

Case No. 72462

**IN THE
SUPREME COURT OF NEVADA**

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Elizabeth A. Brown
Clerk of Supreme Court

**MICHELLE FLORES, an individual,
Appellant,**

vs.

**LAS VEGAS-CLARK COUNTY LIBRARY DISTRICT, a Political
Subdivision of the State of Nevada,
Respondent.**

Appeal from the Eighth Judicial District Court, Clark County, Nevada
Judge Stephanie Miley, Case No. A-16-735496-C

RESPONDENT'S ANSWERING BRIEF

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1 **I. JURISDICTIONAL STATEMENT**

2 Omitted pursuant to NRAP 28(b)(1).

3 **II. ROUTING STATEMENT**

4 The Las Vegas-Clark County Library District (“Library District”)
5 agrees with Ms. Flores that this matter is presumptively retained by the
6 Supreme Court because it raises “as a principle issue a question of statewide
7 public importance.” NRAP 17(a)(14).

8 However, the matter does ***not*** raise a constitutional question because
9 that matter was not properly raised below, and was not decided in the District
10 Court. Although alleged below, the District Court did not rule on the
11 constitutionality of the Library District’s Dangerous Items Policy because Ms.
12 Flores did not serve the Nevada Attorney General, as required by NRS
13 30.130. (JA304:23-305:18.)

14 **III. STATEMENT OF THE ISSUES PRESENTED FOR REVIEW**

15 Do Nevada Revised Statutes 244.364, 268.418, and 269.222 (as
16 amended in 2015 by Senate Bill 175¹ (“SB175”)) preclude a consolidated
17

18 ¹ 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 Jan. 11, 2018).

1 library district from adopting, establishing, or otherwise creating any rule,
2 regulation, or policy prohibiting the possession of a firearm, whether loaded
3 or unloaded, or any ammunition or material for a firearm on the Library
4 District's property?

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1 **IV. STATEMENT OF THE CASE**

2 On March 16, 2016, Plaintiff/Appellant Michelle Flores (“Ms. Flores”)
3 entered the Library District’s Rainbow Branch with her three young children
4 and with a .38 caliber revolver, openly holstered on her hip. (JA5 at ¶ 31;
5 JA99.) After using the Library District facilities for approximately one hour,
6 Ms. Flores and her three children checked out some items and proceeded
7 toward the exit. (JA5 at ¶¶ 32, 33.) As she approached the exit, Ms. Flores
8 was told by a security guard that the Library District’s Dangerous Items
9 Policy prohibits firearms and that she could not bring a handgun into the
10 building on future visits. (JA99.)

11 Although Ms. Flores was leaving when she was approached by the
12 security guard, she then refused to depart from the premises. (JA93.) Instead,
13 she and her three children sat on the floor in the entryway and refused to
14 leave. (JA93.) After persuasion failed, until the Library District was forced to
15 call the police, who cited Ms. Flores and escorted her off the property.
16 (JA94.) As a result of her disruptive behavior, Ms. Flores was issued a Notice
17 of Trespass and her library privileges were suspended for one year. (JA94.)

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1 On April 22, 2016, Ms. Flores filed a Complaint alleging claims for
2 “Violation of SB 175 and Nevada Constitution.” (JA6:25.) Ms. Flores sought
3 a declaration “that the District’s rules and policies that prohibit the open
4 possession of firearms in libraries are unconstitutional,” a declaration “that the
5 Trespass Notice is invalid,” injunctive relief “to invalidate the Trespass Notice
6 and to permit [Ms. Flores] to return to the District’s libraries,” and damages.
7 (JA8 at ¶¶ 69-70; JA9 at ¶ 77; JA9:17-JA10:1.) The Library District filed an
8 Answer and Counterclaim on May 27, 2016. (JA44-JA61.) The Library
9 District counterclaimed for a declaratory judgment “stating whether NRS
10 244.364, [NRS] 268.418, and NRS 269.222 (as amended in 2015) preempts
11 the Library District from adopting, establishing, or otherwise creating any
12 rule, regulation, or policy prohibiting the possession of a firearm, whether
13 loaded or unloaded, or any ammunition or material for a firearm on the
14 Library District’s property.” (JA60 ¶ 38.)

15 Immediately after filing her Complaint, Ms. Flores sought a preliminary
16 injunction to lift the one-year suspension of her library privileges. (JA17-
17 JA43.) The Court refused to grant the preliminary injunction because it found
18 that Ms. Flores was unlikely to prevail on the merits, that she had failed to

1 establish that she would suffer irreparable harm in the absence of an
2 injunction, that the hardship on the Library District outweighed any
3 inconvenience to Ms. Flores, and that the public interest weighed in favor of
4 the denying the injunction. (JA262:15-JA263:14.)

5 Furthermore, the Court found that Ms. Flores' library privileges were
6 not suspended because she violated its Dangerous Items Policy. (JA262 at ¶
7 35.) Rather, the Court found that there was "substantial evidence" that Ms.
8 Flores' library privileges were suspended due to her disruptive conduct
9 (hindering other patrons' use of the library) that violated the Rules of Conduct.
10 (JA262 n.1.)

