

IN THE SUPREME COURT OF THE STATE OF NEVADA

INDICATE FULL CAPTION:

STEVE SISOLAK, GOVERNOR OF
NEVADA, et al.

Appellants,

v

POLYMER80, INC.

Respondents

No. 83385

Electronically Filed
Sep 02 2021 03:16 p.m.

Elizabeth A. Brown
Supreme Court

DOCKETING STATEMENT
CIVIL APPEALS

GENERAL INFORMATION

Appellants must complete this docketing statement in compliance with NRAP 14(a). The purpose of the docketing statement is to assist the Supreme Court in screening jurisdiction, identifying issues on appeal, assessing presumptive assignment to the Court of Appeals under NRAP 17, scheduling cases for oral argument and settlement conferences, classifying cases for expedited treatment and assignment to the Court of Appeals, and compiling statistical information.

WARNING

This statement must be completed fully, accurately and on time. NRAP 14(c). The Supreme Court may impose sanctions on counsel or appellant if it appears that the information provided is incomplete or inaccurate. *Id.* Failure to fill out the statement completely or to file it in a timely manner constitutes grounds for the imposition of sanctions, including a fine and/or dismissal of the appeal.

A complete list of the documents that must be attached appears as Question 27 on this docketing statement. Failure to attach all required documents will result in the delay of your appeal and may result in the imposition of sanctions.

This court has noted that when attorneys do not take seriously their obligations under NRAP 14 to complete the docketing statement properly and conscientiously, they waste the valuable judicial resources of this court, making the imposition of sanctions appropriate. See KDI Sylvan Pools v. Workman, 107 Nev. 340, 344, 810 P.2d 1217, 1220 (1991). Please use tab dividers to separate any attached documents.

1. Judicial District Third Department 1
County Lyon Judge The Honorable John P. Schlegelmilch
District Ct. Case No. 21-CV-00690

2. Attorney filing this docketing statement:

Attorney Gregory L. Zunino, #4805 Telephone (775) 684-1237

Firm Nevada Office of the Attorney General

Address 100 N. Carson Street
Carson City, Nevada 89701

Client(s) Steve Sisolak; Aaron Ford; George Togliatti; Mindy McKay

If this is a joint statement by multiple appellants, add the names and addresses of other counsel and the names of their clients on an additional sheet accompanied by a certification that they concur in the filing of this statement.

3. Attorney(s) representing respondents(s):

Attorney Brad M. Johnston, Esq. #8515 Telephone (775) 463-9500

Firm Simons Hall Johnston, PC

Address 22 State Route 208
Yerington, Nevada 89447

Client(s) Polymer80, Inc.

Attorney James J. McGuire (Pro Hac Vice) Telephone (212) 524-5000

Firm Greenspoon Marder, LLP

Address 590 Madison Ave., Suite 1800
New York, New York 10022

Client(s) Polymer80, Inc.

(List additional counsel on separate sheet if necessary)

4. Nature of disposition below (check all that apply):

- | | |
|--|---|
| <input type="checkbox"/> Judgment after bench trial | <input type="checkbox"/> Dismissal: |
| <input type="checkbox"/> Judgment after jury verdict | <input type="checkbox"/> Lack of jurisdiction |
| <input type="checkbox"/> Summary judgment | <input type="checkbox"/> Failure to state a claim |
| <input type="checkbox"/> Default judgment | <input type="checkbox"/> Failure to prosecute |
| <input type="checkbox"/> Grant/Denial of NRCP 60(b) relief | <input type="checkbox"/> Other (specify): _____ |
| <input checked="" type="checkbox"/> Grant/Denial of injunction | <input type="checkbox"/> Divorce Decree: |
| <input type="checkbox"/> Grant/Denial of declaratory relief | <input type="checkbox"/> Original <input type="checkbox"/> Modification |
| <input type="checkbox"/> Review of agency determination | <input type="checkbox"/> Other disposition (specify): _____ |

5. Does this appeal raise issues concerning any of the following?

- Child Custody
- Venue
- Termination of parental rights

6. Pending and prior proceedings in this court. List the case name and docket number of all appeals or original proceedings presently or previously pending before this court which are related to this appeal:

7. Pending and prior proceedings in other courts. List the case name, number and court of all pending and prior proceedings in other courts which are related to this appeal (*e.g.*, bankruptcy, consolidated or bifurcated proceedings) and their dates of disposition:

Polymer80, Inc.

v

Steve Sisolak, Governor of Nevada; Aaron D. Ford, Attorney General of Nevada; George Togliatti, Director of the Nevada Department of Public Safety; and Mindy McKay, Administrator of the Records, Communications, and Compliance Division of the Nevada Department of Public Safety

Dist. Court No: 21-CV-00690

8. Nature of the action. Briefly describe the nature of the action and the result below:

Below. Respondent Polymer80 challenges the facial constitutionality of Assembly Bill No. 286 of the 81st Session of the Nevada Legislature (2021). AB 286 enacted criminal prohibitions against the manufacture, transfer, sale and possession of unfinished frames and receivers intended for use in the assembly of "ghost guns" - namely firearms without serial numbers. Upon a motion by Polymer80, the district court granted a preliminary injunction against the enforcement of Section 3.5 of AB 286. Effective upon passage and approval, Section 3.5 enacted criminal penalties against the transfer or sale of an "unfinished frame or receiver" intended for use in the assembly of a firearm without a serial number. Appellants appeal from the district court's order granting a preliminary injunction in favor of Polymer80.

9. Issues on appeal. State concisely the principal issue(s) in this appeal (attach separate sheets as necessary):

The issue on appeal is whether Section 3.5 of AB 286 (described in section 8 above) is void for vagueness, thus violating the due process guarantees of the Nevada Constitution.

10. Pending proceedings in this court raising the same or similar issues. If you are aware of any proceedings presently pending before this court which raises the same or similar issues raised in this appeal, list the case name and docket numbers and identify the same or similar issue raised:

There are no such proceedings.

11. Constitutional issues. If this appeal challenges the constitutionality of a statute, and the state, any state agency, or any officer or employee thereof is not a party to this appeal, have you notified the clerk of this court and the attorney general in accordance with NRAP 44 and NRS 30.130?

