Candid Facts on the Origin of SB 115

To the Senate Committee on the Judiciary
SB 115, 79th (2017) Session of the Legislature

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Senators,

SB 115 could be characterized as a vindictive move against gun owners because certain citizens stood up against the illegal actions of the Las Vegas Clark County Library District (LVCCLD, hereafter, the District) to prohibit openly carried firearms. Had the District acted legally and abided by state law, there would be no need for a bill. Instead, the District violated state firearm regulation preemption laws, violated Constitutional rights, and violated the statute governing library regulations. In the aftermath of public outcry and a lawsuit, Assemblywoman Bilbray-Axelrod, a trustee until March, stated that she intended to introduce a prohibition to prohibit firearms where they have always been legal. The District knew it could not ultimately prevail under the law, so it is seeking through an intermediary to ban a right its staff, administration, and trustees disagree with.

State law reserves the right to regulate where firearms can be carried entirely to the Legislature under a concept known as preemption. No local regulations are valid, any local regulations in existence to the contrary are required to be repealed, and persons adversely affected by enforcement of illegal rules are entitled to enhanced civil damages. Firearms carried openly, not concealed, are permitted in most public buildings. Open carriers are among the most well-behaved and law-abiding citizens who carry firearms for self-protection. The issues with the District are longstanding. The citizens who have openly carried at libraries did so not for purposes of protest, but for self-defense as a part of their daily routine. There are no safety threats, or any known history of danger, from any person legally carrying a firearm for self-defense in a library.

In California, for example, until 2015 concealed firearm permittees could carry concealed handguns on school campuses. This was eliminated in 2015, leaving it to the discretion of local schools. But when schools began granting permission for some to carry on campus, the California legislature introduced a bill to stop this.[1] That is the danger facing Nevada; will those disinclined to gun rights gradually ban firearms as citizens exert their rights?

I characterize SB 115 as nothing more than revenge for the public calling out the District, its staff, administration, and trustees, for violating state law. Passage of SB 115 would diminish the nature of our republican, democratic government, emboldening any official with power or connections to ban any form of behavior that personally offends that official. The law cannot, and should not, be changed simply because citizens stood up against officials who ignore and subvert laws they disagree with.

[1] AB-424 (2017)

History of Incidents, LVCCLD

The Las Vegas Clark County Library District has a history of illegal prohibiting legally carried firearms dating back to at least 2011. Open carriers have been ejected, trespassed, arrested, and threatened with various legal and administrative actions despite the absence of legal authority or even an enforceable district policy. Requests for written permission to carry a firearm have been denied by library administrators.

Numerous incidents have occurred involving open carriers and District staff in the past year. Most of the older incidents are catalogued on the opencarry.org[2] forums. One such incident includes a security guard who began to draw his own openly carried gun on an openly carrying library patron. In 2015, there were two known incidents where open carriers were accosted by library staff simply for openly carrying a weapon. No one was arrested, though one carrier was willing to be arrested, however, it appears he had to leave before LVMPD arrived. On March 16, 2016, the District had mother and open carrier Michelle Flores arrested for trespass for openly carrying a firearm. As a result, Flores filed a lawsuit under the provision of state preemption laws that allow anyone adversely affected by illegal no-gun regulations to recover damages. Unfortunately, her request for a preliminary injunction did not prevail and the case is on appeal.

The safety concerns about a firearm in a library are unfounded. There have been no known instances of a negligent discharge of a firearm in a Nevada library. There are no known instances of a lawfully armed citizen brandishing a firearm in a library. There are no known instances of a child accessing a lawfully carried firearm in a library. The only incidents involving those legally carrying firearms in a library were those incidents precipitated by library staff.

It is worth nothing that every person to my knowledge who has had an incident at a library, including myself, has not been seeking to cause a controversy. Each person openly carries a firearm regularly for self-defense as part of their daily activities and chose to visit the library for the reasons one patronizes a library. Influential members of the gun rights community have diligently worked to prevent any such "stunts" as an armed protest or visit simply for to generate a "test case."