11 On July 5, 2016, Ms. Flores filed a Motion for Partial Summary
12 Judgment on Plaintiff's Declaratory Relief Claim and Motion for Summary
13 Judgment on Counterclaimant's Declaratory Relief Claim ("Motion for
14 Summary Judgment"). (JA159-JA230.)

15 On October 26, 2016, the District Court entered a Decision and Order
16 denying Ms. Flores' Motion for Summary Judgment. (JA292-JA306.) It held
17 that the statutes amended by 2015 Senate Bill 175 (NRS 244.364, 268.418,
18 and NRS 269.222) did not apply to the Library District and, therefore, did not

1 preclude the Library District from implementing and enforcing its Dangerous
2 Items Policy. (JA300:8-10; JA303:7-10.) Additionally, the Court did not rule
3 on the constitutionality of the Library District’s Dangerous Items Policy
4 because Ms. Flores failed to comply with NRS 30.130 and serve the Nevada
5 Attorney General. (JA304:23-305:18.)

6 Although the Decision and Order was not a final decision within the
7 meaning of NRAP 3A, the District Court’s findings were effectively
8 dispositive of all claims. Accordingly, the Parties stipulated to dismissal of all
9 claims not resolved by the Decision and Order and allow entry of a Final
10 Judgment in this action. (JA307-JA315.)

11 This appeal followed.

12 **V. STATEMENT OF FACTS**

13 **A. The Underlying Dispute**

14 On March 16, 2016, Ms. Flores violated the Dangerous Items Policy by
15 openly carrying a holstered .38 caliber revolver into the Library District’s
16 Rainbow Branch.² (JA5 at ¶ 31; JA99.) After using the Rainbow Branch

17 ² The Las Vegas-Clark County Library District consists of fourteen urban
18 branches and eleven outlying branches, one of which is located at 3150 North
Buffalo Drive, Las Vegas, Nevada 89128 (the “Rainbow Branch”). (JA90 at ¶
9.)

1 facilities for approximately one hour, Ms. Flores and her children checked out
2 some items and proceeded toward the exit. (JA5 at ¶¶ 32, 33.) As they passed
3 through the main doors, Ms. Flores was stopped by a Library District security
4 guard who explained the Dangerous Items Policy, and told her she could not
5 bring a handgun into the building on future visits. (JA99.) When Ms. Flores
6 questioned the Policy, a librarian provided Ms. Flores with a more detailed
7 explanation of the Library District’s policy. (JA99.)

8 Although Ms. Flores and her children had already completed their
9 library business and were leaving the building, she responded to this
10 information by sitting on the floor in the middle of the library entrance with
11 her three children. (JA93.) Despite numerous requests to leave, Ms. Flores
12 refused. (JA93.) Eventually, the Library District was forced to call the
13 police, who cited Ms. Flores for trespassing and escorted her off the property.
14 (JA93.) Due to Ms. Flores’ disruptive behavior, the Library District
15 suspended her Library District privileges for a year. (JA94.)

16 **B. The Library District’s Dangerous Items Policy**

17 In accordance with its statutory obligations, values, and operating
18 principles, the Library District adopted the “Dangerous Items Policy,” which

1 prohibits the possession of weapons and other dangerous items on Library
2 District premises. (JA103.) It states:

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

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

18 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.

1 (Id.)

2 **C. The Claims for Declaratory Relief**

3 On April 22, 2016, Ms. Flores filed a Complaint requesting a
4 declaratory judgment that “the [Library] District’s rules and policies that
5 prohibit the open possession of firearms in libraries are unconstitutional.”

6 (JA8 ¶ 69.)

7 On May 27, 2016, the Library District filed its Answer and asserted a
8 counterclaim for declaratory relief and requested a:

9 [D]eclaratory judgment stating whether NRS
244.364, [NRS] 268.418, and NRS 269.222 (as
10 amended in 2015) preempts the Library District from
adopting, establishing, or otherwise creating any rule,
11 regulation, or policy prohibiting the possession of a
firearm, whether loaded or unloaded, or any
12 ammunition or material for a firearm on the Library
District’s property.

13 (JA60 at ¶ 38.)

14 **D. Senate Bill 175 (2015)**

15 During the 2015 Legislative Session, the Nevada Legislature passed SB
16 175, which amended many statutory provisions regarding firearms.³ (JA206-

17 ³ In addition to the sections at issue, SB 175 included sections pertaining
18 to justifiable homicide, restrictions on firearms ownership by perpetrators of
domestic violence, and presumptions regarding use of deadly force in civil
litigation.

223.) It became effective upon passage and approval, which occurred on June 2, 2015. (JA223.) Sections 8, 9, and 10 of SB 175 relate to NRS 244.364, 268.418, and 269.222. (JA212-JA223.) Each of these statutes relates to the authority of a specific type of political subdivision (counties, cities, and towns) to regulate firearms, firearm accessories, or ammunition.

The relevant sections of the three statutes are largely identical, differing primarily with respect to the language defining the particular type of governmental entity⁴ to which each applies. SB 175 added a new Subsection 1 to each of these statutes, which state:

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

⁴ “‘Governmental entity’ means (1) [a]n elected or appointed officer of this State or of a political subdivision of 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

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.

