIPULATE AND AGREE THAT judgment shall be entered as follows:

Judgment is entered against Plaintiff on her claim for a declaratory judgment "that the District's rules and policies that prohibit the open possession of firearms in libraries are unconstitutional."

Judgment is entered in favor of Defendant on Defendant's claim for declaratory relief, and a declaratory judgment is entered that NRS 244.364, 268.418, and NRS 269.222 (as amended in 2015)

⁶ Should the District Court's ruling on Plaintiff's Motion for Partial Summary Judgment be reversed or remanded on appeal, the Parties agree that Plaintiff may reinstate these claims.

do NOT preempt the Library District from adopting, establishing, or otherwise creating any rule, regulation, or policy prohibiting the possession of a firearm, whether loaded or unloaded, or any ammunition or material for a firearm on the Library District's property."

DATED this 12th day of January, 2017.

DATED this 10th day of January, 2017

By: [Signature]
JOHN B. BAILEY
DENNIS L. KENNEDY
JOSEPH A. LIEBMAN
KELLY B. STOUT
AMANDA L. STEVENS
BAILEY ♦ KENNEDY

By: [Signature]
JEFFREY F. BARR
ASHCRAFT & BARR LLP

AND

LEE I. IGLODY
IGLODY LAW, PLLC

Attorneys for Defendant
Las Vegas-Clark County Library District

Attorneys for Plaintiff
Michelle Flores

IT IS SO ORDERED.

[Signature]
HONORABLE STEFANY A. MILEY
DISTRICT COURT JUDGE
DEPARTMENT XXIII

Dated: 1-25-17

RESPECTFULLY SUBMITTED BY:

By: [Signature]
JOHN B. BAILEY
DENNIS L. KENNEDY
JOSEPH A. LIEBMAN
KELLY B. STOUT
AMANDA L. STEVENS
BAILEY ♦ KENNEDY

Attorneys for Defendant
Las Vegas-Clark County Library District


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10 Attorneys for Plaintiff and Counterdefendant
Michelle Flores

11
12 **EIGHTH JUDICIAL DISTRICT COURT**

13 **CLARK COUNTY, NEVADA**

14 MICHELLE FLORES, an individual
Plaintiff,

15 v.

16 LAS VEGAS-CLARK COUNTY LIBRARY
17 DISTRICT, a political subdivision of the State
of Nevada; DOES I-X, inclusive; and ROES
18 1-X, inclusive,
Defendants.

Case No.: A-16-735496-C

Dept. No.: XXIII

NOTICE OF APPEAL

19
20 **AND RELATED COUNTERCLAIMS.**

21 NOTICE is hereby given that Plaintiff Michelle Flores appeals to the Supreme Court of
22 Nevada from the STIPULATION AND ORDER FOR FINAL JUDGMENT entered in this
23 action on the 9th day of February 2017.
24
25
26
27

1 DATED this 17th day of February, 2017.

2 ASHCRAFT & BARR | LLP

3 /s/ Jeffrey F. Barr
4 JEFFREY F. BARR, ESQ.
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10 Facsimile: (702) 631.7556
11 Attorneys for Michelle Flores

9 **CERTIFICATE OF SERVICE**

10 I certify that on this 17th day of February, 2017, I electronically filed and served the
11 foregoing NOTICE OF APPEAL by using the Eighth Judicial District Court E-File & Serve
12 System, and if necessary, by first class mail, postage pre-paid to the following:

13 BAILEY KENNEDY
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18 AStevens@BaileyKennedy.com

DKennedy@BaileyKennedy.com
KStout@BaileyKennedy.com

18 /s/ Justine Levy
19 An employee of ASHCRAFT & BARR | LLP