

1 CASE NO.: 21-CV-00690

2 DEPT. NO.: 1

3
4 **IN THE THIRD JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
5 **IN AND FOR THE COUNTY OF LYON**

Electronically Filed
Aug 18 2021 10:33 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

6 POLYMER80, INC.

7 Plaintiff,

8 vs.

9 STEPHEN SISOLAK, Governor of
10 Nevada, AARON FORD, Attorney
11 General of Nevada, GEORGE
12 TOGLIATTI, Director of the Nevada
13 Department of Public Safety, MINDY
MCKAY, Administrator of the Records,
Communications, and Compliance
Division of the Nevada Department of
Public Safety,

14 Defendants.

15 **NOTICE OF APPEAL**

16 Notice is hereby given that Stephen Sisolak, Governor of Nevada, Aaron Ford,
17 Attorney General of Nevada, George Togliatti, Director of the Nevada Department of Public
18 Safety, Mindy McKay, Administrator of the Records, Communications, and Compliance
19 Division of the Nevada Department of Public Safety (collectively, the "State Defendants")
20 hereby appeal to the Supreme Court of Nevada from the "Order Granting Preliminary
21 Injunction," entered on July 16, 2021 and notice of entry of which was served on July 16,
22 2021.

23 DATED this 12th day of August 2021.

24 AARON D. FORD
25 Attorney General

26 By: 


#10960
FU
27 CRAIG A. NEWBY, Bar #8591
28 Deputy Solicitor General
(702) 486-3420 (phone)
cnewby@ag.nv.gov

AFFIRMATION

Pursuant to NRS 239B.030(4), the undersigned does hereby affirm that the preceding document does not contain the Social Security number of any person.

DATED this 12th day of August, 2021.

AARON FORD
Attorney General

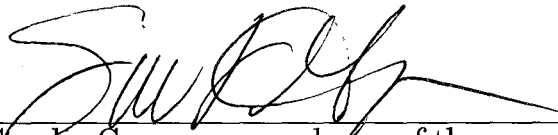
By:  #109180
CRAIG A. NEWBY, Bar #8591
Deputy Solicitor General
Nevada Office of the Attorney General
555 E. Washington Ave., Ste. 3900
Las Vegas, NV 89101
(702) 486-3420 (phone)
(702) 486-3768 (facsimile)
cnewby@ag.nv.gov

1 CERTIFICATE OF SERVICE

2 I hereby certify that I am an employee of the State of Nevada, Office of the Attorney
3 General, and that on the 12th day of August, 2021, I served the foregoing document, by
4 causing a true and correct copy thereof to be served via U.S. Mail, addressed to the
5 following:

6 Brad M. Johnston
7 Simons Hall Johnston PC
8 22 State Route 208
9 Yerington, NV 89447

10 *Attorneys for Polymer80, Inc.*

11 
12
13 Sandie Geyer, an employee of the
14 Office of the Attorney General

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7 Plaintiff,

8 vs.

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12 TOGLIATTI, Director of the Nevada
13 Department of Public Safety, MINDY
MCKAY, Administrator of the Records,
Communications, and Compliance
Division of the Nevada Department of
Public Safety,

14 Defendants.

Mindy McKay
2021 AUG 16 AM 11:07
FILED

15 **APPELLANT'S CASE APPEAL STATEMENT**

16 Defendants Stephen Sisolak, Governor of Nevada, Aaron Ford, Attorney General of
17 Nevada, George Togliatti, Director of the Nevada Department of Public Safety, Mindy
18 McKay, Administrator of the Records, Communications, and Compliance Division of the
19 Nevada Department of Public Safety (collectively, the "State Defendants") hereby file their
20 Case Appeal Statement pursuant to Nevada Rule of Appellate Procedure 3(f).

21 **1. Name of appellant filing this case appeal statement:**

22 Stephen Sisolak, Governor of Nevada, Aaron Ford, Attorney General of Nevada,
23 George Togliatti, Director of the Nevada Department of Public Safety, Mindy McKay,
24 Administrator of the Records, Communications, and Compliance Division of the Nevada
25 Department of Public Safety.

26 **2. Identify the judge issuing the decision, judgment, or order appealed from:**

27 Honorable John P. Schlegelmilch.

28 ///

1 **3. Identify each appellant and the name and counsel for each appellant:**

2 **(a) Name of appellants**

3 Stephen Sisolak, Governor of Nevada, Aaron Ford, Attorney General of Nevada,
4 George Togliatti, Director of the Nevada Department of Public Safety, Mindy McKay,
5 Administrator of the Records, Communications, and Compliance Division of the Nevada
6 Department of Public Safety.

7 **(b) Name and address of appellate counsel**

8 Craig A. Newby, Esq.
9 Nevada Bar No. 8591
10 Deputy Solicitor General
11 Nevada Office of the Attorney General
12 555 E. Washington Ave., Ste. 3900
13 Las Vegas, NV 89101
14 (702) 486-3420 (phone)
15 (702) 486-3768 (facsimile)
16 cnewby@ag.nv.gov

13 **4. Identify each respondent and the name and address of appellate counsel, if
14 known, for each respondent (if the name of a respondent's appellate
15 counsel is unknown, indicate as much and provide the name and address
16 of that respondent's trial counsel):**

16 **(a) Name of respondent**

17 Polymer80, Inc.

18 **(b) Name and address of trial counsel**

19 Respondent's appellate counsel is not known. Polymer80, Inc. was represented by
20 the following trial counsel:

21 Brad M. Johnston, Esq.
22 Nevada Bar No. 8515
23 Simons Hall Johnston PC
24 32 State Route 208
25 Yerington, NV 89447
26 (775) 463-9500 (phone)
27 bjohnston@shjnevada.com

25 **5. Indicate whether any attorney identified above in response to question 3
26 or 4 is not licensed to practice law in Nevada and, if so, whether the district
27 court granted that attorney permission to appear under SCR 42 (attach a
28 copy of any district court order granting such permission):**

28 ///

1 All attorneys identified above in response to questions 3 and 4 are licensed to
2 practice law in Nevada.

3 **6. Indicate whether appellants were represented by appointed or retained**
4 **counsel in the district court.**