For those unfamiliar with the character of open carriers, the idea of them being unpermitted and thus untrained and unsafe etc. is a fallacy. Many open carriers do indeed have concealed firearm permits. Others have trained with their firearm and practice with it frequently, but choose not to pay for a concealed firearm permit as they disagree philosophically with paying and apply to exercise a constitutional right. Open carriers, due to their higher profile when carrying a firearm, are often extremely cautious, polite, and law abiding. This correlates with studies that show concealed firearm permittees, i.e. law abiding armed citizens, are more law abiding than police.[3]

As a gun rights journalist, historian, and former law enforcement officer, I submit the following based on my deep personal knowledge of the history of this issue, the history and social issues of both open and concealed carry, and gun rights in general. I do not represent anyone other than myself.

Open Carry Generally

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[2] Opencarrry.org is not affiliated with NevadaCarry.org/FrontierCarry.org.

[3] Crime Prevention Research Center. "Comparing Conviction Rates Between Police And Concealed Carry Permit Holders." February 19, 2015. http://crimeresearch.org/2015/02/comparing-conviction-rates-between-police-and-concealed-carry-permit-holders/

Open carry has long been the judicially favored method of carry. Concealed carry has long had a negative reputation, in that only criminals, murderers, and someone up to no good had firearms. This stems from a time when justifiable homicide was often extended to insults of honor; a behavior long disclaimed under law and by society. Despite concealed carry being viewed by the law and society as the province of the "badman," concealed carry has actually been the preferred method of carry by society. Concealed carry for self-defense has lost any negative associations in mainstream society, opinions on gun control aside.[4]

Yet because an openly carried firearm can be seen by all, it is very hard for someone who intends to ill-use that weapon for criminal purposes to conceal that fact, given the relative greater share of attention they garner. For the reason that the firearm was not hidden (in the sense of there being something bad, an evil intent, to be hidden), openly carried firearms were not stigmatized until recently. Open carry is well-protected under a multitude of state Supreme Court decisions partially recounted in *Peruta v. Gore*, which applies to Nevada. It is generally believed by most states' judiciaries that open carry cannot be strictly regulated as SB 115 attempts to do here.

Nevada never prohibited openly carried firearms anywhere or within public buildings. The only blanket firearm provisions under state law are NRS 202.265, which applies to school grounds and is the section SB 115 seeks to amend, and meetings of the legislature[5]. Prior to 1995, the prohibition of firearms in public buildings did not exist within the statutes[6]. As far as research indicates, there was no prior law on the topic and no need.

Firearms in Public Buildings

NRS 202.3673 prohibits concealed weapons permittees from carrying concealed weapons, not plainly visible (openly carried) weapons, in buildings posted with "no guns" signs or having metal detectors at each public entrance. Most LVCCLD buildings and public buildings in urban counties are posted thusly.

Legislative Counsel Bureau in 2015 wrote an opinion confirming the legality of openly carried firearms in public buildings. ""Because there is no general statutory prohibition against the open carry of firearms in a public building, it is the opinion of this office that the open carry of firearms is not prohibited in a public building, unless otherwise prohibited by a specific statute..."[7] It is worthy of noting that at the time, no legislator, Republican or Democrat, moved to prohibit openly carried firearms in public buildings.

Before 1995, Nevada was a may issue state for concealed firearm permits, at the sole discretion of the sheriff to issue or not. Open carry was the only method available to the public at large in some counties. In 1995, Nevada became a shall issue state and a perceived need to regulate firearms in public buildings was felt, so concealed carry by permittees was prohibited.

The 1995 amendment banned concealed firearms in virtually every type of public building.[8] In 1997, the law made a minor change: "must" to "shall."[9] Then, in 1999, the law

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[4] For more on this subject, I recommend the works of historian Clayton E. Cramer, *Concealed Weapon Laws of the Early Republic* and

[5] NRS 218A.905

[6] NRS 202.3673 was added in 1995.

[7] Email from Brad Wilkinson, Legislative Counsel Bureau, to Assemblywoman Fiore. Feb. 26, 2015.