NRS 244.364(1); 268.418(1); 269.222(1).

SB 175 also amended the existing language of the former Subsection 1 (Subsection 2 as amended) 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 [;] and [~~no~~] to define such terms. . ..⁵

(JA213, JA216; JA220.) In each statute, the last sentence of Subsection 2 (as amended) specifies the particular governmental entity that is subject to the prohibition. NRS 244.364(2); 268.418(2); 269.222(2).

⁵ The underlined, italicized language was added. The bracketed language was deleted.

1 NRS 244.364(2): Except as otherwise provided by
2 specific statute, the Legislature reserves for itself such
3 rights and powers as are necessary to regulate the
4 transfer, sale, purchase, possession, carrying,
5 ownership, transportation, storage, registration and
6 licensing of firearms, firearm accessories and
7 ammunition in Nevada and to define such terms. No
8 county may infringe upon those rights and powers
9 (emphasis added).

6 NRS 268.418(2): Except as otherwise provided by
7 specific statute, the Legislature reserves for itself such
8 rights and powers as are necessary to regulate the
9 transfer, sale, purchase, possession, carrying,
10 ownership, transportation, storage, registration and
11 licensing of firearms, firearm accessories and
12 ammunition in Nevada and to define such terms. No
13 city may infringe upon those rights and powers
14 (emphasis added).

11 NRS 269.222(2): Except as otherwise provided by
12 specific statute, the Legislature reserves for itself such
13 rights and powers as are necessary to regulate the
14 transfer, sale, purchase, possession, carrying,
15 ownership, transportation, storage, registration and
16 licensing of firearms, firearm accessories and
17 ammunition in Nevada and to define such terms. No
18 town may infringe upon those rights and powers
(emphasis added.)

16 Additionally, each of the statutes was also amended to: (1) require the
17 repeal of any existing ordinance or regulation, which is inconsistent with the
18 statute or “which is designed to restrict or prohibit the sale, purchase, transfer,

1 manufacture or display of firearms, firearm accessories or ammunition that is
2 otherwise lawful under the laws of this State”; (2) deem any inconsistent
3 ordinance or regulation null and void; (3) expressly prohibit the governing
4 body from enacting inconsistent ordinances or regulations; (4) provide a
5 judicial remedy for any “person who is adversely affected by the enforcement
6 of an [inconsistent] ordinance or regulation”; and (4) expressly identify some
7 specific restrictions and activities that fall outside the scope of the statute.
8 NRS 244.364(3), (4), (8); 268.418(3), (4), (8); 269.222 (3), (4), (8).

9 Finally, each of the three sections adds a definition of “political
10 subdivision” which “includes, without limitation, a state agency, county, city,
11 town or school district.” NRS 244.364(9)(e); 268.418(9)(e); 269.222(9)(e).

12 VI. SUMMARY OF THE ARGUMENT

13 It is evident from the plain language of NRS 244.364, 268.418, and
14 269.222 that the Legislature intended their preemptive effect be limited to the
15 three specific types of political subdivisions identified in each of the three
16 statutes: counties, cities, and towns. Accordingly, Ms. Flores’ attempt to use
17 the legislative statement of intent and purpose in Section 1 of each statute fails

18 ///

1 because an introductory legislative statement does alter the plain,
2 unambiguous terms of a statute’s operative provisions.

3 Likewise, Ms. Flores’ argument that Dillon’s Rule prohibits the
4 Dangerous Items Policy also fails. Under Dillon’s rule, local governments
5 may exercise “[t]hose powers granted in express terms by the Nevada
6 Constitution or statute; . . . [t]hose powers *necessarily or fairly implied* in or
7 incident to the powers expressly granted; and . . . [t]hose powers *essential to*
8 *the accomplishment of the declared objects and purposes* of the [entity] and
9 not merely convenient but indispensable.” NRS 244.137(3), 268.001(3).

10 Nevada law contains no legal authority to support the proposition that
11 “Dillon’s Rule” applies to a Library District. However, even if applicable to
12 special districts, Dillon’s rule does not prevent the Library District from
13 adopting and enforcing its Dangerous Items Policy. The legislature granted
14 the Library District’s governing body broad authority to “[e]stablish bylaws
15 and regulations for the management of the library and their own management”
16 and “[d]o all acts necessary for the orderly and efficient management and
17 control of the library.” NRS 379.025(1)(h), (2)(d). Thus, the Library District
18 is authorized to regulate the possession of firearms on its property because

1 that regulation is necessary to the “orderly and efficient management and
2 control of the library.” NRS 379.025(2)(d).

3 Consequently, the District Court’s Decision and Order must be
4 affirmed.

5 **VII. ARGUMENT**

6 **A. Standard of Review**

7 In this case, the Parties agree that this appeal involves the pure legal
8 question of statutory interpretation, which is reviewed de novo. *Pressler v.*
9 *City of Reno*, 118 Nev. 506, 509, 50 P.3d 1096, 1098 (2002) (“[a]ny questions
10 of law are also reviewed de novo.”); *Davis v. Beling*, 128 Nev. 301, 278 P.3d
11 501(2012) (“Questions of statutory construction, including the meaning and
12 scope of a statute, are questions of law, which this court reviews de novo.”)
13 (quoting *City of Reno v. Reno Gazette–Journal*, 119 Nev. 55, 58, 63 P.3d
14 1147, 1148 (2003)).