5 Appellants were represented by retained counsel before the district court.

6 **7. Indicate whether appellants were represented by appointed or retained**
7 **counsel on appeal.**

8 Appellants are represented by retained counsel on appeal.

9 **8. Indicate whether appellant was granted leave to proceed in forma**
10 **pauperis, and the date of entry of the district court order granting such**
11 **leave:**

12 None of these appellants sought or were granted leave to proceed in forma pauperis.

13 **9. Indicate the date the proceedings commenced in the district court (e.g.,**
14 **date complaint, indictment, information, or petition was filed):**

15 On June 22, 2021, the complaint was filed in the district court.

16 **10. Provide a brief description of the nature of the action and result in the**
17 **district court, including the type of judgment or order being appealed and**
18 **the relief granted by the district court:**

19 Plaintiff is a designer, developer, and seller of aftermarket gun accessories, including
20 unfinished lower receivers or frames that can be bought as kits and assembled at home.
21 Plaintiff brought this action to challenge Assembly Bill 286 (AB 286) of the 2021 legislative
22 session, which was passed to attempt reducing the spread of ghost guns by applying serial
23 number requirements to an “unfinished frame or receiver” with criminal penalties.

24 In its complaint and its motion for preliminary injunction, Plaintiff contended that
25 AB 286 was unconstitutionally vague. Following briefing and argument, the district court
26 entered an order granting preliminary injunction against Appellants with respect to
27 enforcing Section 3.5 of AB 286, concluding that it was unconstitutionally vague as a
28 criminal statute. Further, the district court concluded that Plaintiff sufficiently
demonstrated irreparable harm to warrant a preliminary injunction based on the inability
to conduct business without the threat of criminal prosecution. Finally, the district court

1 concluded that the public interests and the balance of hardships weigh in favor of a
2 preliminary injunction due to the ambiguity in AB 286.

3 The district court denied Plaintiff's motion for preliminary injunction seeking to
4 enjoin other aspects of AB 286. Pursuant to NRAP 3A(b)(3), Appellants appeal the district
5 court's July 16 order as to Section 3.5 of Assembly Bill 286.

6 **11. Indicate whether the case has previously been the subject of an appeal or**
7 **original writ proceeding in the Supreme Court and, if so, the caption and**
8 **the Supreme Court docket number of the prior proceeding:**

9 This case has not previously been the subject of an appeal to or original writ
10 proceeding in the Supreme Court.

11 **12. Indicate whether this appeal involves child custody or visitation:**

12 This appeal does not involve child custody or visitation.

13 **13. If this is a civil case, indicate whether this appeal involves the possibility**
14 **of settlement.**

15 This appeal does not involve the possibility of settlement.

16 DATED this 12th day of August 2021.

17 AARON D. FORD
18 Attorney General

19 By: 

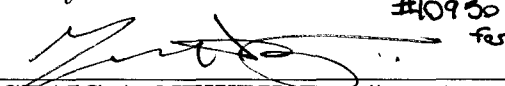
20 CRAIG A. NEWBY, Bar #8591
21 Deputy Solicitor General
22 Nevada Office of the Attorney General
23 555 E. Washington Ave., Ste. 3900
24 Las Vegas, NV 89101
25 (702) 486-3420 (phone)
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28

AFFIRMATION

Pursuant to NRS 239B.030(4), the undersigned does hereby affirm that the preceding document does not contain the Social Security number of any person.

DATED this 12th day of August, 2021.

AARON FORD
Attorney General

By:  #10930
CRAIG A. NEWBY, Bar #8591
Deputy Solicitor General
Nevada Office of the Attorney General
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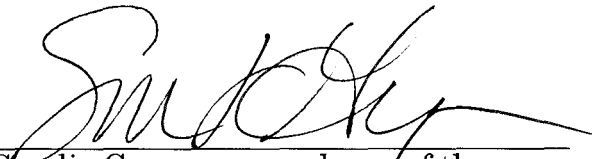
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CERTIFICATE OF SERVICE

I hereby certify that I am an employee of the State of Nevada, Office of the Attorney General, and that on the 12th day of August, 2021, I served the foregoing document, by causing a true and correct copy thereof to be served via U.S. Mail, addressed to the following:

Brad M. Johnston
Simons Hall Johnston PC
22 State Route 208
Yerington, NV 89447

Attorneys for Polymer80, Inc.


Sandie Geyer, an employee of the
Office of the Attorney General

Case Summary

Aaron D. Ford Attorney General, POLYMER80, INC., STEPHEN SISOLAK, GOVERNOR OF NEVADA, GEORGE TOGLIATTI, DIRECTOR OF THE NEVADA DEPARTMENT OF PUBLIC SAFETY, MINDY MCKAY, ADMINISTRATOR OF THE RECORDS, COMMUNICATION, AND COMPLIANCE DIVISION OF THE NEVADA DEP

Case Number: 21-CV-00690

Agency: Third Judicial District Court

Type: Other Civil Matters

Received Date: 6/22/2021

Status: Open

Status Date: 6/22/2021

Involvements

Primary Involvements

STEPHEN SISOLAK, GOVERNOR OF NEVADA Defendant
Ford, Aaron D. Attorney General - AFORD Defendant
GEORGE TOGLIATTI, DIRECTOR OF THE NEVADA DEPARTMENT OF PUBLIC SAFETY Defendant
MINDY MCKAY, ADMINISTRATOR OF THE RECORDS, COMMUNICATION, AND COMPLIANCE DIVISION OF THE NEVADA DEPARTMENT OF PUBLIC SAFETY Defendant
POLYMER80, INC. Plaintiff

Other Involvements

Doerr, Mark T. Esq. Plaintiff's Attorney
Zunino, Gregory L. Deputy Solicitor General Defendant's Attorney
McGuire, James J. Esq. Plaintiff's Attorney
Johnston, Brad M. Esq. Plaintiff's Attorney
Third Judicial District Court (21-CV-00690)
Schlegelmilch, John P. - JPS Dept I - TJDC

Other Civil Matters

[1. NRCP 3 - COMPLAINT](#)