[8] 1995 Statutes of Nevada, Page 2725 (Chapter 713, SB 299)

[9] AB 141 (1997)

changed to only locations with signs and metal detectors at each public entrance, plus airports, schools, and colleges.[10] There was a concern that occupants of a posted building would be unable to protect themselves, which resulted in a loosening of the statute.[11]

NRS 202.265 prohibits firearms on the grounds, including the parking lots, of schools, colleges, universities, and childcare facilities. It is important to note that should this bill be signed into law, otherwise ostensibly lawfully armed citizens would become criminals for simply having a firearm in their parked vehicle, if on library property. NRS 202.265's provisions which bans firearms at childcare centers was added by Senator Debbie Smith at a constituent's request after an unprofessional bounty hunter raided a daycare and scared the children.[12] Senator Smith's amendment was based on one incident involving bounty hunters. From information available, no one was injured, but children were scared. Poor tactics and judgement for sure, but that ought to have been an occupational regulation issue, not a gun control issue. The addition of childcare centers as gun-free zones was an emotional over-reaction, but it at least had some rational basis in calls for safety. Here, SB 115 was prompted not by validated concerns for safety, but because citizens sought redress of a grievance.

State Preemption of Local Firearm Regulation

The Legislature has chosen to preempt the field of firearm regulation and reserve that power almost entirely to itself. Preemption takes away the authority of counties, cities, and towns (and sub-unit of government like library districts) to make their own gun regulations, which would create a confusing and hazardous patchwork of laws. Except for unsafe discharge of firearms, only the legislature can regulate firearms in any manner. This has been the law, in substantially similar language, since 1989. The pertinent sections are NRS 244.364 (counties), NRS 268.418 (cities), and NRS 269.222 (towns). Specifically, section (b) from the essentially identical sections reads:

> "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*." [emphasis added]

On June 2, 2015 Gov. Sandoval signed Senate Bills 175 and 240 into law. Each bill contained identical provisions regarding state preemption of local firearm laws. This change came about largely to eliminate Clark County's "blue card" handgun registration system and partly to clear up discrepancies over whether or not certain local Clark County ordinances were grandfathered.[13]

Firearm preemption laws were introduced by AB 147 in 1989. The bill was ultimately amended to permit Clark County to retain its handgun registration system, as Clark County used

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[10] **1999 Statutes of Nevada, Page 2767 (AB 166)**

[11] Minutes Of The Senate Committee on Judiciary. AB 166. March 25, 1999.

[12] Minutes of Assembly Committee on Judiciary. SB 354. May 9, 2007. p. 17

[13] See Attorney General's Opinion No. 2010-16. August 13, 2010. Attorney General Cortez-Masto disregarded the legislative intent and found that Clark County park ordinances forbidding firearms did apply (in all fairness, the legislative history may not have been reviewed by her office, as no reference to it is made). Such information can be found online at the following link: http://stillwaterfirearms.org/Docs/General/AB147_1989.pdf

its influence to preserve the ordinance.[14] While there has never been statewide registration of firearms, Clark County registered handguns from 1948 to 2015, originally due to concerns about the influx of mobsters.[15] They specifically grandfathered Clark County's handgun registration ordinances even while the state preempted all other local regulations. The preemption law was amended in 2007 to fix a loophole that technically made visitors to Las Vegas and Clark County's new Shooting Complex (and other travelers) in violation of the law.[16]

In regards to the District, a citizen inquired in June of 2015 as to whether or not the district would honor the provisions of SB 175/240. Mario Aguilar, Assistant Library Operations Director, replied:

> "The information from the recent bills is being reviewed by the District's legal counsel and management team. Currently, library policy bans bringing firearms into our buildings in order to protect the health and safety of our patrons. We are evaluating the changes in the law, which are expected to become effective 10/01/15, and you may not bring your firearm into the building until such evaluation is complete."

District counsel was made aware of the preemption laws by the public and counsel reviewed. Counsel, attorney Gerald Welt, remarked in a private conversation, later recounted on Facebook by the other participant, that Welt "...acknowledged the State preemption law, but said he'll kick out open carriers anyway. He fully expects to be sued."[17] Mr. Welt has never publicly disclaimed this allegation.