N/A

Yes

No

If not, explain: The Attorney General is aware of the constitutional issue described in Section 9 above, as he is representing Appellants in this appeal.

12. Other issues. Does this appeal involve any of the following issues?

Reversal of well-settled Nevada precedent (identify the case(s))

An issue arising under the United States and/or Nevada Constitutions

A substantial issue of first impression

An issue of public policy

An issue where en banc consideration is necessary to maintain uniformity of this court's decisions

A ballot question

If so, explain:

13. Assignment to the Court of Appeals or retention in the Supreme Court. Briefly set forth whether the matter is presumptively retained by the Supreme Court or assigned to the Court of Appeals under NRAP 17, and cite the subparagraph(s) of the Rule under which the matter falls. If appellant believes that the Supreme Court should retain the case despite its presumptive assignment to the Court of Appeals, identify the specific issue(s) or circumstance(s) that warrant retaining the case, and include an explanation of their importance or significance:

This appeal is presumptively retained by the Supreme Court because it involves a dispute between branches of government, see NRAP 17(a)(7), and it raises as a principal issue a question of first impression involving the Due Process Clause of the Nevada Constitution, see NRAP 17(a)(11). Regarding the former, Judge Schlegelmilch in Lyon County has temporarily enjoined enforcement of a statewide criminal prohibition that was duly enacted by the people's representatives in the Nevada Legislature. Regarding the latter, the principal issue is whether the term "unfinished frame or receiver" is unconstitutionally vague as it appears in context within a broader prohibition against trade in non-serialized firearms. This is an issue of first impression in Nevada, the resolution of which has important public policy implications for Nevada's law enforcement and public safety officials.

14. Trial. If this action proceeded to trial, how many days did the trial last? _____

Was it a bench or jury trial? A bench trial is scheduled to begin on November 30, 2021.

15. Judicial Disqualification. Do you intend to file a motion to disqualify or have a justice recuse him/herself from participation in this appeal? If so, which Justice?

Appellants do not intend to file a motion to disqualify or have a justice recuse himself/herself from participation in this appeal.

TIMELINESS OF NOTICE OF APPEAL

16. Date of entry of written judgment or order appealed from Jul 16, 2021

If no written judgment or order was filed in the district court, explain the basis for seeking appellate review:

17. Date written notice of entry of judgment or order was served Jul 16, 2021

Was service by:

Delivery

Mail/electronic/fax

18. If the time for filing the notice of appeal was tolled by a post-judgment motion (NRCP 50(b), 52(b), or 59)

(a) Specify the type of motion, the date and method of service of the motion, and the date of filing.

NRCP 50(b) Date of filing _____

NRCP 52(b) Date of filing _____

NRCP 59 Date of filing _____

NOTE: Motions made pursuant to NRCP 60 or motions for rehearing or reconsideration may toll the time for filing a notice of appeal. See AA Primo Builders v. Washington, 126 Nev. ____, 245 P.3d 1190 (2010).

(b) Date of entry of written order resolving tolling motion _____

(c) Date written notice of entry of order resolving tolling motion was served _____

Was service by:

Delivery

Mail

19. Date notice of appeal filed Aug 16, 2021

If more than one party has appealed from the judgment or order, list the date each notice of appeal was filed and identify by name the party filing the notice of appeal:

20. Specify statute or rule governing the time limit for filing the notice of appeal, e.g., NRAP 4(a) or other

NRAP 4(a)

SUBSTANTIVE APPEALABILITY

21. Specify the statute or other authority granting this court jurisdiction to review the judgment or order appealed from:

(a)

- | | |
|---|---------------------------------------|
| <input type="checkbox"/> NRAP 3A(b)(1) | <input type="checkbox"/> NRS 38.205 |
| <input type="checkbox"/> NRAP 3A(b)(2) | <input type="checkbox"/> NRS 233B.150 |
| <input checked="" type="checkbox"/> NRAP 3A(b)(3) | <input type="checkbox"/> NRS 703.376 |
| <input type="checkbox"/> Other (specify) _____ | |

(b) Explain how each authority provides a basis for appeal from the judgment or order:

The district court issued an order enjoining the enforcement of Section 3.5 of AB 286. NRAP 3A(b)(3) authorizes an appeal of “[a]n order granting or refusing to grant an injunction”.

22. List all parties involved in the action or consolidated actions in the district court:

(a) Parties:

Plaintiff: Polymer80, Inc., a Nevada corporation.

Defendants: 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.

(b) If all parties in the district court are not parties to this appeal, explain in detail why those parties are not involved in this appeal, *e.g.*, formally dismissed, not served, or other:

23. Give a brief description (3 to 5 words) of each party's separate claims, counterclaims, cross-claims, or third-party claims and the date of formal disposition of each claim.

Plaintiff Polymer80 makes claims for a 1) declaratory judgment, 2) temporary restraining order, 3) preliminary injunction, and 4) permanent injunction. The district court formally disposed of the claim for preliminary injunction on July 16, 2021, thus mooting the claim for a temporary restraining order.

Defendants have made no counterclaims.

There are no cross-claims or third-party claims.

24. Did the judgment or order appealed from adjudicate ALL the claims alleged below and the rights and liabilities of ALL the parties to the action or consolidated actions below?

Yes

No

25. If you answered "No" to question 24, complete the following:

(a) Specify the claims remaining pending below:

The order adjudicated only the claims for a temporary restraining order and preliminary injunction. With respect to these two claims, the order adjudicated the rights and liabilities of all parties to the action below.

The claims remaining below are Plaintiff Polymer80's claims for declaratory relief and permanent injunction.

(b) Specify the parties remaining below:

Plaintiff: Polymer80, Inc., a Nevada corporation.

Defendants: 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.

(c) Did the district court certify the judgment or order appealed from as a final judgment pursuant to NRCP 54(b)?

Yes

No

(d) Did the district court make an express determination, pursuant to NRCP 54(b), that there is no just reason for delay and an express direction for the entry of judgment?

Yes

No

26. If you answered "No" to any part of question 25, explain the basis for seeking appellate review (e.g., order is independently appealable under NRAP 3A(b)):

NRAP 3A(b)(3) provides the basis for seeking appellate review.