Lead/Active: True

Case Status History

6/22/2021 3:33:00 PM | Open

Documents

6/22/2021 Verified Complaint.pdf - Filed
6/22/2021 Summons- Issued- Aaron Ford.pdf - Issued
6/22/2021 Summons- Issued- George Togliatti.pdf - Issued
6/22/2021 Summons- Issued- Mindy McKay.pdf - Issued
6/22/2021 Summons- Issued- Steve Sisolak.pdf - Issued
6/22/2021 Civil Cover Sheet.pdf - Filed
6/24/2021 Plaintiff's Rule 7.1 Disclosure Statement.pdf - Filed
6/25/2021 Motion for Temporary Restraining Order and Preliminary Injunction.pdf - Filed
6/25/2021 Notice of Entry of Order (Order filed 6-25-21).pdf - Filed
6/25/2021 Order Shortening Time.pdf - Filed
6/25/2021 Emergency Application of Polymer80 Inc. for Order to Show Cause or, Alternatively,.pdf - Filed
Notes: Its Motion for Order Shortening Time
6/30/2021 Motion to Associate Counsel- James J. McGuire.pdf - Filed
6/30/2021 Proof of Service (Summons and Complaint).pdf - Filed
7/2/2021 Order Granting Motion to Associate Counsel- James J. McGuire.pdf - Filed
7/6/2021 Defendants' Opposition to Application for Temporary Restraining Order.pdf - Filed
7/12/2021 Reply Memorandum of Points and Authorities in Support of Motion for Temp Restraining Order.pdf - Filed
7/13/2021 Motion to Associate Counsel- Mark T. Doerr.pdf - Filed
7/14/2021 Order Granting Motion to Associate Counsel- Mark T. Doerr.pdf - Filed
7/15/2021 Notice of Posting Security.pdf - Filed
7/15/2021 Security Bond Check.pdf - For Court Use Only

Case Summary

7/15/2021 Case Management and Trial Scheduling Order.pdf - Filed
7/16/2021 Notice of Entry of Order.pdf - Filed
7/16/2021 Order Granting Preliminary Injunction.pdf - Filed
7/23/2021 Transcript of Proceedings Motion for Temporary Restraining Order July 14, 2021.pdf - Filed
8/16/2021 Appellant's Case Appeal Statement.pdf - Filed
8/16/2021 Notice of Appeal.pdf - Filed

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Case No. 21-CV-00690

2021 JUL 16 PM 2:41

Dept. No. 1

TANYA BOJARDI
COURT ADMINISTRATOR
THIRD JUDICIAL DISTRICT

The undersigned affirms that this document does not contain the social security number of any individual.

Andrea Andersen

**IN THE THIRD JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF LYON**

POLYMER80, INC.,

Plaintiff,

vs.

STEPHEN SISOLAK, Governor of Nevada, AARON FORD, Attorney General of Nevada, GEORGE TOGLIATTI, Director of the Nevada Department of Public Safety, MINDY MCKAY, Administrator of the Records, Communications, and Compliance Division of the Nevada Department of Public Safety,

Defendants.

ORDER GRANTING PRELIMINARY INJUNCTION

This Court, having reviewed and considered Plaintiff Polymer80, Inc.'s (i) *Verified Complaint*, (ii) Plaintiff Polymer80, Inc.'s *Motion for Temporary Restraining Order and Preliminary Injunction*, (iii) *Defendants' Opposition to Application for Temporary Restraining Order*, and (iv) the *Reply Memorandum of Points and Authorities of Polymer80, Inc. in Further Support of Its Motion for Temporary Restraining Order*, and having considered the exhibits thereto and the arguments therein, and having conducted a hearing on July 14, 2021 on Plaintiff Polymer80, Inc.'s *Motion for Temporary Restraining Order and Preliminary Injunction* and having heard oral argument from counsel for Plaintiff Polymer80, Inc. and Defendants, and good cause appearing,

1 IT IS HEREBY ORDERED that Plaintiff Polymer80, Inc.'s *Motion for Temporary Restraining*
2 *Order and Preliminary Injunction* is GRANTED in PART and DENIED in PART for the reasons set forth
3 herein. Specifically, Plaintiff Polymer80, Inc.'s *Motion for Temporary Restraining Order and*
4 *Preliminary Injunction* is GRANTED as to Section 3.5 of AB 286, and for the reasons stated herein,
5 the State of Nevada and Defendants STEPHEN SISOLAK, Governor of Nevada, AARON FORD,
6 Attorney General of Nevada, GEORGE TOGLIATTI, Director of the Nevada Department of Public
7 Safety, MINDY MCKAY, Administrator of the Records, Communications, and Compliance Division of
8 the Nevada Department of Public Safety, are hereby preliminarily enjoined from enforcing Section
9 3.5 of AB 286 during the pendency of this lawsuit and a ruling on Polymer80, Inc.'s claims for relief.

10 A preliminary injunction is proper when a party can show a reasonable likelihood of success
11 on the merits of its claims and that irreparable harm will occur, for which compensatory damages
12 is an inadequate remedy, in the absence of preliminary injunctive relief. *See, e.g., Dangberg*
13 *Holdings Nevada, LLC v. Douglas County*, 115 Nev. 129, 142 (1999). Here, Plaintiff Polymer80, Inc.
14 has met this burden. Additionally, the public interests at stake and a balancing of hardships
15 between the parties warrants preliminary injunctive relief. *See Clark Co. School Dist. v. Buchanan*,
16 112 Nev. 1146, 1150 (1996) (court may weigh the public interest and relative hardships of the
17 parties in determining whether a preliminary injunction should be granted).

18 Turning first to whether Polymer80, Inc. has demonstrated a likelihood of success on the
19 merits of its claims, the Court finds that it has. Polymer80, Inc. ultimately seeks a declaratory
20 judgment from this Court, declaring that AB 286 violates the Nevada Constitution's Due Process
21 Clause because the statute is unconstitutionally vague, and a permanent injunction, permanently
22 enjoining the Defendants from enforcing AB 286. At this stage of these proceedings and based on
23 the record before this Court, Polymer80, Inc. has demonstrated a likelihood of succeeding on these
24 claims because AB 286 – a criminal statute that under Nevada law requires a heightened level of
25 scrutiny – and particularly AB 286's definition of "Unfinished Frame or Receiver" is impermissibly
26 vague.