As Senate Bills 175 and 240 also invalidated any local regulations (see above citation) and required their repeal, addition additional civil damages for anyone adversely affected by enforcement of a preempted law. This, and the above mentioned attitude expressed by District counsel Mr. Welt, resulted in the *Flores* case. The District did not feel it was subject to state preemption laws.

The District argued in its *Flores* responding brief that it is a "type of political subdivision that is distinct from counties, cities, and towns." Later, it admits that "The strong language...leaves little question that the Legislature intended for the amendment to apply broadly," but then qualifies this by arguing that since it applies specifically to counties, towns, and cities in different chapters, that a library district is beyond the reach of the Legislature.

The Henderson Library District board was advised by its counsel that preemption statutes do apply (this was in 2014, prior to adoption of the enhanced preemption laws in 2015) and chose not to prohibit openly carried firearms.

> "Recently a gentleman[18] came in with an open carry weapon. It appeared his purpose was to challenge someone to confront him. The admin team will meet

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[14] The original act stated: "The provisions of this act apply only to ordinances or regulations adopted on or after the effective date of this act." The legislative record clearly states the legislative intent was to preserve the Clark County handgun registration ordinance. *1989 Statutes of Nevada*, Page 652. Chapter 308. (AB147 Sec. 5)

[15] Helsely, Steve. "Nevada Views: Is gun registration worth cost?" *Las Vegas-Review Journal*. September 16, 2012.

[16] 2007 Statutes of Nevada, Page 1289 (Chapter 320, SB 92)

[17] A screenshot of the conversation has been enclosed with the submission of this statement.

[18] The author must disclose that in very high probability, this was the author himself. There was no intent to provoke a reaction. I was simply going about my business on a hot summer's day, openly carrying a handgun for my self-

> with the district's attorney, Brin Gibson, and go through the applicable laws to decide what the district's stance should be. This may result in a policy update brought back to the Board. There haven't been any real problems; this was just something a little out of the ordinary. Jim Frey asked how the situation was resolved. Angela Thornton said staff asked him to leave. He said he didn't have to, but did leave soon after. He wanted to prove a point. Angela Thornton said in Oklahoma libraries are considered government buildings where weapons are not allowed. If the Board has any questions they should direct them to Angela Thornton. The meeting is scheduled for October 1st.[19]
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> "The admin team and branch managers met with the library district's attorney Brin Gibson about the open carry issue. The law allows for a person to openly carry a firearm [holstered] in the library, but it is against the law to carry a concealed weapon [even with a permit] in the library. The library staff response will be to call the police to ask any person open carrying about their intentions to ensure they are someone who can carry legally, safely and responsibly in the library. If a person is carrying an unholstered weapon, staff will pull the fire alarm and call 911. Gayle Hornaday said the situation rarely occurs. On the rare occasion a person has open carried in the library, he did so to make a statement."[20]

This begs the question: if a library district is neither fish nor fowl and unless specifically called out by statute, statutes cannot apply to a library district, what do the sponsors have to fear? What is the necessity of SB 115 if the state firearm preemption statutes do not apply to library districts?

District Policies

The District's stance and strategy has remained consistent, though their words and tactics have shifted as public pressure have increased. What one sees in the history of this issue is an ever-changing game to outmaneuver citizens who have the law on their side. A 2011 letter from Jeanne Goodrich, the then director to a citizen states, in part:

> "As you pointed out, pursuant to NRS 202.3673, carriers of concealed weapons can be prohibited from entering libraries. From the District's perspective, the same fears and concerns carrying concealed weapons are heightened for individuals who do not have concealed weapons permits and are carrying unconcealed weapons into libraries. In enacting NRS 370.040 [sic, NRS 379.040], the State granted the District authority to implement those regulations it deems reasonable and weighing the District's concerns of public safety versus and individual's right to bring a firearm into a library, the District implemented this reasonable restriction. The law permits the District to trespass any individual in

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defense, and chose to visit the library to pick up a book. The staff member walked away to sulk, no patrons panicked, and no one molested me after that and have no subsequently, weapon present or not.

