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**

APPELLANT'S REPLY BRIEF

DATED this 19th day of March, 2018.

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I. NRAP 26.1 DISCLOSURE STATEMENT

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

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

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

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

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III. ARGUMENT[1]

In the Opening Brief of Appellant Michelle Flores ("Ms. Flores"), Ms. Flores articulated three reasons why the District Court erred in upholding Respondent Las Vegas Clark County Library District's (the "District") Dangerous Items Policy (the "DIP Rule"): the Plain Meaning Analysis; the Preemption Analysis; and the Dillon's Rule Analysis.

The Answering Brief largely ignores these analyses. These analyses flow from the fact that the Nevada Legislature's power is plenary (subject only to constitutional constraints) and that there are certain spheres where inferior political subdivisions, like the District in this case, may not interfere. The regulation of the possession of firearms unequivocally became one such sphere when the Legislature enacted SB 175 (2015), as codified in NRS 244.364, NRS 268.418, and NRS 269.222 by 2015 Nev. Stat. ch. 328, §§8(1) and (2), 9(1) and (2), and 10(1) and (2) at 1784, 1787, and 1789 (collectively, "SB 175").

In the Answering Brief, the District spends an inordinate number of pages attempting to deny the Legislature's exercise of sovereignty in the realm of firearms regulation. These arguments are unavailing for three reasons: First, the District misdirects the Court away from the plain language of the operative sections of SB

[1] The Answering Brief recites facts that were not established in the proceeding below, are unnecessary for the resolution of this appeal, and in any case, not agreed to or conceded by Ms. Flores. Therefore, Ms. Flores will not address them.

175, asking the Court to conclude that SB 175 does not mean what it says. Second, the Legislature did not exempt the District from SB 175's preemptive effects. Third, the District misapplies 150 years of precedent, asking the Court to conclude that Dillon's Rule does not apply to it.

Reasonable minds may differ about the politics of regulating firearms. But these politics should be left to the Legislature. Where, as here, the Legislature has unambiguously asserted its sovereignty over the regulation of firearms, the role of the courts is to protect that exercise of the Legislature's sovereignty, even if reasonable minds disagree with the prudence of that exercise.

As such, Appellant Michelle Flores respectfully seeks the following relief: (1) that the Court reverse the District Court's judgment upholding the DIP Rule; (2) that the Court declare the DIP Rule illegal; and (3) that the Court direct the entry of an order enjoining the District's enforcement of the DIP Rule.

A. SB 175 MEANS WHAT IT SAYS

"[W]hen the language of a statute is plain and unambiguous, such that it is capable of only one meaning, this court should not construe that statute otherwise." *MGM Mirage v. Nev. Ins. Guar. Ass'n*, 125 Nev. 223, 228-29, 209 P.3d 766, 769 (2009). Moreover, even in an unambiguous statute, the Court will "adhere to the rule of statutory construction that the intent of a statute will prevail over the literal sense of its words." *Id*. at 229 (internal citations and quotations omitted).

Sections 8(1) and (2), 9(1) and (2), and 10(1) and (2) of SB 175 recite, in relevant part, the following:

> The Legislature hereby declares that:
> (a) The purpose of this section is to establish state control over the regulation of and policies concerning firearms…to ensure that such regulation and policies are uniform throughout this State….
> (b) The regulation of the…possession [and] carrying…of firearms…in this State and the ability to define such terms is within the exclusive domain of the Legislature, and any other law, regulation, rule, or ordinance to the contrary is null and void.
> (c) This section must be liberally construed to effectuate its purpose.
>
> 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.

(Emphasis added.) [JA 127-128.][2]

The Legislature's broad intent could not be more obvious. Section 8(1) of SB 175 establishes "state control" over the regulation of firearms to safeguard "uniform" regulation and policies "throughout this State." The regulation of possession of firearms in Nevada and (even the existential ability to define such terms) are within the "exclusive domain of the Legislature" such that all other rules to the contrary are "null and void."