27 "A criminal statute can be invalidated for vagueness (1) if it fails to provide a person of
28 ordinary intelligence fair notice of what is prohibited; or (2) if it is so standardless that it authorizes

1 or encouraged seriously discriminatory conduct.” *Scott v. First Jud. Dist. Ct.*, 131 Nev. 1015, 1021
2 (2015) (quotations omitted). Here, the Court finds, at this juncture, that AB 286 fails to provide a
3 person of ordinary intelligence fair notice of what AB 286 criminalizes and encourages
4 discriminatory, criminal enforcement because the definition of “Unfinished Frame or Receiver” in
5 Section 6.9 of AB 286 is inherently vague due to the use of undefined terms, such as “blank”,
6 “casting”, and “machined body”, and amorphous words and phrases – that are similarly not defined
7 – such as “additional machining” and “machined to the point at which most of the major machining
8 operations have been completed.” In fact, it is unclear, on the current record, as to what the
9 Nevada Legislature meant by the words “blank”, “casting”, and “machined body”, as those words
10 are used in AB 286. Moreover, Defendants, at the hearing on Polymer80, Inc.’s motion, made
11 reference to a manufacturing continuum on which a “blank”, “casting”, or “machined body” is
12 turned into a frame or lower receiver of a firearm, but, at the hearing, Defendants could not
13 identify where on that continuum AB 286 comes into play (i.e., at what point during the machining
14 process an item, such as a blank, becomes unlawful and subject to criminal prosecution).
15 Therefore, Polymer80, Inc. has demonstrated a reasonable likelihood of success on its claim that
16 AB 286 is unconstitutionally vague due to the ambiguities that permeate AB 286’s definition of
17 “Unfinished Frame or Receiver.”

18 The Court also finds that Nevada Legislature only adopted limited definitions from Federal
19 Law when it adopted AB 286. The Nevada Legislature presumably did so purposely, creating
20 additional ambiguity in AB 286. Thus, this Court declines the Defendants’ invitation to fill holes in
21 AB 286 by looking to Federal Law when the Nevada Legislature only incorporated Federal Law into
22 AB 286 in specific limited instances.

23 Turning to the issue of irreparable harm, the Court first notes that Section 3.5 of AB 286
24 criminalizes the sale or transfer of an “unfinished frame or receiver” and this portion of AB 286 is
25 currently in effect. Polymer80, Inc. has sufficiently demonstrated to this Court that it has standing
26 to facially challenge AB 286 and will suffer irreparable harm in the absence of preliminary injunctive
27 relief because Section 3.5 of AB 286 renders Polymer80, Inc. unable to conduct its business without
28 the threat of criminal prosecution. The inability of a company like Polymer80, Inc. to conduct its

1 business without the threat of unreasonable interference or the destruction of the business is the
2 type of irreparable harm that warrants preliminary injunctive relief. *See Sobol v. Capital Mgmt.*
3 *Consultants, Inc.*, 102 Nev. 444, 446 (1986); *see also Finkel v. Cashman Prof'l, Inc.*, 128 Nev. 68, 73
4 (2012). The Court also notes that the harm Polymer80, Inc. would suffer due to its inability to
5 conduct its business in the face of AB 286 is immeasurable, underscoring the Court's finding that
6 Polymer80, Inc. has sufficiently demonstrated irreparable harm to warrant a preliminary
7 injunction.

8 Defendants maintain that Polymer80, Inc. can simply serialize its products to avoid the
9 harm it claims it will suffer as a result of the enactment of AB 286. The Court finds this argument
10 unconvincing initially because the Nevada Legislature did not include any such language or
11 provision in AB 286. Moreover, the argument is belied by the plain language that the Nevada
12 Legislature did include in AB 286. Section 3.5 of AB 286 criminalizes the sale of an "unfinished
13 frame or receiver unless ... [t]he unfinished frame or receiver **is required by federal law** to be
14 imprinted with a serial number." (emphasis added). Thus, unless Federal Law requires the
15 unfinished frame or receiver (whatever that may be) to be imprinted with a serial number,
16 Polymer80, Inc. can find no safe haven under AB 286 by simply placing a serial number on its
17 products that Federal Law does not require.

18 Finally, the Court finds that public interests weigh in favor of issuing a preliminary injunction
19 pending the trial in this matter due to the ambiguity in AB 286, which is, once again, a criminal
20 statute. Additionally, the balance of hardships weighs decidedly in favor of Polymer80, Inc.
21 because the Defendants will only be preliminary enjoined from enforcing Section 3.5 of AB 286
22 during the pendency of this matter and until this matter proceeds to verdict, during which time
23 Polymer80, Inc., as explained above, will face irreparable harm in the absence of a preliminary
24 injunction.

25 Based on the foregoing and good cause appearing, IT IS HEREBY ORDERED that Plaintiff
26 Polymer80, Inc.'s *Motion for Temporary Restraining Order and Preliminary Injunction* is GRANTED
27 in PART and DENIED in PART.

1 IT IS HEREBY FURTHER ORDERED that the State of Nevada and Defendants STEPHEN
2 SISOLAK, Governor of Nevada, AARON FORD, Attorney General of Nevada, GEORGE TOGLIATTI,
3 Director of the Nevada Department of Public Safety, MINDY MCKAY, Administrator of the Records,
4 Communications, and Compliance Division of the Nevada Department of Public Safety, and their
5 respective officers, agents, servants, and employees and anyone acting in concert with them,
6 individually or collectively, are hereby preliminarily enjoined from enforcing Section 3.5 of AB 286
7 during the pendency of this lawsuit.

8 The Court declines to enter a preliminary injunction with respect to the enforcement of
9 Section 3 of AB 286 because that portion of AB 286 does not take effect until January 1, 2022.
10 However, to the extent this matter does not proceed to trial as scheduled before January 1, 2022,
11 Polymer80, Inc. may renew its request for a preliminary injunction with respect to the enforcement
12 of Section 3 of AB 286.