15 16 **B. The Dangerous Items Policy is Not Preempted by NRS 244.364, 268.418, and 269.222**

17 Ms. Flores argues that the plain language of NRS 244.364, 268.418,
18 and 269.222 expressly preempts the Library District from adopting any rule

1 relating to the possession of firearms on its property, when, in fact, the plain
2 language makes it clear that the legislature’s intent was to limit the preemptive
3 effect to three (and only three) specific types of political subdivisions—
4 counties, cities, and towns.

5
6 **1. The Plain Language of NRS 244.364, 268.418, and 269.222**
7 **Limits Their Application to Cities, Counties, and Towns**

8 “If the Legislature’s intention is apparent from the face of the statute,
9 there is no room for construction, and this court will give the statute its plain
10 meaning.” *Clark Cnty. v. S. Nev. Health Dist.*, 128 Nev. 651, 656, 289 P.3d
11 212, 215 (2012) (citing *Madera v. SIIS*, 114 Nev. 253, 257, 956 P.2d 117, 120
12 (1998)). *See also Justin v. Second Jud. Dist. Ct. ex rel. Cnty. of Washoe*, 132
13 Nev. Adv. Op. 47, *3, 373 P.3d 869, 872 (2016) (“When the plain language of
14 a statute establishes the Legislature’s intent, [the Court] ‘will give effect to
15 such intention.’”) (quoting *We the People Nev. v. Miller*, 124 Nev. 874, 881,
16 192 P.3d 1166, 1170–71 (2008).

17 “If possible, legislative intent should be determined by looking at the
18 act itself.” *List v. Whisler*, 99 Nev. 133, 138–39, 660 P.2d 104, 107 (1983).

18 ///

1 Therefore, this Court first determines if there is any ambiguity.⁶ *State v.*
2 *Quinn*, 117 Nev. 709, 713, 30 P.3d 1117, 1120 (2001). If there is no
3 ambiguity, the Court will proceed to interpret the statute based only on the
4 plain language. *See Williams v. United Parcel Servs.*, 129 Nev. Adv. Op. 41,
5 302 P.3d 1144, 1147 (2013) (“Our duty is to interpret the statute’s language;
6 this duty does not include expanding upon or modifying the statutory
7 language because such acts are the Legislature’s function.”); *In re Estate of*
8 *Melton*, 128 Nev. 34, 43, 272 P.3d 668, 674 (2012) (the court “must give [a
9 statute’s] terms their plain meaning, considering its provisions as a whole so
10 as to read them in a way that would not render words or phrases superfluous
11 or make a provision nugatory.” (quoting *S. Nev. Homebuilders v. Clark Cnty.*,
12 121 Nev. 446, 449, 117 P.3d 171, 173 (2005)).

13
14 **a. A Statute’s Meaning Is Limited By Its Defined
Terms**

15 “A statute’s express definition of a term controls the construction of
16 that term no matter where the term appears in the statute.” *Nev. Pub. Emps.*

17 ⁶ “[I]f the statutory language is capable of more than one meaning, it is
18 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 *Ret. Bd. v. Smith*, 129 Nev. Adv. Op. 65, 310 P.3d 560, 566 (2013) (citing
2 *Williams v. Clark Cnty. Dist. Atty*, 118 Nev. 473, 485, 50 P.3d 536, 544
3 (2002)). *See also Dep't of Bus. & Indus. v. Check City*, 130 Nev. Adv. Op. 90,
4 337 P.3d 755, 758 (2014) (“the statutory definition must govern”).

5 The Library District is a political subdivision. NRS 379.142.⁷ Each of
6 the three statutes at issue defines a “political subdivision” to “include, without
7 limitation, a state agency, county, city, town or school district.” NRS
8 244.364(9)(e); 268.418(9)(e); 269.222(9)(e). The Library District, a city, a
9 town, and a county, are all separate and distinct types of political subdivisions,
10 which are created by statute. Had the Legislature meant for the prohibitions in
11 NRS 244.364, NRS 268.418, and NRS 269.222 to apply more broadly, it
12 could have (and would have) chosen different language. The Legislature
13 could have stated that “no **political subdivision** may infringe upon those rights
14 and powers” or “no **governmental entity** may infringe upon those rights and
15 powers” or “no **local government**⁸ may infringe upon those rights and

16 ⁷ JA3 at ¶ 12 (“The District is a political subdivision of the State of
17 Nevada.”).

18 ⁸ “‘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,

1 powers” or “no *public body*⁹ may infringe upon those rights and powers.” It
2 did not say any of those things; instead, it said city, county, or town.

3 “Nevada follows the maxim ‘expressio unius est exclusio alterius,’ the
4 expression of one thing is the exclusion of another.” *State v. Javier C.*, 128
5 Nev. 536, 541, 289 P.3d 1194, 1197 (2012) (citing *Cramer v. State*, 126 Nev.
6 388, 394, 240 P.3d 8, 12 (2010)). Therefore, the use of a defined term
7 excludes anything beyond the scope of the definition. Consequently, each of
8 the three statutes must be interpreted to apply only to the specific type of
9 political subdivision specified within the statute.