27. Attach file-stamped copies of the following documents:

- The latest-filed complaint, counterclaims, cross-claims, and third-party claims
- Any tolling motion(s) and order(s) resolving tolling motion(s)
- Orders of NRCP 41(a) dismissals formally resolving each claim, counterclaims, cross-claims and/or third-party claims asserted in the action or consolidated action below, even if not at issue on appeal
- Any other order challenged on appeal
- Notices of entry for each attached order

VERIFICATION

I declare under penalty of perjury that I have read this docketing statement, that the information provided in this docketing statement is true and complete to the best of my knowledge, information and belief, and that I have attached all required documents to this docketing statement.

Steve Sisolak, Governor of Nevada, et al
Name of appellant

Gregory L. Zunino
Name of counsel of record

Sep 2, 2021
Date


Signature of counsel of record

Carson City - Nevada
State and county where signed

CERTIFICATE OF SERVICE

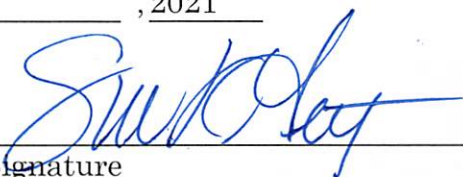
I certify that on the 2nd day of September, 2021, I served a copy of this completed docketing statement upon all counsel of record:

- By personally serving it upon him/her; or
- By mailing it by first class mail with sufficient postage prepaid to the following address(es): (NOTE: If all names and addresses cannot fit below, please list names below and attach a separate sheet with the addresses.)

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(Pro Hac Vice)
Michael R. Patrick
(Pro Hac Vice)
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Brad M. Johnston, Esq.
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Dated this 2nd day of September, 2021


Signature

Continuation of #2

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CLERK OF DISTRICT COURT
THIRD JUDICIAL DISTRICT

Victoria Tovar

1 Case No. 21-CV-00690

2 Dept. No. I

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

6 **IN THE THIRD JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**

7 **IN AND FOR THE COUNTY OF LYON**

8 POLYMER80, INC.,

9 Plaintiff,

10 vs.

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

18 Defendants.

19 **VERIFIED COMPLAINT**

20 COMES NOW POLYMER80, INC. ("Polymer80" or "Company"), a Nevada
21 corporation, by and through its counsel, Greenspoon Marder LLP and Simons Hall
22 Johnston PC, and for its Verified Complaint alleges as follows:

23 **INTRODUCTION**

24 1. This is an action for Declaratory and Injunctive relief against certain
25 Nevada public officials, in which Polymer80 seeks a: (i) Declaratory Judgment that the
26 recently enacted Nevada Assembly Bill 286 ("AB 286"), a copy of which is annexed as
27 Exhibit A for the Court's consideration, violates the Constitution of the State of Nevada
28 ("Nevada Constitution"), because it is unconstitutionally vague; (ii) Temporary
Restraining Order barring defendants from enforcing this new and unlawful legislation
pending the Court's determination of the Company's request for a Preliminary
Injunction; (iii) Preliminary Injunction stopping defendants from further enforcing this

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1 same unlawful legislation during the pendency of this action; and (iv) Permanent
2 Injunction forever prohibiting defendants from enforcing this same unlawful legislation.

3 2. The Nevada Constitution provides, in pertinent part, that "[n]o person shall
4 be deprived of life, liberty, or property, without due process of law."

5 3. One significant aspect of that "due process" guarantee ("Due Process") is
6 that persons made subject to the laws of the State of Nevada must have sufficient
7 notice of the conduct proscribed. Such Constitutional "fair notice," in particular, requires
8 that criminal statutes provide enough notice to enable persons of ordinary intelligence to
9 understand exactly what conduct is prohibited. Laws that do not provide such notice to
10 ordinary persons must be deemed unconstitutionally vague and void as a matter of law.

11 4. Moreover, Nevada statutes, such as AB 286, lacking specific standards
12 and definitions inevitably encourage, authorize, and/or fail to prevent arbitrary and
13 discriminatory enforcement of those statutes and are unconstitutionally vague for that
14 alternate reason as well.

15 5. Although AB 286 purports to expand the scope of Nevada's firearms-
16 related laws by categorically banning certain objects under pain of criminal sanctions,
17 precisely which objects are subject to AB 286 are wholly unknowable owing to its
18 palpably and unconstitutionally ambiguous language.

19 6. For instance, AB 286 purports to criminalize, among other things, the
20 possession and sale of what this enactment refers to as "unfinished frames or
21 receivers." Yet, nowhere does AB 286 -- or any other Nevada statute or State law --
22 define a *finished* "frame" or "receiver," causing persons of ordinary intelligence, not to
23 mention a major commercial entity such as Polymer80, to be unable to determine or
24 know just what an *unfinished* frame or receiver actually is within the bounds of the new
25 statute. Therefore, AB 286, coupled with the remainder of Nevada law, gives
26 inadequate notice of what an *unfinished* version of a "frame" or "receiver" is and so
27 renders AB 286 unconstitutional under Nevada law.

28

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1 7. Further, in drafting AB 286, the Nevada legislature failed to define
2 numerous necessary terms used in the statute, including those most material to the
3 meaning of an "[u]nfinished frame or receiver," including "blank," "casting," "machined
4 body," "frame," "receiver," and "lower receiver." Specifically, AB 286 Section 6(9)
5 provides, in pertinent part, that an "unfinished frame or receiver" means a blank, a
6 casting or a machined body that is intended to be turned into the frame or lower receiver
7 of a firearm with additional machining and which has been formed or machined to the
8 point at which most of the major machining operations have been completed to turn the
9 blank, casting or machined body into a frame or lower receiver of a firearm." However,
10 "blank," "casting," and "machined body" are nowhere defined in the new legislation or
11 elsewhere in Nevada law. Nor does AB 286 define or clarify the meaning of a "frame,"
12 "receiver," and/or "lower receiver," so as to elucidate just what an "unfinished frame or
13 receiver" might be. Likewise, the rest of Nevada law does not define "frame," "receiver,"
14 and/or "lower receiver" anywhere. Consequently, although AB 286 Section 6 does
15 purport to define (however inconclusively) an *unfinished* "frame" or "receiver," neither it
16 nor other Nevada law anywhere define what the end product -- a *finished* "frame,"
17 "receiver," or "lower receiver" -- is.