13 IT IS HEREBY FURTHER ORDERED that this Order only applies to the enforcement of Section
14 3.5 of AB 286 and shall not preclude or prohibit the enforcement of other sections of AB 286 that
15 are now in effect or may take effect in the future.

16 IT IS HEREBY FURTHER ORDERED, pursuant to NRCP 65(c), that Plaintiff Polymer80, Inc. shall
17 post security with the Court in the amount of \$20,000.00 (Twenty Thousand Dollars) on or before
18 July 16, 2021, and that this Order shall only take effect upon the posting of this security. The Court
19 finds that security in the amount of \$20,000.00 (Twenty Thousand Dollars) is sufficient to pay the
20 costs and damages that may be sustained, if any, by the Defendants if it is ultimately determined
21 they have been wrongfully enjoined pending trial.

22
23 DATED this 16th day of July, 2021.

24
25 
26 JOHN P. SCHLEGELMILCH
27 DISTRICT JUDGE
28

SIMONS HALL JOHNSTON PC
22 State Route 208
Yerington, Nevada 89447
(775) 463-9500

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Case No. 21-CV-00690

Dept. No. 1

The undersigned affirms that this document does not contain the social security number of any individual.

FILED
2021 JUL 16 PM 3:43
TANYA BEEHNT
COURT ADMINISTRATOR
THIRD JUDICIAL DISTRICT
Jynda Mckay

**IN THE THIRD JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF LYON**

POLYMER80, INC.,

Plaintiff,

vs.

STEPHEN SISOLAK, Governor of Nevada, AARON FORD, Attorney General of Nevada, GEORGE TOGLIATTI, Director of the Nevada Department of Public Safety, MINDY MCKAY, Administrator of the Records, Communications, and Compliance Division of the Nevada Department of Public Safety,

Defendants.

NOTICE OF ENTRY OF ORDER

Plaintiff Polymer80, Inc., by and through its undersigned counsel, hereby provides written notice of entry of the *Order Granting Preliminary Injunction* attached hereto as **Exhibit A.**

Dated this 16th day of July, 2021

SIMONS HALL JOHNSTON PC

By: 
Brad M. Johnston, Esq.
Nevada Bar No. 8515
22 State Route 208
Yerington, Nevada 89447
Telephone: 775-463-9500
bjohnston@shjnevada.com

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-and-

James J. McGuire
Pro Hac Vice
Michael R. Patrick
(Pro Hac Application Forthcoming)
Mark T. Doerr
Pro Hac Vice
Greenspoon Marder LLP
590 Madison Avenue, Suite 1800
New York, New York 10022
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james.mcquire@gmlaw.com
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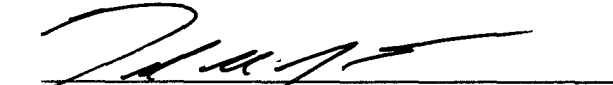
Attorneys for Plaintiff Polymer80, Inc.

CERTIFICATE OF SERVICE

I, Brad M. Johnston, hereby certify that on this date I caused the foregoing document to be served via Electronic Mail and U.S. Mail on the following:

Gregory Zunino, Deputy Solicitor General
Craig Newby, Deputy Solicitor General
Laena St-Jules, Deputy Attorney General
100 N. Carson St.
Carson City, NV 89701
gzunino@ag.nc.gov
cnewby@ag.nv.gov
lstjules@ag.nv.gov

DATED this 16th day of July 2021.



Brad M. Johnston

SIMONS HALL JOHNSTON PC
22 State Route 208
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(775) 463-9500

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Exhibit A

Exhibit A

FILED

2021 JUL 16 PM 2:41

CLERK OF DISTRICT COURT
THIRD JUDICIAL DISTRICT

Andrea Andersen

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Case No. 21-CV-00690
Dept. No. 1
The undersigned affirms that this document does not contain the social security number of any individual.

**IN THE THIRD JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF LYON**

POLYMER80, INC.,
Plaintiff,

vs.

STEPHEN SISOLAK, Governor of Nevada, AARON FORD, Attorney General of Nevada, GEORGE TOGLIATTI, Director of the Nevada Department of Public Safety, MINDY MCKAY, Administrator of the Records, Communications, and Compliance Division of the Nevada Department of Public Safety,

Defendants.

ORDER GRANTING PRELIMINARY INJUNCTION

This Court, having reviewed and considered Plaintiff Polymer80, Inc.'s (i) *Verified Complaint*, (ii) Plaintiff Polymer80, Inc.'s *Motion for Temporary Restraining Order and Preliminary Injunction*, (iii) *Defendants' Opposition to Application for Temporary Restraining Order*, and (iv) the *Reply Memorandum of Points and Authorities of Polymer80, Inc. in Further Support of Its Motion for Temporary Restraining Order*, and having considered the exhibits thereto and the arguments therein, and having conducted a hearing on July 14, 2021 on Plaintiff Polymer80, Inc.'s *Motion for Temporary Restraining Order and Preliminary Injunction* and having heard oral argument from counsel for Plaintiff Polymer80, Inc. and Defendants, and good cause appearing,

1 IT IS HEREBY ORDERED that Plaintiff Polymer80, Inc.'s *Motion for Temporary Restraining*
2 *Order and Preliminary Injunction* is GRANTED in PART and DENIED in PART for the reasons set forth
3 herein. Specifically, Plaintiff Polymer80, Inc.'s *Motion for Temporary Restraining Order and*
4 *Preliminary Injunction* is GRANTED as to Section 3.5 of AB 286, and for the reasons stated herein,
5 the State of Nevada and Defendants STEPHEN SISOLAK, Governor of Nevada, AARON FORD,
6 Attorney General of Nevada, GEORGE TOGLIATTI, Director of the Nevada Department of Public
7 Safety, MINDY MCKAY, Administrator of the Records, Communications, and Compliance Division of
8 the Nevada Department of Public Safety, are hereby preliminarily enjoined from enforcing Section
9 3.5 of AB 286 during the pendency of this lawsuit and a ruling on Polymer80, Inc.'s claims for relief.

