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Flores v. Las Vegas-Clark Cty. Library Dist., 134 Nev. Adv. Op. 101 (Dec. 13, 2018) (en banc)

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Flores v. Las Vegas-Clark Cty. Library Dist., 134 Nev. Adv. Op. 101 (Dec. 13, 2018) (en banc)[1]

STATUTORY CONSTRUCTION: PREEMPTION, FIREARM REGULATIONS

Summary

The Court determined that (1) NRS §§ 244.364, 268.418, and 269.222, as amended by Senate Bill 175 ("SB 175"), unambiguously preempt firearm ordinances and regulations adopted by counties, cities, and towns only and (2) a library district created in accordance with NRS Chapter 379 is not a "county," "city," or "town" for the purposes of SB 175.

Background

Enacted in 2015, SB 175 states that "the regulation . . . of firearms . . . in this State . . . is within the exclusive domain of the Legislature, and any other law, regulation, rule or ordinance to the contrary is null and void."[2] However, SB 175 also declares that no "county," "city," or "town" may infringe on the Legislature's rights and powers to regulate firearms.[3]

The Las Vegas-Clark County Library District ("the District") is a "Consolidated Library District" created in accordance with NRS Chapter 379. The District is authorized by statute to "[d]o all acts necessary for the orderly and efficient management and control of the library" and "[e]stablish bylaws and regulations for the management of the library."[4]

In 2016, Michelle Flores visited one of the District's branches while openly carrying a handgun holstered on her belt. A librarian requested that Flores no longer bring the gun when visiting the library, as doing so violates the District's Dangerous Items Policy ("DIP"). The DIP bans library patrons from bringing or possessing dangerous items, including firearms, on the District's premises.

Flores subsequently brought a declaratory relief action alleging that SB 175 preempts the District's DIP. Both parties moved for summary judgment. The trial court found that the District is not a "county," "city," or "town" for the purposes of SB 175; thus, the Legislature did not intend to revoke or diminish the District's authority to create appropriate bylaws and regulations when enacting SB 175.[5] The court granted the District's motion for summary judgment accordingly. This appeal followed.

Discussion

Whether SB 175 preempts the District from regulating the possession of firearms on its premises is an issue of statutory construction. The Court therefore reviewed the district court's decision de novo.[6]

In 1989, the Legislature enacted Assembly Bill 147 ("AB 147") to reserve the rights and powers to regulate firearms to the Legislature.[7] AB 147 amended NRS Chapters 244, 268, and 269

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[1] By Paige Hall.
[2] S.B. 175 §§ 8(1)(b), 9(1)(b), 10(1)(b), 78th Leg. (Nev. 2015).
[3] *Id.* at §§ 8(2), 9(2), 10(2).
[4] NEV. REV. STAT. §§ 379.025 (2)(f), 379.025(1)(h) (2017).
[5] NEV. REV. STAT. § 379.025(1)(h) (2017).
[6] *See* Williams v. United Parcel Servs., 302 P.3d 1144, 1147 (2013).
[7] Assemb. B. 147, 65th Leg. (Nev. 1989).

by adding a fairly short, nearly identical provision to each chapter.[8] These three chapters pertain to counties, cities, and towns.[9]

SB 175 "drastically expanded" the three statutory provisions created in 1989.[10] Introductory language added to each provision defines the legislation's purpose as "establish[ing] 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."[11] The new language also indicates that the Legislature has "exclusive domain" over the regulation of firearms, and "any other law, regulation, rule or ordinance to the contrary is null and void."[12] Finally, under SB 175, each provision "must be liberally construed to effectuate its purpose."[13]

Like AB 147, SB 175 states that no "county," "city," or "town" may infringe on the Legislature's rights and powers.[14] However, a board of county commissioners, governing body of a city, or town board may regulate unsafe firearm discharges and authorize a private right of action for the violation of SB 175.[15]

Relying on the introductory language describing SB 175's purpose and its intended effect, as well as requiring its provisions to be liberally construed, Flores argued that the district court erred because SB 175 grants the Legislature exclusive domain over the regulation of firearms and thus preempts the DIP as a matter of law.[16] The District alternatively relied on language from SB 175 that prohibits infringement by cities, counties, and towns,[17] as well as provisions that grant certain powers to a board of county commissioners, governing body of a city, or town board.[18]