[2] The language is identical in each of these Sections. [JA 127-28; 131; and 134-35.]

Section 8(2) of SB 175 echoes the Legislature's broad exercise of sovereignty: "Except as otherwise provided by specific statute, the Legislature reserves for itself such rights and powers as are necessary to regulate…firearms."

This unambiguous operative language prohibits anyone other than the Legislature from regulating firearms unless specifically authorized by the Legislature to do so. Plainly stated, the language means what it says.

The Answering Brief insists that the language of Sections 8(1) and (2) of SB 175 does not mean what it says and therefore that SB 175 does not apply to the District, merely because of where the language is placed in the Nevada Revised Statutes. [Ans. Br. 21:13-15.] Ignoring the unambiguous provisions of Sections 8(1) and (2), the District errantly argues, "This placement shows that the amendments [in SB 175] were meant to apply only to the three specific chapters in which the revised statutes are located." [Ans. Br. 21:14-15.]

The District is wrong for three reasons. First, placement, alone, is not talismanic and does not trump the words used. *See MGM Mirage v. Nev. Ins. Guar. Ass'n*, 125 Nev. 223, 229, 209 P.3d 766, 771 (2009). Indeed, the District's citation to *MGM Mirage* is inapposite. Contrary to the District's reading, *MGM Mirage* stands for the proposition that placement of a statute is an aid to plain meaning analysis where the legislature failed to define a significant term, but placement cannot override SB 175's plain meaning.

Moreover, this placement argument renders Sections 8(1) and (2) of SB 175 meaningless. When interpreting a statute as a whole, the Court "will not interpret a statute in a way that would render any part of statute meaningless." *C. Nicholas Pereos, Ltd. v. Bank of Am., N.A.*, 131 Nev. Ad. Op. 44, 352 P.3d 1133, 1136 (2015) (internal citations and quotations omitted). The District's parochial control of firearms cannot be reconciled with the Legislature's "state control" over the regulation of firearms. Firearm policies cannot be "uniform" "throughout this State" or the "exclusive domain of the Legislature" if the District (and the 21 of its sister districts) can promulgate rules like the DIP Rule. The Legislature cannot reserve "for itself such rights and powers as are necessary to regulate" firearms if the District is simultaneously claiming these rights and powers. The District's reading produces absurd results.

Finally, the Legislature's repeated use of the term, "this section," in Section 8(1) of SB 175 flatly contradicts the placement argument by specifically focusing the reader's attention on Section 8(1) of SB 175. For example, the Legislature states, "The purpose of this section [i.e., Section 8(1)] 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." Similarly, the Legislature instructs the courts, "This section [again, Section 8(1)] must be liberally construed to effectuate its purpose." In sum, other provisions of SB 175 may have other operative effects,

but Section 8(1) [i.e., "this section"], establishes "state control" over firearms to promote "uniform policies throughout this State," declaring "null and void" any rule to the contrary and instructing the courts that Section 8(1) ["this section"] is to be "liberally construed."

Plainly put, SB 175 means what it says, and the District's argument to the contrary is unavailing. Therefore, the District Court's Order is in error, and the Court should reverse the decision.

B. THE DISTRICT IS NOT EXEMPT FROM SB 175'S PREEMPTION

Preemption occurs when a state law supersedes a conflicting local law or rule. *See Lamb v. Mirin*, 90 Nev. 329, 332-33, 526 P.2d 80, 82 (1974). As discussed in the Opening Brief, the Legislature can preempt a local rule in three ways: Express Preemption; Conflict Preemption; or Field Preemption. Here, under any iteration of the doctrine, the Legislature has preempted all local firearms regulations, including the DIP Rule. Again, the District largely ignored the preemption analysis, and where the Answering Brief does address preemption, the District misapprehends the doctrine.