10 ///

11 ///

12 ///

13
14 towns, boards, school districts and other districts organized pursuant to chapters
15 244A, 309, 318 and 379 of NRS, NRS 450.550 to 450.750, inclusive, and
16 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).

17 ⁹ “‘Public body’ means the State of Nevada, or any agency,
18 instrumentality, or corporation thereof, or any municipality, school district,
other type district, or any other subdivision of the State, excluding the Federal
Government.” NRS 271.185.

**b. NRS 244.364, 268.418, and 269.222 Must Be
Interpreted in Harmony with the Larger Statutory
Scheme**

This Court’s inquiry into the plain meaning requires that it examine the language of the individual statutes within the context of their chapter, title, and the NRS as a whole. *Karcher Firestopping v. Meadow Valley Contractors, Inc.*, 125 Nev. 111, 113, 204 P.3d 1262, 1263 (2009) (“Plain meaning may be ascertained by examining the context and language of the statute as a whole.”). Therefore, “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)).

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

9 Like school districts, water districts, and other special districts, the
10 Library District is a “special district,”¹⁰ which is formed by statute. Created
11 by Chapter 379 of the Nevada Revised Statutes, the Library District is part of
12 a special district—a form of “local government” created by the Legislature.
13 NRS 354.474(1)(a). Library districts are separate and distinct entities from
14 the county, town, and/or city that they serve. In fact, counties, cities, and
15

16 ¹⁰ ““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:

- 17 1. A county;
18 2. A city;
3. A town; or
4. An enterprise district.”

NRS 360.650.

1 towns are specifically excluded from the definition of special districts. NRS
2 360.650.

3 “When the legislature enacts a statute, this court presumes that it does
4 so ‘with full knowledge of existing statutes relating to the same subject.’”
5 *Nev. Power Co. v. Haggerty*, 115 Nev. 353, 364, 989 P.2d 870, 877 (1999).

6 Therefore, the Legislature’s decision to amend the existing statutes—and only
7 the existing statutes—demonstrates its intent to limit those amendments to
8 counties, cities, and towns. Had the Legislature intended to preempt
9 rulemaking by all political subdivisions, it could have done so by inserting the
10 language into a chapter of general application. For example, the Legislature
11 could have rescinded NRS 244.364, 268.418, and 269.222 and added a single
12 statute to Chapter 202, which already contains the provisions governing the
13 concealed carrying of firearms, or Chapter 237, which includes miscellaneous
14 provisions applicable to governmental entities.

15 When considering the statutory scheme as a whole, the chapter in which
16 the statute is located is relevant to its interpretation. *MGM Mirage v. Nev. Ins.*
17 *Guar. Ass’n*, 125 Nev. 223, 231, 209 P.3d 766, 771 (2009) (“The only
18 definition of ‘insurer’ that includes self-insured employers is found in

1 Nevada’s Workers’ Compensation Act under NRS 616A.270. Nevada’s
2 workers’ compensation laws are located in a separate title, not the insurance
3 title. . . . Thus, we conclude that the Legislature’s substantial use of ‘insurer’
4 to describe persons or entities in the business of insurance militates in favor of
5 concluding that the NIGA Act’s reference to ‘insurer’ plainly addresses an
6 insurance company.’”). *See also Studer v. Studer*, 320 Conn. 483, 493-94, 131
7 A.3d 240, 248 (2016) (“the title of a statute or regulation and its placement
8 within a group of statutes or regulations may provide some evidence of its
9 meaning”).

10 Although the preliminary language in the new Section 1 indicates that
11 the Legislature intended the amendment to be construed broadly, it is not
12 contained within a chapter of general application. Rather, it is included in
13 three separate chapters, each of which applies only to one type of political
14 subdivision. This placement shows that the amendments were meant to apply
15 only to the three specific chapters in which the revised statutes are located.
16 Significantly, the Legislature did **not** include the language in any of the
17 chapters relating to other types of political subdivisions. Most importantly,

18

1 the language was not added to Chapter 379, which governs the Library
2 District.

3 **c. The Statement of Legislative Purpose in Section 1**
4 **of NRS 244.364, 268.418, and 269.222 Does Not**
5 **Extend Their Application Beyond Counties, Cities,**
6 **and Towns**

7 Ms. Flores argues that the statement of legislative purpose contained in
8 Section 1 of NRS 244.364, 268.418, and 269.222 must be read to prevent the
9 Library District from establishing rules related to the possession of firearms.

10 (Opening Br. 5:10-8:4, 9:3-10:2.) Essentially, Ms. Flores argues that the

11 Legislature’s purpose of establishing “uniform” regulation of firearms

12 “throughout this State,” its declaration that the regulation of firearms is

13 “within the exclusive domain of the legislature,” and its instruction that the

14 relevant statutes be “liberally construed” requires the Court to ignore the plain

15 language of the statute’s operative clauses. (*Id.*) Ms. Flores is wrong. First,

16 a legislative statement does not alter a statute’s plain and unambiguous

17 language. Second, the statements of purpose are not necessarily inconsistent

18 with an intent to limit the application of NRS 244.364, 268.418, and 269.222

to counties, cities, and towns.