[19] Minutes, Henderson Library District Board of Trustees Meeting (September 2014). September 18, 2014.

[20] Minutes, Henderson Library District Board of Trustees Meeting (October 2014). October 16, 2014.

violation of this policy and the District intends on doing so pursuant to its 'no firearms' policy."

A 2012 letter from Robert Duren, the then deputy director, to another citizen, seems to acknowledge only concealed firearms are prohibited (refers to NRS 202.3673 in context of a denial of written permission to carry a concealed firearm by a citizen) cites NRS 379.040.

> "Your letter dated September 12, 2012 was referred to me as I oversee public services for the Library District. Unfortunately, I cannot accommodate your request to carry your concealed handgun into any of our library branches. It is the Library District's practice that the Library Rules of Conduct, which states that firearms are prohibited as outlined in NRS 202.3673, be administered fairly and equally to all patrons visiting our facilities.
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> "In regards to the open carry of your weapon, the Library District also prohibits this under NRS 370.040. The statute grants the Library District the authority to implement those regulations it deems reasonable and weighing the District's concerns of public safety versus an individual's right to bring a firearm into the library, the District implemented this reasonable restriction."

NRS 379.040[21] empowers the board of trustees, not administration or staff, to make regulations. This has been the consistent source that District personnel have claimed as their authority to prohibit firearms. The following District policy was obtained by a private citizen (and received in similar words by others in response to numerous emails complaining to District administration about the policy) in November 2015. This policy is known by the District as its "Dangerous Weapons Policy."[22]

> "NRS 379.040 (quoted below) requires the Trustees of the 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."
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> > "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."
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> "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

[21] 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."
[22] Copy sent as evidence with this statement.

include young children. The Library District will reasonably enforce its "no firearms" policy by asserting trespass claims against violators."[23]

The NRS 379.040 power is a legislative function reserved to appointed members of the board, presumably to avoid arbitrary and capricious regulations not subject to public comment. Only after giving the public notice, listening to public comments, and reasoned debate can a regulation be adopted by the Board of Trustees. The above policy could not and should not have been made nor enforced with NRS 379.040 as the operative statute because that section grants authority *only* to the Board of Trustees.

The "Dangerous Weapons Policy" is merely an administrative response when citizens' objections, I assert, forced them to manufacture something. Since the 'policy' was never approved the board of trustees, it is not an enforceable regulation because at no time did the trustees adopt the above policy. District bureaucrats made up the ban.

Even under the current Code of Conduct, adopted in July of 2016, weapons are generically banned (see below). Only the trustees have the power to enact regulations under NRS 379.040; not administrative employees. Individual staff members *are not* authorized by law to independently interpret library policy or create any unofficial practices regarding patron conduct. Since library rules did not prohibit openly carried firearms, staff members removing patrons engaged in such lawful activity did doing so without justification under NRS 379.040 (and would continue to do so).

NRS 379.040 also requires that a "library must forever be and remain free and accessible to the public […]." Denying access to a library based solely upon the fact a patron is legally openly carrying a firearm violates the law. Perversely, the district has quoted the second clause, "reasonable regulations [etc.]," to justify their ban. They can't choose which part of the public gets free access to the library. It is a grotesque misapplication of the law to quote one half of a statute to justify violating its other half.

A library would be perfectly justified under its own policy and under law to remove someone engaged in inappropriate handling of their firearm or creating some other kind of disruptive or rude behavior. Yet in none of the incidents where a person openly carrying a firearm was asked to leave was disorderly conduct, other than openly carrying a firearm (if such a thing can be considered disruption) cited until after the fact.[24]

The library district has repeatedly stated that they defend their ban based on NRS 379.040 and have made no denial prior to the *Flores* case that the provisions of state firearm preemption statutes do not apply to them. It was only in the response to the request for a preliminary injunction did the District first publicly articulate this.

State preemption of local firearm laws explicitly prohibits the district's behavior. In fact, the legislature made its intent explicitly clear, while NRS 379.040 is much more vague. The fact that NRS 244.364 and 268.418 are coded respectively within the NRS titles for counties and cities does not abrogate the language of subsections (a) through (c) which are identical to each section (see below). The legislature made its intent to invalidate any local regulation of firearms,

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[23] A copy of this policy has been attached as an exhibit.