10 A preliminary injunction is proper when a party can show a reasonable likelihood of success
11 on the merits of its claims and that irreparable harm will occur, for which compensatory damages
12 is an inadequate remedy, in the absence of preliminary injunctive relief. *See, e.g., Dangberg*
13 *Holdings Nevada, LLC v. Douglas County*, 115 Nev. 129, 142 (1999). Here, Plaintiff Polymer80, Inc.
14 has met this burden. Additionally, the public interests at stake and a balancing of hardships
15 between the parties warrants preliminary injunctive relief. *See Clark Co. School Dist. v. Buchanan*,
16 112 Nev. 1146, 1150 (1996) (court may weigh the public interest and relative hardships of the
17 parties in determining whether a preliminary injunction should be granted).

18 Turning first to whether Polymer80, Inc. has demonstrated a likelihood of success on the
19 merits of its claims, the Court finds that it has. Polymer80, Inc. ultimately seeks a declaratory
20 judgment from this Court, declaring that AB 286 violates the Nevada Constitution's Due Process
21 Clause because the statute is unconstitutionally vague, and a permanent injunction, permanently
22 enjoining the Defendants from enforcing AB 286. At this stage of these proceedings and based on
23 the record before this Court, Polymer80, Inc. has demonstrated a likelihood of succeeding on these
24 claims because AB 286 – a criminal statute that under Nevada law requires a heightened level of
25 scrutiny – and particularly AB 286's definition of "Unfinished Frame or Receiver" is impermissibly
26 vague.

27 "A criminal statute can be invalidated for vagueness (1) if it fails to provide a person of
28 ordinary intelligence fair notice of what is prohibited; or (2) if it is so standardless that it authorizes

1 or encouraged seriously discriminatory conduct.” *Scott v. First Jud. Dist. Ct.*, 131 Nev. 1015, 1021
2 (2015) (quotations omitted). Here, the Court finds, at this juncture, that AB 286 fails to provide a
3 person of ordinary intelligence fair notice of what AB 286 criminalizes and encourages
4 discriminatory, criminal enforcement because the definition of “Unfinished Frame or Receiver” in
5 Section 6.9 of AB 286 is inherently vague due to the use of undefined terms, such as “blank”,
6 “casting”, and “machined body”, and amorphous words and phrases – that are similarly not defined
7 – such as “additional machining” and “machined to the point at which most of the major machining
8 operations have been completed.” In fact, it is unclear, on the current record, as to what the
9 Nevada Legislature meant by the words “blank”, “casting”, and “machined body”, as those words
10 are used in AB 286. Moreover, Defendants, at the hearing on Polymer80, Inc.’s motion, made
11 reference to a manufacturing continuum on which a “blank”, “casting”, or “machined body” is
12 turned into a frame or lower receiver of a firearm, but, at the hearing, Defendants could not
13 identify where on that continuum AB 286 comes into play (i.e., at what point during the machining
14 process an item, such as a blank, becomes unlawful and subject to criminal prosecution).
15 Therefore, Polymer80, Inc. has demonstrated a reasonable likelihood of success on its claim that
16 AB 286 is unconstitutionally vague due to the ambiguities that permeate AB 286’s definition of
17 “Unfinished Frame or Receiver.”

18 The Court also finds that Nevada Legislature only adopted limited definitions from Federal
19 Law when it adopted AB 286. The Nevada Legislature presumably did so purposely, creating
20 additional ambiguity in AB 286. Thus, this Court declines the Defendants’ invitation to fill holes in
21 AB 286 by looking to Federal Law when the Nevada Legislature only incorporated Federal Law into
22 AB 286 in specific limited instances.

23 Turning to the issue of irreparable harm, the Court first notes that Section 3.5 of AB 286
24 criminalizes the sale or transfer of an “unfinished frame or receiver” and this portion of AB 286 is
25 currently in effect. Polymer80, Inc. has sufficiently demonstrated to this Court that it has standing
26 to facially challenge AB 286 and will suffer irreparable harm in the absence of preliminary injunctive
27 relief because Section 3.5 of AB 286 renders Polymer80, Inc. unable to conduct its business without
28 the threat of criminal prosecution. The inability of a company like Polymer80, Inc. to conduct its

1 business without the threat of unreasonable interference or the destruction of the business is the
2 type of irreparable harm that warrants preliminary injunctive relief. *See Sobol v. Capital Mgmt.*
3 *Consultants, Inc.*, 102 Nev. 444, 446 (1986); *see also Finkel v. Cashman Prof'l, Inc.*, 128 Nev. 68, 73
4 (2012). The Court also notes that the harm Polymer80, Inc. would suffer due to its inability to
5 conduct its business in the face of AB 286 is immeasurable, underscoring the Court's finding that
6 Polymer80, Inc. has sufficiently demonstrated irreparable harm to warrant a preliminary
7 injunction.

8 Defendants maintain that Polymer80, Inc. can simply serialize its products to avoid the
9 harm it claims it will suffer as a result of the enactment of AB 286. The Court finds this argument
10 unconvincing initially because the Nevada Legislature did not include any such language or
11 provision in AB 286. Moreover, the argument is belied by the plain language that the Nevada
12 Legislature did include in AB 286. Section 3.5 of AB 286 criminalizes the sale of an "unfinished
13 frame or receiver unless ... [t]he unfinished frame or receiver **is required by federal law** to be
14 imprinted with a serial number." (emphasis added). Thus, unless Federal Law requires the
15 unfinished frame or receiver (whatever that may be) to be imprinted with a serial number,
16 Polymer80, Inc. can find no safe haven under AB 286 by simply placing a serial number on its
17 products that Federal Law does not require.

18 Finally, the Court finds that public interests weigh in favor of issuing a preliminary injunction
19 pending the trial in this matter due to the ambiguity in AB 286, which is, once again, a criminal
20 statute. Additionally, the balance of hardships weighs decidedly in favor of Polymer80, Inc.
21 because the Defendants will only be preliminary enjoined from enforcing Section 3.5 of AB 286
22 during the pendency of this matter and until this matter proceeds to verdict, during which time
23 Polymer80, Inc., as explained above, will face irreparable harm in the absence of a preliminary
24 injunction.

