

IN THE SUPREME COURT OF THE STATE OF NEVADA

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,
Appellants,
vs.
POLYMER80, INC.,
Respondent.

No. 83999

Electronically Filed
DOCKETING as of 2022-05-27 p.m.
CIVIL APPEALS Elizabeth A. Brown
Clerk of Supreme Court

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.

Revised December 2015

1. Judicial District Third Department I

County Lyon Judge John P. Schlegelmilch

District Ct. Case No. 21-CV-00690

2. Attorney filing this docketing statement:

Attorney Steve Shevorski Telephone 702-486-3420

Firm Office of the Attorney General

Address 555 E. Washington Ave., Ste. 3900
Las Vegas, NV 89101

Client(s) Appellants

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 Telephone 775-463-9500

Firm Simons Hall Johnston PC

Address 22 State Route 208
Yerington, NV 89447

Client(s) Respondent

Attorney James J. McGuire Telephone 212-524-5000

Firm Greenspoon Marder LLP

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

Client(s) Respondent

(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 checked="" 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 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:

Steve Sisolak, Governor of Nevada; Aaron D. Ford, Attorney General of Nevada; George Togliatti, Director of Public Safety; and Mindy McKay, Administrator of the Records, Communications, and Compliance Division of the Nevada Department of Public Safety v. Polymer80, Inc., Case No. 83385

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:
None.

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

Plaintiff, Polymer80, Inc., manufactures gun-related products that lack a serial number. The legislature passed Assembly Bill 286. Polymer80, Inc. challenges Sections 3 and 3.5 of AB 286. Section 3 makes it a crime to possess, purchase, transport or receive an unfinished frame or receiver. Section 3.5 makes it a crime to sell, offer to sell or transfer an unfinished frame or receiver. The term unfinished frame or receiver is defined in Section 6. Polymer80, Inc. alleges that the phrase "unfinished frame or receiver" is unconstitutionally vague.

After a brief discovery period, the parties filed cross-motions for summary judgment. The court enjoined sections 3 and 3.5 as unconstitutionally vague because they fail to provide a person of ordinary intelligence with fair notice of the conduct that is prohibited and they are so standardless that they authorize arbitrary and discriminatory enforcement.

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

1. Order granting Polymer80's motion for summary judgment and denying Defendants' motion for summary judgment.

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:

None.

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:

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: Polymer80 contends that sections 3 and 3.5 of Assembly Bill 286 violate on their face procedural due process because those sections are unconstitutionally vague.

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 case should be retained by the Nevada Supreme Court under NRAP 17(a)(12). Whether sections 3 and 3.5 of AB 286 are constitutionally valid is an issue of statewide importance. AB 286 is a significant legislative enactment that seeks to protect the public health of Nevadans through the regulation of unserialized firearms.

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

Was it a bench or jury trial? _____

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?

No

TIMELINESS OF NOTICE OF APPEAL

16. Date of entry of written judgment or order appealed from Dec 10, 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 Dec 13, 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 Dec 20, 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 checked="" 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:

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

(a) Parties:

Governor Stephen Sisolak; Attorney General Aaron Ford; Director of Public Safety George Togliatti; Deputy Director of Public Safety Mindy McKay; and Polymer80, Inc.

(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:

N/A

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.

1. Declaratory relief - AB 286 violates procedural due process (vagueness)
2. Injunctive relief - AB 286 violates procedural due process (vagueness)

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:

(b) Specify the parties remaining below:

(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)):

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, et al.
Name of appellant

Steve Shevorski
Name of counsel of record

01/20/22
Date

/s/ Steve Shevorski
Signature of counsel of record

Nevada, Clark
State and county where signed

CERTIFICATE OF SERVICE

I certify that on the 20th day of January, 2022, 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.)

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

James J. McGuire
Mark T. Doerr
Greenspoon Marder LLP
590 Madison Ave., Ste. 1800
New York, New York 10022

Dated this 20th day of January, 2022

/s/ Traci Plotnick
Signature

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

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

19 Defendants.

20 **SUMMONS – CIVIL**

21 **TO THE DEFENDANT AARON FORD, Attorney General of Nevada:**

22 **Attorney General Aaron Ford**
23 **100 N. Carson St.,**
24 **Carson City, NV 89701**

25 **NOTICE! YOU HAVE BEEN SUED. THE COURT MAY DECIDE AGAINST YOU WITHOUT YOU BEING**
26 **HEARD UNLESS YOU RESPOND WITHIN 20 DAYS.**

27 **READ THE INFORMATION BELOW.**

28 A civil Complaint has been filed by the Plaintiff POLYMER80, INC., against you – STEVE 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

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Yerington, Nevada 89447
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Safety, – for the relief set forth in the Complaint.

1. If you intend to defend this lawsuit, within 20 days after this Summons is served on you, exclusive of the day of service, you must do the following:

a) File with the Clerk of this Court, whose address is shown below, a formal written response to the Complaint in accordance with the rules of the Court, with the appropriate filing fee.

b) Serve a copy of your response upon the attorney whose name and address is shown below.

2. Unless you respond, your default will be entered upon application of the Plaintiff and failure to so respond will result in a judgment of default against you for the relief demanded in the Complaint, which could result in the taking of money or property or other relief requested in the Complaint.