[24] Regarding the facts of the *Flores*, case I would argue that the "disturbance" cited was exaggerated by District counsel in their responding brief after the fact of the incident and the crux of the issue that day was the openly carried firearm. Had the library staff respected state law, there would have been no circumstances for an "alleged" disturbance.

except unsafe discharge of firearms, and reserve all right of firearm regulation to itself. I'm sure the library would love to imagine itself exempt, which it can't reasonably do.

The library distrust asserts in its various publications that "the Las Vegas-Clark County Library District is neither a part of the city of Las Vegas nor of Clark County."[25] Perhaps they meant subordinate to? NRS 379.0221 states that the method of consolidation was to merge the city into the county library district; the county library district just got bigger.

> "NRS 379.0221 The trustees of a county library district in any county whose population is 700,000 or more and the governing body of any city within that county may, to establish and maintain a public library, consolidate the city into the county library district."

The county library district was never abolished by law, but rather incorporated the existing other districts into itself, thus becoming 'consolidated.' This wasn't a marriage, but an adoption.

I also argue that as a consolidated county-city library district, NRS 244.364 and 268.418 both apply to the district because the district is the library district for Clark County, the city of Las Vegas, and the city of North Las Vegas, and the District trustees are appointed and may be removed by the county board of commissioners.

Furthermore, any denial that a city-county consolidated library district is exempt from state preemption of firearm regulation because the statutes themselves do not specifically enumerate their application to "consolidated library districts" is ludicrous. If that were the case, any sub-municipal district could violate any section of the NRS that it chose, so long as the particular statute didn't directly apply to the given type of district. It would be impractical for the legislature to name every type district in the state. If it were not the case, it would be justifiable to create a 'consolidated gun control district' and ban the carry of firearms anytime, anywhere in the county.

The Supreme Court of Nevada held that: statutes "should be interpreted so as to effect the intent of the legislature in enacting them; the interpretation should be reasonable and avoid absurd results."[26] Randomly deciding that preemption doesn't apply to sub-municipal districts would be unreasonable, absurd, and ignorant of the legislature's intent. In light of this, one must note that subsection (c) of NRS 244.364 and 268.418 identically states: "This section must be liberally construed to effectuate its purpose."

> "[T]o 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 protection of the right to keep and bear arms [...]" and "the Legislature reserves for itself such rights and powers as are necessary to regulate the [...] possession, carrying [..] of firearms."

July 2016 Code of Conduct Re-Write

Prior to July of 2016 (from at least 2004), the District's Code of Conduct stated: "3. Firearms are prohibited as outlined in NRS 202.3673."[27] Please note that NRS

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[25] *Technology Plan for Las Vegas-Clark County Library District: FYE 2016-2018 July 1, 2015 – June 30, 2018*. p. 5
[26] *Las Vegas Sun v. District Court*
[27] Relevant Code of Conduct submitted separately.

202.3673 specifically prohibits *only concealed* firearms in posted buildings. This was the Code of Conduct that applied when the *Flores* incident occurred. Library officials in 2012 were referring to this rule. In 2015 and 2016, the "Dangerous Weapons Policy" was being referred to and promulgated by the District.

In July of 2016, the Board of Trustees, without announcement or discussion[28], re-wrote the Code of Conduct to prohibit "Possession of weapons or dangerous items of any kind"; this would obviously include firearms. As the enhanced provisions of state preemption were enacted in 2015, removing the ability to enact a rule relating to firearms, this clause in the new Code of Conduct was made in violation of law (NRS 244.364 and NRS 268.418) and without legal authority. By statute, these regulations are null and void and must be repealed.

The minutes and agendas of the Board of Trustees make no mention of alteration of the weapons policy. Unfortunately, since the scope of the re-write was not clearly articulated in the agenda beforehand, myself and others had no notice to comment on the policy until after the fact. I assert, but cannot prove, this omission was hidden in general terms to prevent public protest. Interesting, in the following board meeting, there was a discussion of safety enhancements after some vandalism at a library, including increasing security camera coverage, better lighting, and a security survey by senior District staff.[29] Clearly, not all libraries are free from crime concerns.