The Answering Brief implies that there is something supernatural about the District's status as a "special district," which exempts it from the broad preemptive language in SB 175. This misapprehends the District's powers as an inferior jurisdiction. The District is a consolidated library district created by a county and a

city. If SB 175 preempts counties and cities from regulating firearms (as the District admits), the statute even more forcefully preempts political subdivisions created by counties and cities, including the District.

The Legislature's power is plenary, subject only to constitutional limitations. *See Gibson v. Mason*, 5 Nev. 283, 292 (1869). The Legislature can, in turn, delegate certain power to cities and counties. *See* e.g., *Reno v. Saibini*, 83 Nev. 315, 320, 429 P.2d 559, 562 (1967). The Legislature permits a county to create a county library. *E.g.*, NRS 379.010. The Legislature permits a city to create a municipal library district. *E.g.*, North Las Vegas Charter § 2.310. In counties with a population greater than 700,000, the Legislature permits a city and a county to create a joint library, called a "consolidated library district." NRS 379.0221.

In a consolidated library district, the creator city and county jointly appoint a board of trustees. NRS 379.0222. The creator city and county jointly approve all bond issuances and budgets. NRS 379.0225(1) and NRS 379.025(1)(f). The creator county levies taxes on behalf of the consolidated library district. NRS 379.0227.

But a municipality and a county *cannot delegate what they do not have*; therefore, if a legislature preempts municipalities and counties from regulating firearms, creatures of municipalities and counties are also likewise preempted. *See Wis. Carry, Inc. v. City of Madison*, 892 N.W.2d 233, 242 (Wis. 2017).

In *Wisconsin Carry*, the Wisconsin Supreme Court reversed the decision of the trial court (as affirmed by the court of appeals) and held that a city-created transit commission, which promulgated a rule prohibiting dangerous items (including firearms) on transit commission buses, ran afoul of a state statute prohibiting cities, counties, towns, and villages from enacting rules relating the to the possession of firearms. *Id*. at 254. The transit commission argued that the statute did not apply to it because it was not a city, county, town, or village, but the high court looked at the transit commission's enabling statute and concluded that the transit commission drew its authority from the city because the city created it and exercised supervisory authority over it. *Id*. at 245. The court concluded that as a creature of the city, the transit commission had no more powers than its creator. *Id*. The court rejected the transit commission's argument that state statutes describing certain required attributes of transit commissions gave the transit commission an existence apart from the city, stating, "In the City's reading of the statute, the legislature made a conscious decision to withdraw firearms-regulating authority from a municipality's democratically-accountable governing body, while leaving that authority entirely undiminished when exercised by the municipality's democratically-unaccountable sub-units." *Id*. The court ultimately held that the transit commission's dangerous items rule was preempted by state law. *Id*. at 254.

In this case, the District admits that SB 175 preempts firearm ordinances of cities and counties. [Ans. Br. 11:13-16.] Like the transit commission in *Wisconsin Carry*, the District is a creature of Clark County and the City of Las Vegas in that it is created by an act of the county and city; its governing board is appointed by the creator county and city; its bonds are approved by the creator county and city; its budgets are approved by the creator county and city, and its taxes are levied by the creator county. Similar to the errant transit commission in *Wisconsin Carry*, the District argues absurdly that SB 175 does not preempt rules of a jurisdiction created by a city and county because the word "library district" does not appear in the preemptive language of Section 8(1) of SB 175.[3] Like the court in *Wisconsin Carry*, this Court should likewise hold that SB 175 preempts the DIP Rule.

The District also asserts two other errant assertions why SB 175 does not preempt the DIP Rule: (1) "repeal by implication" and (2) exemption. For the reasons below, both reasons are flawed.

1. Repeal by Implication

The District wrongly argues that the Legislature did not actually intend to establish total uniformity of firearm rules, but only sought to narrowly prohibit counties, cities, and towns from regulating firearms. [Ans. Br. 24:1-12.] For this

[3] Notably, the words "county" or "city" also do not appear in the preemptive paragraphs of Section 8(1).

proposition, it cites to statutes where the power to regulate firearms had been specifically delegated.