///

1 Although a statement of purpose might be used to “resolve an
2 ambiguity in the operative clause,” it “does not limit or expand the scope of
3 the operative clause.” *Dist. of Columbia v. Heller*, 554 U.S. 570, 577–78
4 (2008). *See also* *Lowe v. Rowe*, 294 P.3d 6, 10 (Wash. App. Ct. 2012)
5 (“intent statements do not control over the express language of an otherwise
6 unambiguous statute”). Moreover, “where an unambiguous operative
7 statutory section conflicts with the purpose or policy section of a statute, the
8 operative section controls.” *State v. Rios*, 237 P.3d 1052, 1061 (Ariz. Ct.
9 App. 2010) (quoting *Cronin v. Sheldon*, 991 P.2d 231, 238 (Ariz. 1999)).
10 Thus, “[t]he asserted purpose for enacting the legislation cannot modify its
11 plain meaning.” *Farmers Nat. Bank v. Green River Dairy, LLC*, 318 P.3d
12 622, 625 (Idaho 2014). Ms. Flores does not contend that the statutes are
13 ambiguous; therefore, the Court must look to the substantive portion of the
14 statute to determine its effect. *Naifeh v. Okla. Tax Comm’n*, 400 P.3d 759,
15 768 (Okla. 2017) (“In evaluating a measure's purpose, we are careful not to
16 elevate form over function. Thus, we look to “what the legislation actually
17 accomplishes . . . and not [to] what a legislature states it is accomplishing.”).

1 Furthermore, the language Ms. Flores relies on is not contrary to an
2 intent that the statutes apply only to counties, cities, and towns. First, the
3 legislature itself has largely prohibited the possession of a firearm “while on
4 the property of the Nevada System of Higher Education, a private or public
5 school or child care facility, or while in a vehicle of a private or public school
6 or child care facility.” NRS 202.265. Not only does NRS 202.265 prevent
7 statewide uniformity by creating a rule unique to certain types of property, the
8 statute also allows the person in charge of the property to grant permission for
9 a person to carry a firearm. NRS 202.265(3)(a)(3). The ability of each school
10 or child care center to grant individualized exemptions from the statutory
11 prohibition is plainly in derogation of an intent to make firearms policies
12 “uniform throughout this state.”

13 Assuming that Ms. Flores’ interpretation is correct, the stated purpose
14 of uniformity would repeal NRS 202.265 by implication. However, “the
15 presumption is always against an intention to repeal an earlier statute, unless
16 there is such inconsistency or repugnancy between the statutes as to preclude
17 the presumption, or the later statute revises the whole subject-matter of the
18 former.” *Ronnow v. City of Las Vegas*, 57 Nev. 332, 65 P.2d 133, 145 (1937).

1 Therefore, the Court must, if possible, harmonize the interpretation so as to
2 retain the effect of existing statutes. Therefore, NRS 244.364, 268.418, and
3 269.222 are properly read to apply only to counties, cities, and towns, as such
4 an interpretation prevents a conflict with other statutes relating to firearms.

5 Finally, even if NRS 244.364, 268.418, and 269.222 render the
6 regulation of firearms the “exclusive domain” of the Legislature, the authority
7 within that “exclusive domain” may be extended by an act of the legislature.

8 As discussed in more detail below, the Legislature has granted the Library
9 District the broad authority to “[d]o all acts necessary for the orderly and
10 efficient management and control of the library.” NRS 379.025(1)(h), (2)(d).

11 Accordingly, the Library District’s authority to regulate firearms is not
12 inconsistent with Section 1 of NRS 244.364, 268.418, and 269.222.

13
14 **d. NRS 244.364, 268.418, and 269.222 Do Not Render
the Dangerous Items Policy Null and Void**

15 Finally, Ms. Flores argues that subsection 1(b) of NRS 244.364,
16 268.418, and 269.222 render the Library District’s Dangerous Items Policy
17 null and void. (Opening Br. 8:5-9:2.) However, as discussed above, the
18 language of the individual statutes must be interpreted within the context of

1 their chapter, title, and the NRS as a whole. *Karcher Firestopping v. Meadow*
2 *Valley Contractors, Inc.*, 125 Nev. 111, 113, 204 P.3d 1262, 1263 (2009).

3 Each of these statutes is located within a chapter that relates to one specific
4 type of entity—a county, city, or town. Thus, each section operates to nullify
5 only a “law, regulation, rule or ordinance” promulgated by the specific type of
6 entity regulated by the Chapter.