25 Based on the foregoing and good cause appearing, IT IS HEREBY ORDERED that Plaintiff
26 Polymer80, Inc.'s *Motion for Temporary Restraining Order and Preliminary Injunction* is GRANTED
27 in PART and DENIED in PART.

1 IT IS HEREBY FURTHER ORDERED that the State of Nevada and Defendants STEPHEN
2 SISOLAK, Governor of Nevada, AARON FORD, Attorney General of Nevada, GEORGE TOGLIATTI,
3 Director of the Nevada Department of Public Safety, MINDY MCKAY, Administrator of the Records,
4 Communications, and Compliance Division of the Nevada Department of Public Safety, and their
5 respective officers, agents, servants, and employees and anyone acting in concert with them,
6 individually or collectively, are hereby preliminarily enjoined from enforcing Section 3.5 of AB 286
7 during the pendency of this lawsuit.

8 The Court declines to enter a preliminary injunction with respect to the enforcement of
9 Section 3 of AB 286 because that portion of AB 286 does not take effect until January 1, 2022.
10 However, to the extent this matter does not proceed to trial as scheduled before January 1, 2022,
11 Polymer80, Inc. may renew its request for a preliminary injunction with respect to the enforcement
12 of Section 3 of AB 286.

13 IT IS HEREBY FURTHER ORDERED that this Order only applies to the enforcement of Section
14 3.5 of AB 286 and shall not preclude or prohibit the enforcement of other sections of AB 286 that
15 are now in effect or may take effect in the future.

16 IT IS HEREBY FURTHER ORDERED, pursuant to NRCP 65(c), that Plaintiff Polymer80, Inc. shall
17 post security with the Court in the amount of \$20,000.00 (Twenty Thousand Dollars) on or before
18 July 16, 2021, and that this Order shall only take effect upon the posting of this security. The Court
19 finds that security in the amount of \$20,000.00 (Twenty Thousand Dollars) is sufficient to pay the
20 costs and damages that may be sustained, if any, by the Defendants if it is ultimately determined
21 they have been wrongfully enjoined pending trial.

22
23 DATED this 16th day of July, 2021.

24
25 
26 JOHN P. SCHLEGELMILCH
27 DISTRICT JUDGE
28

Case Summary

Aaron D. Ford Attorney General, POLYMER80, INC., STEPHEN SISOLAK, GOVERNOR OF NEVADA, GEORGE TOGLIATTI, DIRECTOR OF THE NEVADA DEPARTMENT OF PUBLIC SAFETY, MINDY MCKAY, ADMINISTRATOR OF THE RECORDS, COMMUNICATION, AND COMPLIANCE DIVISION OF THE NEVADA DEP

Case Number: 21-CV-00690

Agency: Third Judicial District Court

Type: Other Civil Matters

Received Date: 6/22/2021

Status: Open

Status Date: 6/22/2021

Involvements

Primary Involvements

STEPHEN SISOLAK, GOVERNOR OF NEVADA Defendant
Ford, Aaron D. Attorney General - AFORD Defendant
GEORGE TOGLIATTI, DIRECTOR OF THE NEVADA DEPARTMENT OF PUBLIC SAFETY Defendant
MINDY MCKAY, ADMINISTRATOR OF THE RECORDS, COMMUNICATION, AND COMPLIANCE DIVISION OF THE NEVADA DEPARTMENT OF PUBLIC SAFETY Defendant
POLYMER80, INC. Plaintiff

Other Involvements

Doerr, Mark T. Esq. Plaintiff's Attorney
Zunino, Gregory L. Deputy Solicitor General Defendant's Attorney
McGuire, James J. Esq. Plaintiff's Attorney
Johnston, Brad M. Esq. Plaintiff's Attorney
Third Judicial District Court (21-CV-00690)
Schlegelmilch, John P. - JPS Dept I - TJDC

Other Civil Matters

[1. NRCP 3 ~ COMPLAINT](#)

Lead/Active: True

Events

7/14/2021 9:30:00 AM | Evidentiary Hearing | DEPT I 21-CV-00690 | Court Room B

Andersen, Andrea Deputy Clerk -
AANDERSEN

Terhune, Kathy

Staff - STAFF

Court Room B - CourtRmB

Geurts, Patrick Bailiff - X004896

Schlegelmilch, John P. - JPS (Dept I -
TJDC)

Zunino, Gregory L. Deputy Solicitor
General (Defendant's Attorney)
obo Defendant

McGuire, James J. Esq. (Plaintiff's
Attorney)
obo Plaintiff

Doerr, Mark T. Esq. (Plaintiff's Attorney)
obo Plaintiff

Johnston, Brad M. Esq. (Plaintiff's
Attorney)
obo Plaintiff

Notes: Court advised counsel the Court has reviewed all pleadings in this matter. Mr. McGuire and Mr. Zunino argued the matter. Court finds the definitions to be vague. Court finds a likelihood of success on the merits. Court finds it is unclear as to what the legislature meant by blank casting or machine body. Court finds clearly, the business may be

Case Summary

impacted as the making, selling and offering in Nevada would be a substantial hardship on Plaintiff. Based upon hardship, Court finds plaintiff has a standing as they are unable to conduct business as commonly done in the past. Court finds probably irreparable injury to conduct business. Court finds legislature, in regard to the use of limited definitions from the gun control act were done so purposely to create vagueness in the laws. Court is unconvinced that the Plaintiff's could just start serializing the frames/receivers as defined in the statute. Court ordered Plaintiff pay a security bond of \$20,000.00 within five (5) business days. Plaintiff's may pay bond via cash to the Clerk of the Court. Court entered injunction pursuant to 3.5 AB286 to the enforcement by the State of Nevada. Injunction is not entered pursuant to section three (3) 3 of AB286. Court finds matter does not become effective until 2022. Court noted sections four (4) and five (5) are not an issue as they are not before the Court. Pursuant to sections four (4) and five (5) it is illegal for a Nevadan to own, possess or manufacture without a serial number. Injunction in effect pending final determination. Bench Trial set for November 30, 2021 through December 3, 2021. Discovery opens today and closes November 1, 2021. Court waived early Case Conference disclosures. Initial expert disclosures due August 20, 2021. Rebuttal expert disclosures due September 20, 2021. Motion in Limine or Motion for Summary Judgment due November 8, 2021. Trial statements are to be filed pursuant to TJDCR. No settlement conference. Plaintiff to prepare Order regarding Injunction. Status Conference set for October 25, 2021 @ 1:30 p.m. Parties may appear via Zoom for the October 25, 2021 hearing. Court to issue Scheduling Order.