But the point of preemption is that the *Legislature* is making these decisions on a *statewide* basis as to whom to delegate the authority to regulate firearms, not any other local government. If the Legislature decides that school principals can determine who can be armed on their campuses, this is a state-wide delegation. If the Legislature decides that the Wildlife Commission may regulate the caliber of firearms used in hunts, this is a state-wide determination. These statewide decisions avoid a patchwork of differing local rules. Contrary to the District's argument, the preemption language in SB 175 does not "repeal by implication" the existing *state* laws governing the use of firearms in particular places.

Moreover, the preemptive language in SB 175(8)(2) contemplates that the Legislature *could* by "specific statute" allow local governments, like library districts to enact gun laws. It just has not done so with respect to libraries.[4]

In short, the "repeal by implication" argument against preemption fails.

2. Exemption

The District further argues that, even if the preemption statutes make firearm regulation the "exclusive domain" of the Legislature, the Legislature made an

[4] In 2017, the Legislature entertained a bill that attempted to delegate this authority to public libraries with SB 115 (2017), but it failed to pass.

exception by granting library districts the power to manage their libraries which is found in the general language of NRS 379.025(1)(h) and (2)(d), authorizing the District to "do all acts necessary for the orderly and efficient management and control of the library." [Ans. Br. 25:5-12.]

But this argument violates the "well-established rule of statutory construction that a special provision, dealing expressly and in detail with a particular subject, is controlling, in preference to a general provision relating only in general terms to the same subject." *W. Realty Co. v. Reno*, 63 Nev. 330, 337, 172 P.2d 158, 161 (1946); *see also*, *Mineral Cty. v. State*, 121 Nev. 533, 540, 119 P.3d 706, 710 (2005) (Hardesty, J., dissenting) ("specific statutes dealing with a subject matter take precedence over statutes of general application"). Put another way, "[W]here two statutes attempt to regulate the same conduct, the more specific statute does preempt the general statute." *Showpiece Homes Corp. v. Assur. Co. of Am.*, 38 P.3d 47, 53 (Colo. 2001).

In this case, Section 8(1) of SB 175 is a "specific statute." It deals expressly and in detail with who may regulate firearms in the State of Nevada. By contrast, NRS 379.025(1)(h) and (2)(d) are general statutes that grant the District general powers to determine things like hours of operation, computer policies, and overdue fines. Notably absent in NRS 379.025 (or the entire title relating to public libraries) is any mention of firearms whatsoever. Thus, in any conflict between Section 8(1)

of SB 175 and NRS 379.025, rules of statutory construction dictate that Section 8(1), the specific statute, preempts NRS 379.025, the general statute.

In sum, the District's unsupportable position is that the Legislature entrusts the power to regulate firearms to an unelected-sub-unit of a municipality and county while simultaneously denying that power to that sub-unit's democratically-accountable progenitors.

The District's arguments against preemption are wholly untenable. Therefore, the District Court's Order based on those arguments is in error, and the Court should reverse the decision.

C. THE DISTRICT MISAPPLIES DILLON'S RULE

Dillon's Rule provides that a local government or a special district "possesses and can exercise such powers only as are expressly conferred by the law of its creation, or such as are necessary to the exercise of its corporate powers, the performance of its corporate duties and the accomplishment of the purposes for which it was created." *Truckee-Carson Irr. Distr.*, 80 Nev. 263, 266, 392 P.2d 46, 47 (1964), *quoting*, *In re Walker River Irr. Dist.*, 44 Nev. 321, 338, 195 P. 327, 331 (1921); *see also*, NRS 244.137 and NRS 268.001. If there is any doubt about a public agency's authority to exercise a power, Dillon's Rule resolves that doubt against the local government. *See Ronnow v. City of Las Vegas*, 57 Nev. 332, 343, 65 P.2d 133, 136 (1937).