7
8 **2. The Use of Extrinsic Evidence (Legislative History) Is**
9 **Improper in the Absence of Ambiguity**

10 “The starting point for determining legislative intent is the statute’s
11 plain meaning; when a statute is clear on its face, a court cannot go beyond the
12 statute in determining legislative intent.” *Barber v. State*, 131 Nev. Adv. Op.
13 103, 363 P.3d 459, 462 (2015) (quoting *State v. Lucero*, 127 Nev. 92, 95, 249
14 P.3d 1226, 1228 (2011)). *See also State v. Harris*, 131 Nev. Adv. Op. 56, 355
15 P.3d 791, 792 (2015) (“[W]hen the language of a statute is plain, its intention
16 must be deduced from such language, and the court has no right to go beyond
17 it.” (quoting *State v. Colosimo*, 122 Nev. 950, 960, 142 P.3d 352, 359
18 (2006)); *Sheriff v. Burcham*, 124 Nev. 1247, 1253, 198 P.3d 326, 329 (2008)

///

1 (the Court “only look[s] beyond the plain language of the statute if that
2 language is ambiguous or its plain meaning clearly was not intended”).

3 Ms. Flores has not identified any ambiguity, and the Court need not
4 (indeed, should not) look beyond the plain meaning of the statutory language
5 to determine the meaning of NRS 244.364, 268.418, and 269.222.

6 Nonetheless, the statutes’ history does not weigh in Ms. Flores’ favor.
7 Although the Legislative Counsel’s Digest is likely irrelevant to the Court’s
8 interpretation,¹¹ it too recognizes the limited scope of the preemption. It
9 states:

10 Sections 8-10 of this bill expand such rights and
11 powers of the Legislature to include those necessary
12 to: (1) regulate the carrying and storage of firearms,
13 firearm accessories and ammunition; and (2) define all
14 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

15 ¹¹ “[I]t is only appropriate to consult the Legislative Counsel’s Digest
16 to ascertain the intent of the Legislature “[i]f the language of a statute is
17 ambiguous.” *Sandpointe Apts. v. Eighth Jud. Dist. Ct.*, 129 Nev. Adv. Op. 87,
18 313 P.3d 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.’”)

any such ordinance or regulation. . . .

. . . .

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 [SB 175] amends section 5 of A.B. 147 to include and preempt ordinances or regulations adopted by *certain political subdivisions* before June 13, 1989.

(JA208 (emphasis added).) Thus, NRS 244.364, 268.418, and 269.222 have always been limited in scope. The recent amendments do nothing to expand the scope of the preemption beyond counties, cities, and towns.

C. Dillon’s Rule Does Not Prohibit the Dangerous Items Policy

“Historically under Nevada law, the exercise of powers by the governing body of an incorporated city has been governed by a common-law rule on local governmental power known as Dillon’s Rule, which is named after former Chief Justice John F. Dillon of the Iowa Supreme Court who in a case from 1868 and in later treatises on the law governing local governments

1 set forth the common-law rule defining and limiting the powers of local
2 governments.” NRS 244.137(1); 268.001(1). *See also City of Clinton v.*
3 *Cedar Rapids & M.R.R. Co.*, 24 Iowa 455 (1868). It limits the power of local
4 governments to “[t]hose powers granted in express terms by the Nevada
5 Constitution or statute; . . . [t]hose powers *necessarily or fairly implied* in or
6 incident to the powers expressly granted; and . . . [t]hose powers *essential to*
7 *the accomplishment of the declared objects and purposes* of the county and
8 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
10 concerning the existence of a power, that doubt is resolved against the
11 [governing body] and the power is denied.” NRS 244.137(4), 268.001(4).

12 Ms. Flores asks this Court to apply Dillon’s Rule to the Library District,
13 despite the lack of any legal precedent in Nevada law. This Court has never
14 applied Dillon’s Rule to a special district. Additionally, the Nevada
15 Legislature recently rejected a strict construction of Dillon’s Rule and
16 adopted statutes expressly limiting its scope and expanding the authority of
17 certain municipal governments. NRS 244.137(6); 268.001(6). Finally, even
18 if applicable, the Dangerous Items Policy would not violate Dillon’s Rule

1 because the Legislature has expressly granted the Library District broad
2 authority to adopt policies and regulations as necessary to manage the Library
3 District.

4 **1. Dillon’s Rule Has Never Been Applied to Special Districts**

5 “In Nevada’s jurisprudence, the Nevada Supreme Court has adopted
6 and applied Dillon’s Rule to county, city and other local governments,” NRS
7 244.137(2); 268.001(2), but has never applied Dillon’s Rule to special
8 districts.¹²

9 Nevada adopted Dillon’s Rule in 1924. *Red Arrow Garage & Auto Co.*
10 *v. Carson City*, 47 Nev. 473, 225 P. 487, 488 (1924). Since that time, the
11 Nevada Supreme Court has applied Dillon’s Rule in many cases, but never to

12 ///

13 ¹² While Ms. Flores argues that “the Court has applied Dillon’s Rule to
14 special districts since at least 1921 (Opening Br. 23, n.9), she supports this
15 contention by citing to *Truckee-Carson Irrigation District v. Baber*, 80 Nev.
16 263, 392 P.2d 46 (1964), which quotes *In re Walker River Irrigation District*,
17 44 Nev. 321, 195 P. 327 (1921). However, an irrigation district is not a
18 “special district” within the statutory definition. Subject to enumerated
exceptions, NRS 360.650 defines a special district as a “a governmental entity
that receives any portion of the proceeds of a tax which is included in the
Account.” Conversely, an irrigation district “is a public corporation. . . . It has
no political function. It does not encroach upon any department of the state,
county, or township government. . . . The district is not established for
political or governmental purposes.” *Truckee-Carson Irr. Dist. v. Baber*, 80
Nev. 263, 266, 392 P.2d 46, 47 (1964) (quoting *In re Walker River Irr. Dist.*,
44 Nev. 321, 195 P. 327, 332 (1921).