18 8. Augmenting its inherent and vast vagueness and ambiguity, AB 286
19 proceeds to posit an amorphous test for ascertaining when an entirely undefined
20 "blank," "casting," or "machined body" has reached a sufficient stage of completion to be
21 deemed an "[u]nfinished frame or receiver"; to wit, that it "has been formed or machined
22 to the point at which most of the major machining operations have been completed."
23 Neither AB 286 nor Nevada law more generally provide any standards or guidelines for
24 assessing when those "major machining operations have been completed." In fact, AB
25 286 criminalizes in certain settings the mere possession of an "unfinished frame or
26 receiver" but unclearly (and unconstitutionally) states that such an item is something
27 (whether a "blank," "casting," or "machined body" -- all murky and undefined terms
28 themselves) intended to be transformed into a "frame" or "lower receiver" (two more

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1 murky and undefined terms) requiring some unquantified and undescribed additional
2 work (presumably "machining" -- itself also undefined), where the major "machining"
3 work has already been done. Plainly, no person of ordinary intelligence -- and a
4 reasonable person might be content to flatly assert that no one -- can understand what
5 AB 286 actually prohibits and be enabled to know how to act in a lawful manner.

6 9. As a result, AB 286 is unconstitutionally vague and void, since: (i) it is not
7 possible for Nevadans, visitors to Nevada, people doing business in Nevada, or anyone
8 else to know what conduct -- that which could well open unwitting offenders to felony
9 criminal punishment -- is, in reality, banned; and (ii) AB 286's central and crucial
10 definitions are without specific standards and meaningful illumination, thus encouraging,
11 authorizing, and/or failing to preclude the statute's arbitrary and discriminatory
12 enforcement.

13 10. Accordingly, for these and other reasons, the Court should issue a
14 Declaration that AB 286 is unconstitutionally vague and enter a Temporary Restraining
15 Order, Preliminary Injunction, and Permanent Injunction enjoining Defendants from
16 enforcing this gravely flawed enactment.

17 **PARTIES AND JURISDICTION**

18 11. Plaintiff Polymer80 is a Nevada corporation with its center of operations in
19 Dayton, Nevada, within Lyon County.

20 12. Defendant Stephen Sisolak is the Governor of the State of Nevada and, in
21 that role, is the State's chief law enforcement officer. The Nevada Constitution obliges
22 him to "see that the laws are faithfully executed," Nev. Const., Art. 5, § 7. As a
23 consequence, Sisolak is responsible for enforcing AB 286. Sisolak is sued in his official
24 capacity.

25 13. Defendant Aaron Ford is the Attorney General of the State of Nevada and
26 also responsible for enforcing AB 286. Ford is sued in his official capacity.

27 14. Defendant George Togliatti is the Nevada Director of Public Safety
28 ("DPS"). He, too, is responsible for enforcing AB 286 and is sued in his official capacity.

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1 15. Defendant Mindy McKay is the Division Administrator for the DPS
2 Records, Communications, and Compliance Division. She also is responsible for
3 enforcing AB 286. McKay is sued in her official capacity.

4 16. This Court possesses subject matter jurisdiction over this action, given
5 that virtually all of the pertinent events described in this Complaint have taken place in
6 Nevada, and Polymer80's claims arise under the Nevada Constitution.

7 17. Venue is proper in this Court, as Polymer80 is domiciled in Lyon County,
8 where any of defendants' law enforcement activities would occur as to the Company,
9 and where Polymer80's business interests are being directly affected by AB 286.

10 BACKGROUND

11 I. AB 286

12 18. On June 7, 2021, defendant Sisolak signed AB 286 into law.

13 19. AB 286 is touted as a law that "[p]rohibits certain acts relating to firearms."
14 AB 286 at 1 (SUMMARY). AB 286 declares that it is "AN ACT relating to crimes;
15 prohibiting a person from engaging in certain acts relating to unfinished frames or
16 receivers under certain circumstances." *Id.* at 1 (emphasis in original).

17 20. Through AB 286, the Nevada Legislature amended Chapter 202 of the
18 Nevada Revised Statutes ("NRS") by adding the following provisions, all of which are at
19 the center of this proceeding.

20 II. AB 286 Section 3

21 21. Effective as of January 1, 2022, AB 286 Section 3(1) provides as follows:

22 A person shall not possess, purchase, transport or
23 receive an unfinished frame or receiver unless: (a)
24 The person is a firearms importer or manufacturer; or
25 (b) The unfinished frame or receiver is required by
26 federal law to be imprinted with a serial number
27 issued by a firearms importer or manufacturer and the
28 unfinished frame or receiver has been imprinted with
the serial number.

1 22. AB 286 and its Section 3(1) make it a crime to "possess, purchase,
2 transport or receive an unfinished frame or receiver" in the State of Nevada, except
3 under two circumstances. *Id.* §§ 3(1), 10(2). Those two exceptions arise, when: (i)
4 "[t]he person [at issue] is a firearms importer or manufacturer" or (ii) "[t]he unfinished
5 frame or receiver is required by federal law to be imprinted with a serial number issued
6 by a firearms importer or manufacturer and the unfinished frame or receiver has been
7 imprinted with the serial number." *Id.* §§ 3(1)(a)–(b). The vagueness of this quoted
8 language is substantial and severe.
9

10 **III. AB 286 Section 3.5**

11 23. In addition, AB 286 Section 3.5(1), which became effective on June 7,
12 2021, provides as follows:

13 A person shall not sell, offer to sell or transfer an
14 unfinished frame or receiver unless (a): The person is:
15 (1) A firearms importer or manufacturer; and (2) The
16 recipient of the unfinished frame or receiver is a
17 firearms importer or manufacturer; or the unfinished
18 frame or receiver is required by federal law to be
imprinted with a serial number issued by an importer
or manufacturer and the unfinished frame or receiver
has been imprinted with the serial number.