Contrary to the protestations of the District, Dillon's Rule applies to "special districts." NRS 244.137(7)(a) and NRS 268.001(7)(a), respectively, provide, "The provisions of [NRS 244.137 to 244.146, inclusive, and NRS 268.001 to 268.0035, inclusive] must not be interpreted to modify Dillon's Rule with regard to [a]ny local governing body other than the governing body of [a county or an incorporated city]. The District's limited reading of Dillon's Rule stands in derogation to the broad mandate of NRS 244.137(7)(a) and NRS 268.001(7)(a).[5] In short, Dillon's Rule applies to the District.

Assuming for argument's sake that Nevada lacks cases applying Dillon's Rule to special districts, it is not because the Rule does not apply to them. It is because the issue has yet to come up since special districts "are created to carry out relatively narrowing, statutorily specified purposes with the method of financing those activities also provided by the underlying statute." B. Chally, *Dillon's Rule in Nevada*, 21 Nev. L. 6, 7 (2013). In other words, special districts are unlikely to overreach as much as other local governments because of their limited purposes and powers—that is, until this case.

[5] NRS 244.137(7)(a) and NRS 268.001(7)(a) are laws that apply to all local governments, yet they are placed in NRS ch. 244 and NRS ch. 268, just like firearms regulation found in SB 175. This placement of Dillon's Rule cuts against the District's "placement trumps plain language" argument.

Moreover, the purpose of Dillon's Rule is to recognize that the sovereign power is in the Legislature and that sub-units of local government have no more power than the Legislature has given them. "[Dillon's Rule] reflects the view of local governments as agents of the state by requiring that all local powers be traced back to a specific delegation: whenever it is uncertain whether a locality possesses a particular power, a court should assume that the locality lacks that power." R. Briffault, *Our Localism: Part I -- The Structure of Local Government Law*, 90 Colum. L. Rev. 1, 8 (1990). Thus, again contrary to the District's assertions, the silence of NRS ch. 379 (relating to library districts) on firearms means that the Court must presume that a library district lacks the power to regulate guns.

Given the purpose of Dillon's Rule – making sure local governments do not exceed the powers the Legislature intended them to have – it makes no sense to apply Dillon's Rule to counties and cities but not to special districts, which are supposed to be even more limited in their powers.

The District erroneously implies that the Legislature's recent limitation of Dillon's Rule with respect to cities and counties shows that the Rule should be read narrowly and not against the District. [Ans. Br. 29:14-17.] But those statutes only show that the Legislature was well aware of Dillon's Rule and abrogated it only where it wanted to do so. This fits the general trend that larger units of local government, which are expected to flexibly address general problems, would get out

from under Dillon's Rule, but special districts, which are intended only to have limited powers to serve a limited purpose, would not. *See* G. T. Schwartz, *Reviewing and Revising Dillon's Rule*, 67 Chi.-Kent L. Rev. 1025, 1026 (1991) ("The domain of Dillon's Rule is…now limited to…smaller localities (and also to limited-purpose special districts that are beyond the scope of home rule grants)"). Indeed, NRS 244.137(7)(a) and NRS 268.001(7)(a) specifically contradict the District's reading of Dillon's Rule.

The District's arguments against Dillon's Rule are wholly unsupported in Nevada law. Therefore, the District Court's Order based on those arguments is in error, and the Court should reverse the decision.

IV. Conclusion

For the reasons detailed above, Appellant Michelle Flores respectfully seeks the following relief: (1) that the Court reverse the District Court's judgment upholding the DIP Rule; (2) that the Court declare the DIP Rule illegal; and (3) that the Court direct the entry of an order enjoining the District's enforcement of the DIP Rule.

V. Attorney's NRAP 28.2 Certification

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

I further certify that this brief complies with the page-or type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it does not exceed **15** pages.

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

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that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

DATED this 19th day of March, 2018.

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CERTIFICATE OF SERVICE

I certify that on the 19th day of March, 2018, service of the foregoing APPELLANT'S REPLY BRIEF was made by electronic service through the Nevada Supreme Court's electronic filing system and, if necessary, 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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