1 a special district. *Ronnow v. City of Las Vegas*, 57 Nev. 332, 65 P.2d 133,
2 136 (1937).

3 Additionally, the Nevada Legislature has recently rejected the
4 traditional, strict construction of Dillon’s Rule because:

5 [A] strict interpretation and application of Dillon’s
6 Rule unnecessarily restricts [the governing body]
7 from taking appropriate actions that are necessary or
8 proper to address matters of local concern for the
9 effective operation of city government and thereby
10 impedes the governing body from responding to and
11 serving the needs of local citizens diligently,
12 decisively and effectively.

13 NRS 244.137(5); 268.001(5). Thus, the Nevada Legislature has increased the
14 authority of county commissioners and governing bodies of incorporated
15 cities and incorporated towns when dealing with matters of local concern.

16 Ms. Flores further claims that when the Legislature chooses to delegate
17 that authority to “‘special districts’ or administrative agencies, it does so with
18 very specific statutes. (Opening Br. 24:19-20.) By way of example, Ms.
19 Flores claims that NRS 407.0475 “delegates to the Administrator of the
20 Division of State Parks the authority to promulgate regulations on the
21 possession of firearms in a State park,” and “NRS 503.150 delegates to the

1 Wildlife Commission the authority to regulate the caliber of firearms that
2 hunters may possess.” (Opening Br. 25:6-10.) However, these statutes
3 establish the opposite.

4 NRS 407.0475 provides a broad grant of authority to the Administrator
5 of the Division of State Parks to “adopt such regulations as he or she finds
6 necessary for carrying out the provisions of this chapter and other provisions
7 of law governing the operation of the Division,” NRS 407.0475(1), but carves
8 out the ability to regulate possession of firearms, NRS 407.0475(2)(c).¹³

9 Similarly, NRS 503.150 prohibits a person from using a handgun to hunt
10 wildlife, but allows a person who is hunting to carry a handgun for self-
11 defense so long as it “[h]as a barrel length of less than 8 inches” and “[d]oes
12 not have a telescopic sight.” NRS 503.150(2)(a).

13 Neither of these statutes grants authority to an administrative agency or
14 special district. Rather, these statutes suggest that a broad grant of authority
15 allows a special district to regulate the possession of firearms unless the right

16 ¹³ “Any regulations relating to the conduct of persons within the park or
17 recreational facilities must: . . . (c) Not establish restrictions on the possession
18 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 is specifically limited or retained. The Legislature has seen fit to require the
2 Board of Trustees of a consolidated library district to “[e]stablish bylaws and
3 regulations for the management of the library and their own management” and
4 authorized the Board to “[d]o all acts necessary for the orderly and efficient
5 management and control of the library.” NRS 379.025(1)(h), (2)(d).
6 Moreover, the Legislature did not reserve or “carve-out” the authority to adopt
7 a policy related to the possession of firearms.¹⁴ Thus, the Legislature has
8 granted the Library District the authority to regulate the possession of
9 firearms.

10 **VIII. CONCLUSION**

11 For the reasons set forth above, the Library District requests that the
12 Court affirm the decision of the District Court and find that “NRS 244.364,
13 268.418, and 269.222 (as amended in 2015) do **not** prevent the Library
14 District from adopting, establishing, or otherwise creating any rule, regulation,
15 or policy prohibiting the possession of a firearm, whether loaded or unloaded,
16

17 ¹⁴ Ms. Flores also cites NRS 202.265 and 392.466, each of which relate to
18 schools and/or child care facilities. (Opening Br. 25:1-5.) Here too, the
legislature has expressly regulated the possession of firearms, NRS 202.265,
but then carved out limited authority that is granted back to the entity.

1 or any ammunition or material for a firearm on the Library District's
2 property.” (JA60 at ¶ 38)

3 DATED this 16th day of January, 2018.

4 BAILEY ♦ KENNEDY

5 By: /s/ Dennis L. Kennedy

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**LAS VEGAS-CLARK COUNTY
LIBRARY DISTRICT**

RULE 28.2 CERTIFICATE

1. I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word for Mac, Version 15.40 in 14 point Times New Roman font.

2. I further certify that this brief complies with the page- or type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is proportionately spaced, has a typeface of 14 points or more and contains 4539 words.

3. I further certify that I have read this appellate brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose.

4. Finally, I certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found.

1 5. I understand that I may be subject to sanctions in the event that
2 the accompanying brief is not in conformity with the requirements of the
3 Nevada Rules of Appellate Procedure.

4 DATED this 16th day of January, 2018.

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CERTIFICATE OF SERVICE

I certify that I am an employee of BAILEY ♦ KENNEDY and that on the 16th day of January 2018, service of the foregoing **RESPONDENT’S ANSWERING BRIEF**, 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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