The Court rejected Flores's argument as requiring a piecemeal reading of SB 175 that ignores the unambiguous preemption of only counties, cities, and towns from the field of firearm regulation. When engaging in statutory construction, a court must read the provisions together, harmonizing their meaning rather than rendering portions of the statutory scheme meaningless.[19] Although the language cited by Flores demonstrates the Legislature's intent to occupy the field of firearm regulation, the latter subsections expressly limit that field to counties, cities, and towns. As SB 175's plain language is clear and unambiguous, it is inappropriate to consider its legislative history.[20]

In concluding that SB 175's text unambiguously limits its preemptive scope to counties, cities, and towns, the Court cited three cases. In the first case, *Michigan Gun Owners, Inc. v. Ann Arbor Public Schools*, the Michigan Supreme Court ruled that a school district was not preempted from regulating firearm possession where the legislature expressly defined the governmental

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[8] *Id.* at §§ 1(1), 2(1), 3(1).
[9] NEV. REV. STAT. ch. 244 (pertains to counties); NEV. REV. STAT. ch. 268 (pertains to cities and towns); NEV. REV. STAT. ch. 269 (pertains to unincorporated towns).
[10] S.B. 175, 78th Leg. (Nev. 2015).
[11] *Id.* at §§ 8(1)(a), 9(1)(a), 10(1)(a).
[12] *Id.* at §§ 8(1)(b), 9(1)(b), 10(1)(b).
[13] *Id.* at §§ 8(1)(c), 9(1)(c), 10(1)(c).
[14] Assemb. B. 147 §§ 1(1), 2(1), 3(1), 65th Leg. (Nev. 1989); S.B. 175 §§ 8(2), 9(2), 10(2), 78th Leg. (Nev. 2015).
[15] S.B. 175 §§ 8(3), 8(7), 9(3), 9(7), 10(3), 10(7) 78th Leg. (Nev. 2015).
[16] *Id.* at §§ 8(1)–(2), 9(1)–(2), 10(1)–(2).
[17] *Id.* at §§ 8(2), (4)–(5); 9(2), (4)–(5); 10(2), (4)–(5).
[18] *Id.* at §§ 8(3), (7); 9(3), (7), 10(3), (7) (authorizing a board of county commissioners, governing body of a city, or town board to regulate unsafe firearm discharges and authorize a private right of action for the violation of SB 175).
[19] Orion Portfolio Servs. 2, LLC v. Cty. of Clark ex rel. Univ. Med. Ctr. of S. Nev., 245 P.3d 527, 531 (2010).
[20] *See* Westpark Owners' Ass'n v. Eighth Judicial Dist. Court, 167 P.3d 421, 427 (2007).

entities it sought to prohibit from firearm regulation as any "city, village, township or county."[21] The Court also relied on a United States Supreme Court case for the proposition that courts should not expand the preemptive reach of a statute when Congress has defined that reach within a preemption provision.[22] Lastly, the Court included a Nevada case for the maxim of construction that "the expression of one thing is the exclusion of another."[23]

The Court determined that accepting Flores's argument would render some of SB 175's subsections superfluous and lead to absurd results in application. First, if the provision relating to the preemption of county action were read so broadly as to include the District, the other provisions relating to cities and towns would be unnecessary. Second, the subsections referring to the board of county commissioners would be nonsensical as applied to the District. This application would require the board of county commissioners to repeal the DIP and provide a private right of action against the county if the board failed to do so, even though this authority rests with the District's trustees. Finally, if the Court were to conclude that SB 175 preempts the District's policy,[24] it would also preempt "countless other local governmental entities" in the field of firearm regulation, even though those entities have been created under and exercise authority in accordance with various statutes passed by the Legislature.

Stressing that the Legislature—not the City of Las Vegas or Clark County—empowered the District to act in the interest of the library's "orderly and efficient management" as well as create bylaws and regulations for the library's management,[25] the Court found Flores's argument that the City of Las Vegas and Clark County cannot authorize the District to undertake actions that those entities may not directly accomplish to be irrelevant.

