



Washington State Senate

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Senator Phil Fortunato
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November 28, 2017

Lieutenant Governor Cyrus Habib
Office of the Lieutenant Governor
PO Box 40400
Olympia, WA 98504-0400

VIA HAND DELIVERY

Dear Lt. Governor Habib,

I recently learned in the media of your decision to ban all weapons from the public galleries of the Senate. I have several concerns about the legality and propriety of this decision. I also believe it will likely subject the Senate and its employees to lawsuits without any added protection for members of the legislature or the public.

1. **The policy is illegal.** The Washington State Constitution protects the right of an individual to bear arms. Article I, section 24. While state law does provide a list of certain government buildings such as courthouses, jails, and mental institutions that may restrict individuals from carrying weapons, the legislative building and chambers are not listed. RCW 9A.1.300. Under the doctrine, *inclusio unius est exclusio alterius* ("the inclusion of one acts to the exclusion of all others") a statute that lists certain items implicitly excludes others not included. While the legislative building at times may feel to members and the public like a jail or mental institution, it cannot be legally considered so for the purposes of this statute.

I note that in your letter regarding your decision you appear to rely on your authority under Senate Rule 1. I have reviewed the rule and find no authority whatsoever for you to restrict firearms or weapons. While sections 2 and 3 of the Rule allow you to preserve the decorum of the chamber and to restrict cellphones, there is no reference to weapons at all. I understand that your predecessor in office excluded firearms that were openly carried in the gallery under the theory that publicly displayed weapons caused a disruption in the same way that a sign or poster does. While I was concerned about this, it cannot be said that a weapon carried in a concealed manner as permitted by law causes a "disruption." You have no more ability to restrict by fiat the private exercise of a constitutional right than you could prohibit a whispered prayer in the gallery or the right of union members watching legislative debate to peaceably assemble. Senate Rule 1 does not give you *carte blanche* to violate the constitution.

2. **The policy was decided unilaterally without input from stakeholders or members.** Even assuming for the purpose of argument that you had the legal authority to do so, I am surprised that you would make such a decision without meetings and consultation with counsel, members, staff, and affected stakeholders. To act unilaterally and with such haste on an issue of this importance is unwise.
3. **The policy is unworkable.** If you had consulted with more interested parties perhaps you could answer how you intend to enforce this new policy.
 - Will Senate security staff be searching the person and belongings of the public before they are able to watch their elected representatives in the gallery? Have Senate staff been trained to conduct such searches? Will women officers be made available to search female members of the public? What will be the protocol if a weapon is found? Will the Senate security staff provide lockers to store weapons that are surrendered or taken? What liability does the state risk in taking and returning these weapons?
 - Does your policy restricting carrying of firearms apply to Senate security staff? What about law enforcement? What about members of the public or legislature who have firearms certification but may not be law enforcement? Would your policy apply to visiting diplomats and their security details?
 - Does taking or returning the weapon constitute a transfer for the purposes of I-594 that would require senate staff to conduct a background check? Who will pay for the background check? What about other illegal items that may be found in searches such as drugs? Will members of the public be warned or arrested if found carrying firearms in violation of the policy? If so, what is the criminal charge since current law does not allow for the restriction of weapons in legislative buildings?
 - Will metal detectors be required? If so, how much will they cost and since there is no current appropriation for them?
 - Your letter references "assault weapons." How do you intend to define this? Since most commonly understood definitions would not entail the kind of firearms that are carried in a concealed manner, how does your policy of restricting concealed weapons address your stated purpose or demonstrate a compelling state interest?
 - What about members of the public who visit the legislative building for other purposes? Will they be required to keep weapons in their car? If so, given the prevalence of vehicle burglaries and property crime, is that safer? How will they know until they reach the building that weapons are prohibited? Since legislative tours go through the galleries, would members of the public carrying weapons be restricted from such tours?

- What about members of the legislature who may have offices on the 4th floor and need to access the gallery via elevators so that they could reach the floor? Would those members also be prohibited from carrying concealed weapons? Will a violation of this policy by members subject the member to discipline for a violation of Senate Rules?

These are just a few of the logistical questions that leap to mind. Unfortunately, your one-page letter to Senate security sheds no light on these substantive queries that go directly to your ability to enforce your policy. I am concerned that you have failed to consider these basic matters related to enforcement and that the result of your order will be limited to having Senate security post signage and set up coat racks in the public gallery.

I appreciate your review of these concerns, and hope to hear from you soon about them.

Sincerely,



Senator Phil Fortunato
31st Legislative District