10/25/2021 1:30:00 PM | Status Hearing | DEPT I 21-CV-00690 | Court Room B

Staff - STAFF

Court Room B - CourtRmB

lawclerk1 - LAW1

Schlegelmilch, John P. - JPS (Dept I - TJDC)

Notes: Zoom preapproved

11/30/2021 9:00:00 AM | Bench Trial | 21-CV-00690 | Court Room B

Staff - STAFF

Court Room B - CourtRmB

lawclerk1 - LAW1

Schlegelmilch, John P. - JPS (Dept I - TJDC)

DISTRICT COURT CIVIL COVER SHEET

LYON County, Nevada

Case No. 21-CV-00690
(Assigned by Clerk's Office)

Dept. I

2021 JUN 22 PM 3:48

TANYA BERTHINE
COURT ADMINISTRATOR
THIRD JUDICIAL DISTRICT

V.T. DEPUTY

I. Party Information (provide both home and mailing addresses if different)

Plaintiff(s) (name/address/phone):	Defendant(s) (name/address/phone):
POLYMER80, INC. 134 LAKES BLVD. DAYTON, NV 89403 (800-517-1243)	GOV. STEVE SISOLAK, 101 N. CARSON ST., CARSON CITY, NV 89701 A.G. AARON FORD, 100 N. CARSON ST., CARSON CITY, NV 89701 Dir. Togliatti and Admin. Mindy McKay, NV Dept. Public Safety, 555 WRIGHT WAY, CARSON CITY, NV 89711
Attorney (name/address/phone):	Attorney (name/address/phone):
BRAD M. JOHNSTON SIMONS HALL JOHNSTON PC 22 STATE ROUTE 208, YERINGTON, NV 89447 (775-463-9500)	

II. Nature of Controversy (please select the one most applicable filing type below)

Civil Case Filing Types

<p>Real Property</p> <p>Landlord/Tenant</p> <input type="checkbox"/> Unlawful Detainer <input type="checkbox"/> Other Landlord/Tenant <p>Title to Property</p> <input type="checkbox"/> Judicial Foreclosure <input type="checkbox"/> Other Title to Property <p>Other Real Property</p> <input type="checkbox"/> Condemnation/Eminent Domain <input type="checkbox"/> Other Real Property	<p>Negligence</p> <input type="checkbox"/> Auto <input type="checkbox"/> Premises Liability <input type="checkbox"/> Other Negligence <p>Malpractice</p> <input type="checkbox"/> Medical/Dental <input type="checkbox"/> Legal <input type="checkbox"/> Accounting <input type="checkbox"/> Other Malpractice	<p>Torts</p> <p>Other Torts</p> <input type="checkbox"/> Product Liability <input type="checkbox"/> Intentional Misconduct <input type="checkbox"/> Employment Tort <input type="checkbox"/> Insurance Tort <input type="checkbox"/> Other Tort
<p>Probate</p> <p>Probate (select case type and estate value)</p> <input type="checkbox"/> Summary Administration <input type="checkbox"/> General Administration <input type="checkbox"/> Special Administration <input type="checkbox"/> Set Aside <input type="checkbox"/> Surviving Spouse <input type="checkbox"/> Trust/Conservatorship <input type="checkbox"/> Other Probate <p>Estate Value</p> <input type="checkbox"/> Greater than \$300,000 <input type="checkbox"/> \$200,000-\$300,000 <input type="checkbox"/> \$100,001-\$199,999 <input type="checkbox"/> \$25,001-\$100,000 <input type="checkbox"/> \$20,001-\$25,000 <input type="checkbox"/> \$2,501-20,000 <input type="checkbox"/> \$2,500 or less	<p>Construction Defect & Contract</p> <p>Construction Defect</p> <input type="checkbox"/> Chapter 40 <input type="checkbox"/> Other Construction Defect <p>Contract Case</p> <input type="checkbox"/> Uniform Commercial Code <input type="checkbox"/> Building and Construction <input type="checkbox"/> Insurance Carrier <input type="checkbox"/> Commercial Instrument <input type="checkbox"/> Collection of Accounts <input type="checkbox"/> Employment Contract <input type="checkbox"/> Other Contract	<p>Judicial Review/Appeal</p> <p>Judicial Review</p> <input type="checkbox"/> Foreclosure Mediation Case <input type="checkbox"/> Petition to Seal Records <input type="checkbox"/> Mental Competency <p>Nevada State Agency Appeal</p> <input type="checkbox"/> Department of Motor Vehicle <input type="checkbox"/> Worker's Compensation <input type="checkbox"/> Other Nevada State Agency <p>Appeal Other</p> <input type="checkbox"/> Appeal from Lower Court <input type="checkbox"/> Other Judicial Review/Appeal
<p>Civil Writ</p> <p>Civil Writ</p> <input type="checkbox"/> Writ of Habeas Corpus <input type="checkbox"/> Writ of Mandamus <input type="checkbox"/> Writ of Quo Warrantum <input type="checkbox"/> Writ of Prohibition <input type="checkbox"/> Other Civil Writ		<p>Other Civil Filing</p> <p>Other Civil Filing</p> <input type="checkbox"/> Compromise of Minor's Claim <input type="checkbox"/> Foreign Judgment <input checked="" type="checkbox"/> Other Civil Matters

Business Court filings should be filed using the Business Court civil coversheet.

June 22, 2021

Date

Signature of initiating party or representative

See other side for family-related case filings.