19 24. AB 286 and its Section 3.5(1) also make it a crime to "sell, offer to sell or
20 transfer an unfinished frame or receiver" in the State of Nevada, except in two
21 scenarios. The first occurs when the person at issue and the recipient of the unfinished
22 frame or receiver are both "firearms importer[s] or manufacturer[s]." The second arises
23 when "the unfinished frame or receiver is required by federal law to be imprinted with a
24 serial number issued by an importer or manufacturer and the unfinished frame or
25 receiver has been imprinted with the serial number." The vagueness of these quoted
26 provisions is similarly substantial and severe.
27
28

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1 IV. AB 286 Section 6(9)

2 25. Also effective as of June 7, 2021, AB 286 Section 6(9) amended NRS 202
3 to add the term "[u]nfinished frame or receiver" to Nevada law. NRS 202.253 now
4 defines that term as follows:

5 [A] blank, a casting or a machined body that is
6 intended to be turned into the frame or lower receiver
7 of a firearm with additional machining and which has
8 been formed or machined to the point at which most
9 of the major machining operations have been
10 completed to turn the blank, casting or machined
11 body into a frame or lower receiver of a firearm even if
12 the fire-control cavity area of the blank, casting or
13 machined body is still completely solid and
14 unmachined.

15 26. This definition is manifestly and unquestionably vague, insofar as it
16 defines an unfinished frame or receiver, at its core, as something "that is intended to be
17 turned into the *frame or lower receiver of a firearm.*" *Id.* (emphasis supplied). However,
18 as noted above, the terms "frame," "receiver," and/or "lower receiver" are never defined
19 in AB 286 or elsewhere in Nevada law. This utterly murky and standardless definition of
20 "unfinished frame or receiver" permeates AB 286 and makes it impossible for persons of
21 ordinary intelligence to understand the conduct that this legislation is proscribing and
22 criminalizing.

23 27. In short, AB 286 on its face, illustrates that the Nevada legislature failed
24 to define many necessary terms used in AB 286, including those most material to an
25 "[u]nfinished frame or receiver." Nowhere does AB 286 or other Nevada law define
26 "blank," "casting," "machined body," "frame," "receiver," or "lower receiver." Although
27 AB 286 Section 6 does purport to define an *unfinished* "frame" or "receiver," Nevada
28 law does not anywhere define what the ultimate end product -- a *finished* "frame,"
"receiver," or "lower receiver" -- is. Nor does AB 286 or other Nevada law define
"blank," "casting," or "machined body," the threshold items used to delineate what an

1 unfinished "frame" or "receiver" is.

2 28. Making the enactment's malady of vagueness even worse, AB 286
3 Section 6(9) additionally propounds an amorphous test for determining when an
4 entirely undefined "blank," "casting," or "machined body" has reached a sufficient stage
5 of completion to be deemed an "[u]nfinished frame or receiver" such that it "has been
6 formed or machined to the point at which most of the major machining operations have
7 been completed." Neither AB 286 nor Nevada law more generally provide any insight
8 or guidelines for assessing when "most of the major machining operations have been
9 completed."
10

11 **V. Criminal Sanctions Under AB 286**

12 29. Nevertheless, AB 286 imposes serious criminal penalties upon violators.
13 A person's first offense is deemed a gross misdemeanor, punishable by imprisonment
14 in the County jail for up to 364 days, a fine up to \$2,000, or both. AB 286 §§ 3(2), 3.5(2),
15 4(2), 5(2); NRS § 193.140.

16 30. Second and subsequent violations are, each and all, "Category D"
17 felonies, punishable by imprisonment for at least one year and up to four years, as well
18 as a fine of up to \$5,000 and all of the various collateral effects of a felony conviction.
19 AB 286 §§ 3(2), 3.5(2), 4(2), 5(2); NRS § 193.130(d).

20 31. All such second or subsequent violations can also trigger a lifetime ban
21 on an individual's right to keep and bear arms in the United States under extant federal
22 law. See 18 U.S.C. § 922(g)(1).
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1 **VI. Polymer80 And The Impact Thereupon Of AB 286**

2 32. Polymer80 is headquartered in Dayton, Nevada, within Lyon County.

3 33. The Company is a leading manufacturer of innovative gun-related
4 products, components, and aftermarket accessories.

5 34. A core principle of Polymer80's business is the empowerment of its
6 customers in exercising their inalienable right to gun ownership and engaging lawfully
7 with the Company's products. Indeed, a material part of the Company's business is the
8 manufacture of components "that provide ways for [their] customer[s] to participate in
9 the build process," facilitating their customers' fundamental Nevada Constitutional right
10 to bear arms. See *Who We Are*, www.polymer80.com (last accessed June 15, 2021).

11 35. Owing to Polymer80's prominent position in the marketplace, the
12 Company has become the target of an onslaught of wrongheaded and politically
13 expedient attacks. AB 286 is perhaps the most recent embodiment of this practice.

14 36. Tellingly, Nevada legislators and officials have made clear that the
15 purpose of AB 286 is to criminalize Polymer80's business. For example, in an article
16 discussing the purported reasons for the passage of AB 286, Assemblywoman and co-
17 sponsor of AB 286, Sandra Jauregui, stated that: "In 2020, federal ATF agents raided a
18 Nevada-based company, Polymer80, one of the nation's largest manufacturers of ghost
19 guns, ... Polymer80 was illegally manufacturing and distributing firearms, failing to pay
20 taxes, shipping guns across state lines and not conducting background checks."

21 37. In another setting, the Nevada Senate Committee on Judiciary made
22 several comments at a hearing about Polymer80's products in connection with AB 286,
23 including that "[s]adly, Nevada is home to one of the largest dealers of ghost guns in the
24 U.S. – Polymer80."

25 38. While these allegations are grievously false and/or misleading, they do
26 demonstrate that AB 286 was and is designed by its drafters -- and will undoubtedly be
27 used by its enforcers -- with the Company's products in the forefront of their minds.
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1 39. At bottom, with the passage of AB 286 and in light of the erroneous and
2 misguided remarks of Nevada legislators and officials, the new enactment has put the
3 Company in an untenable position, which some might aptly characterize as being
4 "between a rock and a hard place." On the one hand, Polymer80 could cease
5 conducting its business operations, notwithstanding the Company's staunch belief that
6 its products are lawful under United States and Nevada law, owing to the threat of the
7 serious criminal sanctions introduced by AB 286. On the other, Polymer80 could
8 continue to conduct business as usual -- which usual business, again, the Company in
9 good faith and for good reason believes to be lawful -- but in so doing might (depending
10 upon the interpretation, application, and enforcement of AB 286) expose itself to those
11 same sanctions, including a possible felony conviction.