If the District's policy *is* enforceable, why the re-write of the Code of Conduct language and why did Assemblywoman Bilbray-Axelrod feel such a bill was necessary? SB 115's proposal by a seated trustee is a tacit admission that the District cannot enforce its weapon ban and was wrong all along. If their rule was enforceable as is, then existing statutes provide the appropriate weight to back District policy. A new law is not needed if something is already illegal.

Instead, the District knows it is in the wrong and has chosen a path of obstinacy and obstruction rather than simply comply with the law. This has been the pattern in similar cases, most notably in *Michigan Open Carry vs. CADL*. Knowing that the District faces eventual defeat in the courts, this bill was proposed to spite armed citizens and invalidate any successful legal challenge on the merits of preemption.

Other Places

In context of other examples, both locally and in other states, it's clear that it is the library district that is out of sync with establish standards. The Henderson Library District does not prohibit openly carried firearms. The Carson City Library prohibits weapons (oddly specifically including bombs), except by police officers or by written permission.[30] Carson City is not known to enforce this provision. No other such policy is known in the state, aside from LVCCLD.

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[28] As reflected in the minutes of the July 2016 board meeting and the agenda.

[29] *Minutes*. Las Vegas-Clark County Library District Board Of Trustees' Meeting. August 11, 2016.

[30] C*arson City Library Policy*. Last approved: August 27, 2015. pp. 19 & 21

Of the Intermountain West states, Idaho[31], New Mexico[32], Utah[33], Washington[34], and Wyoming[35] also prohibit local authorities from making their own firearm regulations and this openly carried weapons are legal in libraries. In Arizona[36] and Montana[37], local public buildings banning weapons are at local discretion with Arizona requiring secure storage or lockboxes. Interestingly, Colorado law absolutely protects *concealed carry*[38] in public buildings without security screening, which caused the Denver Science Museum (similar in nature to a library) to change its policy to permit concealed carry.

Most states have strict preemption laws, so Nevada is not at all unusual in this regard. Ironically, California permits *concealed* firearms carried by permittees in most public buildings.[39] A list of states where some form of carry is permitted in public libraries is: Alabama, Arizona, California, Colorado, Delaware, Florida, Georgia, Idaho, Indiana, Kentucky, Louisiana, Maine, Minnesota, Mississippi, Missouri, Nebraska, Nevada, New Hampshire, New Mexico, North Dakota, Ohio, Pennsylvania, Rhode Island, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington, and Wyoming (at least 32 states).

Michigan v. CADL

Persons legally possessing firearms (both open and concealed carry is legal) were being hassled and prevented from doing so by the Capitol Area District Library in Lansing (CADL). Lansing police eventually informed the library district that they would not respond unless there is a court order in place. Consequently, the district obtained a temporary restraining order (TRO). The restraining order enjoined non-specific members of Michigan Open Carry, resulting in the arrest of a member at a board meeting where he was also first served with the TRO. The next day, all the directors of Michigan Open Carry were served. The group filed suit, which initially resulted in the library district winning the case, which was later overturned on appeal (with a stern rebuke for that judge).

The court found:

> "Although district libraries are not expressly included within the definition of a local unit of government for purposes of MCL 123.1102, because we are dealing with regulation by a quasimunicipal governmental agency in an area that is regulated by the state, we are bound to apply Michigan's doctrine of field preemption in determining whether a district library is free to regulate firearm possession."

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[31] 18-3302J IC.
[32] *New Mexico Constitution*, Article II, Section 6
[33] 76-10-500 UC.
[34] 9.41.290 RCW.
[35] 6-8-401 WS.
[36] ARS 13-3108 (preemption), ARS 13-1302 ("no guns" signs), ARS 13-3202.01 (storage lockers).
[37] 45-8-351 MCA; local ordinances generally refer to only public meetings and large events.
[38] Colorado law is unusual from most states in that it favors concealed carry over open carry. Open carry may be discretionally prohibited in some public places, while concealed carry generally cannot.
[39] 171b(B)(3) PC.