Finally, the Court agreed with both parties that the regulation of firearms entails important public policy decisions and refused to prematurely expand SB 175's scope beyond its plain language. If the Legislature desires to preempt the DIP and other similar policies, "it can expressly do so by enacting legislation that contains no limiting language."

Conclusion

The Court held that SB 175 preempts only counties, cities, and towns from regulating firearms in violation of NRS §§ 244.364, 268.418, and 269.222 as amended. The Court further determined that since a library district created under NRS Chapter 379 is not a "county," "city," or "town" for the purposes of SB 175, the District's DIP is not preempted by SB 175. Thus, finding the DIP to be consistent with the District's statutory authority under NRS § 379.025, the Court upheld the DIP as valid. The Court accordingly affirmed the district court's grant of summary judgment in the District's favor.

Justice Stiglich, with whom Justice Cherry agrees, dissenting:

The majority's decision places too much emphasis on the Legislature's decision to amend NRS Chapters 244, 268, and 269 while ignoring the plain import of SB 175's express purpose and

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[21] 918 N.W.2d 756, 761–62 (Mich. 2018).

[22] Cipollone v. Liggett Grp., Inc., 505 U.S. 504, 517, 547 (1992) (the Court cited to both the opinion and Justice Scalia, concurring in part, dissenting in part).

[23] Galloway v. Truesdell, 422 P.2d 237, 246 (1967).

[24] The Court noted that the District's policy is not an "ordinance or regulation" and suggested that this incongruence alone may be sufficient to avoid preemption.

[25] NEV. REV. STAT. §§ 379.025 (2)(f); 379.025(1)(h) (2017).

intended effects.[26] SB 175's purpose as "establish[ing] state control" over firearm regulation in order to ensure uniformity and protect the right to keep and bear arms demonstrates that the Legislature intended to occupy the field of firearm regulation. This is especially true in light of SB 175's intended effect as granting the Legislature "exclusive domain" over firearm regulation.

This plain-language reading is supported by the requirement that SB 175's provisions be liberally construed to affect its express purpose. *Wisconsin Carry, Inc. v. City of Madison* sheds light on the importance of this requirement.[27] In that case, a transportation commission adopted a policy banning the possession of firearms on its buses.[28] The policy was challenged under a state statute prohibiting a "political subdivision" from regulating firearms.[29] The statute defined "political subdivision" as a "city, village, town or county."[30] The Wisconsin Supreme Court held that the statute preempted the commission's policy because although the commission itself was not a "political subdivision," it had nonetheless been created by a "political subdivision," i.e. the City of Madison.[31] The conclusion that a city cannot "delegate what it does not have" applies here. As a sub-entity created by the City of Las Vegas and Clark County, the District cannot regulate firearm possession.

Neither *Wisconsin Carry* nor *Michigan Gun Owners*, relied upon by the majority, involve express preemption language provided that the state has exclusive authority in the field of firearm regulation. Here, however, SB 175 contains such language. The presence of this express preemption language creates ambiguity as to whether sub-entities created by counties, cities, or towns may regulate firearms.

Because the text's meaning is capable of more than one reasonable interpretation, it is appropriate to examine its legislative history.[32] Senator Greg Brower's statement of purpose demonstrates that, had the Legislature foreseen this issue, it would have intended to prevent a sub-entity such as the districting from entering the field of firearm regulation.[33]

The dissent would have held that SB 175 preempts the DIP and reversed the district court's grant of summary judgment in the District's favor accordingly.

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[26] *See* S.B. 175 §§ 8(1)–(2), 9(1)–(2), 10(1)–(2),78th Leg. (Nev. 2015).
[27] 892 N.W.2d 233 (Wis. 2017).
[28] *Id.* at 235–36.
[29] *Id.* at 236 n.6 (quoting Wis. Stat. §§ 66.0409).
[30] *Id.*
[31] *Id.* at 242.
[32] *See* Dykema v. Del Webb Cmtys., Inc., 385 P.3d 977, 979 (2016).
[33] "[T]his bill say[s] the state is going to preempt the field with respect to the regulation of firearms for most purposes. . . . [T]he Legislature will make the regulation regarding firearms policy." *Hearing on S.B. 175 Before the Assembly Comm. on Judiciary*, 78th Leg., (Nev. April 23, 2015) (statement of Sen. Greg Brower, guest legislator).