12 40. Fundamental fairness and the Nevada Constitution mandate that
13 Polymer80 should not be required to make this extraordinarily difficult and risky choice.
14 In fact, if the Company were to elect to take the former course, and suspend or limit
15 operations, and ultimately it were to be determined that AB 286 is unconstitutional and
16 void, the Company would have few, if any, cognizable, viable, or valuable claims for
17 recompense against the State of Nevada and its officials. Accordingly, pursuing
18 Declaratory and Injunctive relief from the Court in and through this suit is a responsible
19 and prudent step for Polymer80 in the present circumstances.

20 41. It is noteworthy that, beyond Polymer80, any and all persons in Nevada
21 also may be unconstitutionally subject to defendants' enforcement of AB 286. Because
22 AB 286's definitions are so vague and elusive, persons of ordinary intelligence are not
23 able to understand what conduct is banned and thus cannot frame their conduct in
24 accordance with Nevada law. This unlawful and unjust conundrum plainly raises the
25 spectre of arbitrary and/or discriminatory enforcement of the new statute.
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FIRST CAUSE OF ACTION AGAINST ALL DEFENDANTS

(For A Declaratory Judgment Pursuant to NRS 30.040(1) That AB 286 Violates The Nevada Constitution's Due Process Clause, Article 1, Section 8)

42. Polymer80 re-alleges and incorporates the allegations contained in Paragraphs 1 through 41 above as if fully set forth herein.

43. Pursuant to NRS 30.040, "[a]ny person interested under a deed, written contract or other writings constituting a contract, or whose rights, status or other legal relations are affected by a statute, municipal ordinance, contract or franchise, may have determined any question of construction or validity arising under the instrument, statute, ordinance, contract or franchise and obtain a declaration of rights, status or other legal relations thereunder."

44. AB 286, which amends NRS 202, deeply affects Polymer80's rights, status, and other legal relations. And, as a result, the Company is entitled to a determination by this Court as to the construction and/or validity of AB 286.

45. Polymer80 manufactures products that Nevada legislators and officials have revealed are intended to be the target of AB 286's prohibitions.

46. Under the Nevada Constitution, vague statutes are repugnant to Due Process and adjudged void. A statute is unconstitutionally vague and subject to facial attack, if it: (i) does not provide notice sufficient to enable ordinary persons to understand the conduct prohibited, or (ii) lacks specific standards and so encourages, authorizes, and/or fails to prevent arbitrary and discriminatory enforcement.

47. These bedrock Nevada law principles establish that AB 286 is unconstitutionally vague and subject to facial -- and fatal -- attack.

48. Moreover, in drafting AB 286, the Nevada legislature did not define many terms used in the statute, including those of great materiality to "unfinished frame or receiver." Furthermore, the terms used in defining that phrase do not have well settled and/or ordinarily understood meanings in the context of AB 286 in its entirety. These defects engender several intractable problems.

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1 49. For one, nowhere does AB 286 or other Nevada law define the terms
2 "frame" and/or "receiver." Although AB 286 purports to define an *unfinished* "frame" or
3 *unfinished* "receiver," nowhere in the new statute or existing Nevada law is there a
4 definition of a *finished* "frame" or *finished* "receiver."

5 50. Given that Nevada law does not define, clarify, or amplify what a *finished*
6 "frame" or *finished* "receiver" is, it is impossible for persons of ordinary intelligence to
7 understand what an *unfinished* version of those same items is.

8 51. In addition, AB 286's definition of "unfinished frame or receiver" is
9 hopelessly vague, even had AB 286 or other Nevada law defined or clarified "frame"
10 and/or "receiver" (as surely neither has done). At least two other aspects of this
11 definition make it impossible for persons of ordinary intelligence to understand what
12 such a thing really is.

13 52. First, the definition in AB 286 Section 6(9) of an "unfinished frame or
14 receiver" as a "blank, a casting or a machine body that is intended to be turned into the
15 frame or lower receiver of a firearm with additional machining" is opaque and highly
16 uncertain. Neither the new legislation nor Nevada law as a whole shed any light on the
17 meaning of those three key, threshold terms. Otherwise put, it is impossible for persons
18 of ordinary intelligence to know whether such a "blank," "casting," or "machine body" --
19 none of which is defined in AB 286 or elsewhere in Nevada law -- "is intended to be
20 turned into the frame or lower receiver of a firearm with additional machining."

21 53. Second and substantially increasing the extensive ambiguity of "unfinished
22 frame or receiver," its statutory definition further sets forth that such an item has been
23 "formed or machined to the point at which most of the major machining operations have
24 been completed." The phrase "formed or machined to the point at which most of the
25 major machining operations have been completed" does not give persons of ordinary
26 intelligence adequate notice of the point at which "most of the major machining
27 operations have been completed."
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1 54. The impossibility of persons of ordinary intelligence being able to discern
2 the conduct that AB 286 proscribes and criminalizes is thus more than evident. While
3 absolute precision in drafting statutes is not required to withstand Constitutional
4 scrutiny, criminal statutes must, at minimum, delineate the boundaries of unlawful
5 conduct. AB 286 fails to delineate those boundaries.

6 55. Besides failing to give sufficient notice of the conduct prohibited, AB 286
7 encourages, or at least fails to prevent, defendants (certain of whose governmental
8 colleagues have already exposed their animus towards the Company) from arbitrarily
9 and/or discriminatorily enforcing the statute against Polymer80 and/or anyone else
10 subject to defendants' jurisdiction and powers.

11 56. Because AB 286's most material definitions are, at best, vague and, at
12 worst, nonexistent, enforcement of AB 286 and the imposition of criminal penalties for
13 violating it are left to the discretion of certain public officials, including defendants.

14 57. Consequently, the Court should enter a Declaration that AB 286 is void for
15 vagueness, since it fails to provide notice sufficient to enable persons of ordinary
16 intelligence to understand what conduct is banned, and because the legislation lacks
17 specific standards, thereby encouraging, authorizing, and/or failing to bar arbitrary and
18 discriminatory enforcement.