The suit found that while the Michigan library statute authorizing library regulations could pertain to firearms, it was overruled by the preemption statute. The preemption statute applied, even though the library did not meet the given definition of a local unit of government, because:

> "Although district libraries have the authority to adopt bylaws and regulations and do any other thing necessary for conducting the district-library service, as stated earlier, this Court has held that a district library is a quasi-municipal corporation, i.e., a governmental agency authorized by constitution or statute to operate for and about the business of the state."
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> "Excluding a district library from the field of regulation—simply because it is established by two local units of government instead of one—defies the purpose of the statute and would undoubtedly lead to patchwork regulation."

Seattle, Washington

The Seattle Public Library dropped its preempted ban of firearms in November of 2013. This was the result of a few emails from a concerned citizen, Dave Bowman. The city attorney told authorities that he doubted their ban could survive a legal challenge. The fight with the Seattle library had begun in 2007, but only came to a head years later, in light of *Chan v. Seattle*, which found that Seattle's ban on firearms in public parks was illegal. In this case, the Seattle library did the right thing.

An opinion from the Washington Attorney General affirmed that the state preemption statute "fully occupies and preempts the entire field of firearm regulation."[40]

Conclusion

A library is not like a school. A library is held open for public use without requiring invitation or reservation. They are relatively open facilities, without control over who comes in and out. If the same argument for keeping guns out schools are used to support banning them at libraries, then the same arguments in favor of campus carry can be used in rebuttal. Simply because children visit libraries and parents use libraries are unsupervised, free afterschool care, and libraries imply learning, it does not make a library a school.

Libraries, especially in Las Vegas, often are centers for the homeless, some who have been known to cause issues that have, and can easily escalate to violence. Many do not feel safe in the areas where some libraries are located. Should they be forced to go unarmed when visiting a library? While violence at libraries is rare, violence nearby is sadly common. In the past, even the areas beyond the Capitol were considered unsafe.[41] Under this bill, even a citizen sensitive to the library's position would be committing a crime if he left his gun discreetly in his car. Should parents be forced to subordinate their children's and their own safety to mollify the feelings and

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[40] Washington Attorney General. AGO 2008 No. 8. October 13, 2008.

[41] "Senator Titus asked if those in favor of this bill felt unsafe in the Legislature's building. Mr. Prater responded he walks a lot, and passes by a place or through an area that may be questionable. He noted a few years ago the St. Charles Hotel was not a nice place to walk and it is across the street from the Legislature. He pointed out a person may not be safe in a parking lot because the building they are going to does not allow CCW permits." Minutes of the Senate Committee on Judiciary (AB 166). March 25, 1999.

satisfy the opinions of others? Should behavior be banned, not because it is dangerous or harmful, but because someone with influence can get a law made?

What problem, what danger, does this bill seek to remedy? There is no danger, unfounded opinions of those who oppose an armed citizenry aside, to the public. The only problem here is that citizens stood up for their rights and resisted officials' actions to subvert and violate the law on their whim. The real danger is that if an official doesn't like the law, they can simply change what the law says. Citizen activism, the heart of our democracy, is stymied if a legislature can simply re-write the law anytime citizens stand against government abuse of the law.

Had the District complied with the law, this would never have been an issue. No lawsuit, no legislation, no news stories. The District could have gone the way of Henderson, but the District decided to stand for personal animus instead upon responsible public administration. Make no mistake: the only controversy is that which the District itself caused and the only danger is to the state and federal constitutional right to bear arms. If this bill goes into law, it will have a chilling effect for anyone who challenges a government over-reach of law.

The danger of this bill is an erosion of the right to armed self-defense. If a pet peeve of a legislator can grow into a criminal prohibition, what is to stop the legislature from infringing on the right to bear arms wherever a connected and powerful public figure wishes to have guns banned? I allege this bill is personal and the circumstances for its "necessity" are entirely because of the illegal actions of the Las Vegas Clark County Library District and its trustees. This bill is a cover-up for those actions. Passing this bill would reward that bad behavior.

SB 115 should not become law.