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- (iii) The Court issue a Preliminary Injunction restraining defendants from enforcing AB 286 as to Polymer80 and/or anyone else subject to the jurisdiction of the State of Nevada during the pendency of this action;
- (iv) The Court issue a Permanent Injunction forever prohibiting defendants from enforcing AB 286 as to Polymer80 and/or anyone else subject to the jurisdiction of the State of Nevada;
- (v) The Court award the Company the costs of this suit and the attorneys' fees incurred in connection therewith; and
- (vi) The Court accord Polymer80 such further relief as may be deemed appropriate.

DATED this 22nd day of June, 2021

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Attorneys for Plaintiff

VERIFICATION OF DAVID BORGES

I, David Borges, Chief Executive Officer of Polymer80, Inc., the named plaintiff in the foregoing Verified Complaint, hereby declare, pursuant to NRS 53.045 and under penalties of perjury pursuant to the laws of the State of Nevada, that I have read all of the allegations set forth in said Verified Complaint; that I have personal knowledge of the facts stated therein; and that such facts and allegations are true and accurate to the best of my knowledge, information, and belief.

DATED this 22nd day of June, 2021.



David Borges

Exhibit A

Exhibit A

Assembly Bill No. 286—Assemblywoman Jauregui

Joint Sponsor: Senator Scheible

CHAPTER.....

AN ACT relating to crimes; prohibiting a person from engaging in certain acts relating to unfinished frames or receivers under certain circumstances; prohibiting a person from engaging in certain acts relating to firearms which are not imprinted with a serial number under certain circumstances; providing penalties; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law establishes various unlawful acts relating to firearms. (Chapter 202 of NRS) Sections 3-5 of this bill create additional unlawful acts relating to firearms.

Section 3 of this bill prohibits a person from possessing, purchasing, transporting or receiving an unfinished frame or receiver unless: (1) the person is a firearms importer or manufacturer; or (2) the unfinished frame or receiver is required to be, and has been, imprinted with a serial number. Section 3 provides that a person who commits such an unlawful act: (1) for the first offense, is guilty of a gross misdemeanor; and (2) for the second or any subsequent offense, is guilty of a category D felony.

Similarly, section 3.5 of this bill prohibits a person from selling, offering to sell or transferring an unfinished frame or receiver unless: (1) the person is a firearms importer or manufacturer and the recipient of the unfinished frame or receiver is a firearms importer or manufacturer; or (2) the unfinished frame or receiver is required to be, and has been, imprinted with a serial number. Section 3.5 provides that a person who commits such an unlawful act: (1) for the first offense, is guilty of a gross misdemeanor; and (2) for the second or any subsequent offense, is guilty of a category D felony.

Section 4 of this bill prohibits a person from manufacturing or causing to be manufactured or assembling or causing to be assembled a firearm that is not imprinted with a serial number issued by a firearms importer or manufacturer in accordance with federal law and any regulations adopted thereunder unless the firearm is: (1) rendered permanently inoperable; (2) an antique; or (3) a collector's item, curio or relic. Section 4 provides that a person who commits such an unlawful act: (1) for the first offense, is guilty of a gross misdemeanor; and (2) for the second or any subsequent offense, is guilty of a category D felony.

Similarly, section 5 of this bill prohibits a person from possessing, selling, offering to sell, transferring, purchasing, transporting or receiving a firearm that is not imprinted with a serial number issued by a firearms importer or manufacturer in accordance with federal law and any regulations adopted thereunder unless: (1) the person is a law enforcement agency or a firearms importer or manufacturer; or (2) the firearm is rendered permanently inoperable, was manufactured before 1969 or is an antique, collector's item, curio or relic. Section 5 provides that a person who commits such an unlawful act: (1) for the first offense, is guilty of a gross misdemeanor; and (2) for the second or any subsequent offense, is guilty of a category D felony. Section 5.5 of this bill provides that nothing in sections 3-5 shall be deemed to prohibit the sale of an unfinished frame or receiver or firearm.



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that is not imprinted with a serial number to a firearms importer or manufacturer or a licensed dealer before January 1, 2022.

Section 6 of this bill defines the terms "antique firearm," "firearms importer or manufacturer" and "unfinished frame or receiver." Section 7 of this bill makes a conforming change relating to the new definitions.

EXPLANATION - Matter in bolded *italics* is new; matter between brackets [inserted asterisk] is material to be omitted.

**THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:**

Section 1. Chapter 202 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 5, inclusive, of this act.

Sec. 2. (Deleted by amendment.)

Sec. 3. 1. *A person shall not possess, purchase, transport or receive an unfinished frame or receiver unless:*

- (a) The person is a firearms importer or manufacturer; or*
- (b) The unfinished frame or receiver is required by federal law to be imprinted with a serial number issued by a firearms importer or manufacturer and the unfinished frame or receiver has been imprinted with the serial number.*

2. *A person who violates this section:*

- (a) For the first offense, is guilty of a gross misdemeanor; and*
- (b) For the second or any subsequent offense, is guilty of a category D felony and shall be punished as provided in NRS 193.130.*

Sec. 3.5. 1. *A person shall not sell, offer to sell or transfer an unfinished frame or receiver unless:*

- (a) The person is:*
 - (1) A firearms importer or manufacturer; and*
 - (2) The recipient of the unfinished frame or receiver is a firearms importer or manufacturer; or*
- (b) The unfinished frame or receiver is required by federal law to be imprinted with a serial number issued by an importer or manufacturer and the unfinished frame or receiver has been imprinted with the serial number.*

2. *A person who violates this section:*

- (a) For the first offense, is guilty of a gross misdemeanor; and*
- (b) For the second or any subsequent offense, is guilty of a category D felony and shall be punished as provided in NRS 193.130.*

Sec. 4. 1. *A person shall not manufacture or cause to be manufactured or assemble or cause to be assembled a firearm that*



- 3 -

is not imprinted with a serial number issued by a firearms importer or manufacturer in accordance with federal law and any regulations adopted thereunder unless the firearm:

- (a) Has been rendered permanently inoperable;
- (b) Is an antique firearm; or
- (c) Has been determined to be a collector's item pursuant to 26 U.S.C. Chapter 53 or a curio or relic pursuant to 18 U.S.C. Chapter 44.

2. A person who violates this section:

- (a) For the first offense, is guilty of a gross misdemeanor; and
- (b) For the second or any subsequent offense, is guilty of a category D felony and shall be punished as provided in NRS 193.130.

3. As used in this section:

- (a) "Assemble" means to fit together component parts.
- (b) "Manufacture" means to fabricate, make, form, produce or construct by manual labor or machinery.

Sec. 5. 1. A person shall not possess, sell, offer to sell, transfer, purchase, transport or receive a firearm that is not imprinted with a serial number issued by a firearms importer or manufacturer in accordance with federal law and any regulations adopted thereunder unless:

- (a) The person is:
 - (1) A law enforcement agency; or
 - (2) A firearms importer or manufacturer; or
- (b) The firearm:
 - (1) Has been rendered permanently inoperable;
 - (2) Was manufactured before 1969;
 - (3) Is an antique firearm; or
 - (4) Has been determined to be a collector's item pursuant to 26 U.S.C. Chapter 53 or a curio or relic pursuant to 18 U.S.C. Chapter 44.

2. A person who violates this section:

- (a) For the first offense, is guilty of a gross misdemeanor; and
- (b) For the second or any subsequent offense, is guilty of a category D felony and shall be punished as provided in NRS 193.130.

3. As used in this section, "law enforcement agency" has the meaning ascribed to it in NRS 239C.065.

Sec. 5.5. Nothing in the provisions of sections 3 to 5, inclusive, of this act shall be deemed to prohibit the sale of an unfinished frame or receiver or firearm that is not imprinted with a serial number to a firearms importer or manufacturer or a



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licensed dealer before January 1, 2022. As used in this section, "licensed dealer" has the meaning ascribed to it in NRS 202.2546.

Sec. 6. NRS 202.253 is hereby amended to read as follows:

202.253 As used in NRS 202.253 to 202.369, inclusive ~~{ }~~, and sections 2 to 5.5, inclusive, of this act:

1. "Antique firearm" has the meaning ascribed to it in 18 U.S.C. § 921(a)(16).

2. "Explosive or incendiary device" means any explosive or incendiary material or substance that has been constructed, altered, packaged or arranged in such a manner that its ordinary use would cause destruction or injury to life or property.

~~{2.}~~ 3. "Firearm" means any device designed to be used as a weapon from which a projectile may be expelled through the barrel by the force of any explosion or other form of combustion.

~~{3.}~~ 4. "Firearm capable of being concealed upon the person" applies to and includes all firearms having a barrel less than 12 inches in length.

~~{4.}~~ 5. "Firearms importer or manufacturer" means a person licensed to import or manufacture firearms pursuant to 18 U.S.C. Chapter 44.

6. "Machine gun" means any weapon which shoots, is designed to shoot or can be readily restored to shoot more than one shot, without manual reloading, by a single function of the trigger.

~~{5.}~~ 7. "Motor vehicle" means every vehicle that is self-propelled.

~~{6.}~~ 8. "Semiautomatic firearm" means any firearm that:
 (a) Uses a portion of the energy of a firing cartridge to extract the fired cartridge case and chamber the next shell or round;
 (b) Requires a separate function of the trigger to fire each cartridge; and
 (c) Is not a machine gun.

9. "Unfinished frame or receiver" means a blank, a casting or a machined body that is intended to be turned into the frame or lower receiver of a firearm with additional machining and which has been formed or machined to the point at which most of the major machining operations have been completed to turn the blank, casting or machined body into a frame or lower receiver of a firearm even if the fire-control cavity area of the blank, casting or machined body is still completely solid and unmachined.

Sec. 7. NRS 202.2548 is hereby amended to read as follows:

202.2548 The provisions of NRS 202.2547 do not apply to:

1. The sale or transfer of a firearm by or to any law enforcement agency and, to the extent he or she is acting within the



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course and scope of his or her employment and official duties, any peace officer, security guard entitled to carry a firearm under NAC 648.345, member of the armed forces or federal official.

2. The sale or transfer of an antique firearm. ~~[-as defined in 18 U.S.C. § 921(a)(16)-]~~

3. The sale or transfer of a firearm between immediate family members, which for the purposes of this section means spouses and domestic partners and any of the following relations, whether by whole or half blood, adoption, or step-relation: parents, children, siblings, grandparents, grandchildren, aunts, uncles, nieces and nephews.

4. The transfer of a firearm to an executor, administrator, trustee or personal representative of an estate or a trust that occurs by operation of law upon the death of the former owner of the firearm.

5. A temporary transfer of a firearm to a person who is not prohibited from buying or possessing firearms under state or federal law if such transfer:

(a) Is necessary to prevent imminent death or great bodily harm; and

(b) Lasts only as long as immediately necessary to prevent such imminent death or great bodily harm.

6. A temporary transfer of a firearm if:

(a) The transferor has no reason to believe that the transferee is prohibited from buying or possessing firearms under state or federal law;

(b) The transferor has no reason to believe that the transferee will use or intends to use the firearm in the commission of a crime; and

(c) Such transfer occurs and the transferee's possession of the firearm following the transfer is exclusively:

(1) At an established shooting range authorized by the governing body of the jurisdiction in which such range is located;

(2) At a lawful organized competition involving the use of a firearm;

(3) While participating in or practicing for a performance by an organized group that uses firearms as a part of the public performance;

(4) While hunting or trapping if the hunting or trapping is legal in all places where the transferee possesses the firearm and the transferee holds all licenses or permits required for such hunting or trapping; or

(5) While in the presence of the transferor.



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Secs. 8 and 9. (Deleted by amendment.)

Sec. 10. 1. This section and sections 1, 2, 3.5, 4, 5.5 and 6 to 9, inclusive, of this act become effective upon passage and approval.
2. Sections 3 and 5 of this act become effective on January 1, 2022.



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CLERK OF COURT
THIRD JUDICIAL DISTRICT

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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.

28

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 11th day of July, 2021.

24
25 
26 JOHN P. SCHLEGELMILCH
27 DISTRICT JUDGE
28

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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.

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: 
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-and-

James J. McGuire
Pro Hac Vice
Michael R. Patrick
(Pro Hac Application Forthcoming)
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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
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DATED this 16th day of July 2021.



Brad M. Johnston