3. If you intend to seek the advice of an attorney in this matter, you should do so promptly so that your response may be filed on time.

4. The State of Nevada, its political subdivisions, agencies, officers, employees, board members, commission members and legislators each have 45 days after service of this Summons within which to file an Answer or other responsive pleading to the Complaint.

TANYA SCEIRINE
Lyon County Court Clerk

By: Victoria Tovar
Senior Deputy Clerk
Date: 6/22/21
Third Judicial District Court
911 Nevin Way
Yerington, NV 89447

Submitted by:

Brad M. Johnston
Brad M. Johnston
Nevada Bar No. 8515
SIMONS HALL JOHNSTON PC
22 State Route 208
Yerington, Nevada 89447
Telephone: 775-463-9500
Facsimile: 775-463-4032

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-and-

James J. McGuire
(Pro Hac Application Forthcoming)
Michael R. Patrick
(Pro Hac Application Forthcoming)
Mark T. Doerr
(Pro Hac Application Forthcoming)
Greenspoon Marder LLP
590 Madison Avenue, Suite 1800
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Telephone: 212-524-5000
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james.mcquire@gmlaw.com
michael.patrick@gmlaw.com
mark.doerr@gmlaw.com

Attorneys for Plaintiff Polymer80, Inc.

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Case No. 21-CV-00690

Dept. No. I

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

POLYMER80, INC.,

Plaintiff,

vs.

STEVE 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.

SUMMONS – CIVIL

TO THE DEFENDANT STEVE SISOLAK, Governor of Nevada:

Gov. Steve Sisolak, State Capitol Bldg.
101 N. Carson St.
Carson City, NV 89701

NOTICE! YOU HAVE BEEN SUED. THE COURT MAY DECIDE AGAINST YOU WITHOUT YOU BEING HEARD UNLESS YOU RESPOND WITHIN 20 DAYS.

READ THE INFORMATION BELOW.

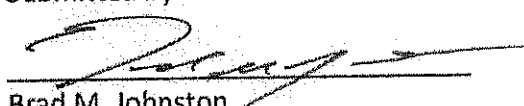
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SIMONS HALL JOHNSTON PC
22 State Route 208
Yerington, Nevada 89447
(775) 463-9500

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- 4 a) File with the Clerk of this Court, whose address is shown below, a formal written
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10 so respond will result in a judgment of default against you for the relief demanded in the
11 Complaint, which could result in the taking of money or property or other relief requested in the
12 Complaint.
- 13 3. If you intend to seek the advice of an attorney in this matter, you should do so promptly so
14 that your response may be filed on time.
- 15 4. The State of Nevada, its political subdivisions, agencies, officers, employees, board members,
16 commission members and legislators each have 45 days after service of this Summons within
17 which to file an Answer or other responsive pleading to the Complaint.

TANYA SCEIRINE
Lyon County Court Clerk

By: Victoria Toran
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Date: 6/22/21
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911 Nevin Way
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22 Submitted by:
23 
24 Brad M. Johnston
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26 SIMONS HALL JOHNSTON PC
27 22 State Route 208
28 Yerington, Nevada 89447
Telephone: 775-463-9500
Facsimile: 775-463-4032

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-and-

James J. McGuire
(Pro Hac Application Forthcoming)
Michael R. Patrick
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Attorneys for Plaintiff Polymer80, Inc.

FILED

2021 JUN 22 PM 3:18

CLERK OF DISTRICT COURT
THIRD JUDICIAL DISTRICT

Victoria Tovar

1 Case No. 21-CV-00690

2 Dept. No. I

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4 does not contain the social security number
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5 IN THE THIRD JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

6 IN AND FOR THE COUNTY OF LYON

7 POLYMER80, INC.,

8 Plaintiff,

9 vs.

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

14 Defendants.

15 VERIFIED COMPLAINT

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

19 INTRODUCTION

20
21 1. This is an action for Declaratory and Injunctive relief against certain
22 Nevada public officials, in which Polymer80 seeks a: (i) Declaratory Judgment that the
23 recently enacted Nevada Assembly Bill 286 ("AB 286"), a copy of which is annexed as
24 Exhibit A for the Court's consideration, violates the Constitution of the State of Nevada
25 ("Nevada Constitution"), because it is unconstitutionally vague; (ii) Temporary
26 Restraining Order barring defendants from enforcing this new and unlawful legislation
27 pending the Court's determination of the Company's request for a Preliminary
28 Injunction; (iii) Preliminary Injunction stopping defendants from further enforcing this

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Yerington, Nevada 89447

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

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

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.

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.
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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

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unfinished "frame" or "receiver" is.

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

V. Criminal Sanctions Under AB 286

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

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

31. All such second or subsequent violations can also trigger a lifetime ban on an individual's right to keep and bear arms in the United States under extant federal law. See 18 U.S.C. § 922(g)(1).

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.

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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SECOND CAUSE OF ACTION AGAINST ALL DEFENDANTS

(For A Temporary Restraining Order, Preliminary Injunction, And Permanent Injunction Pursuant To NRS 33.010 Barring Defendants From Enforcing AB 286)

58. Polymer80 re-alleges and incorporates the allegations contained in Paragraphs 1 through 57 above as if fully set forth herein.

59. NRS 33.010 provides, in pertinent part, as follows:

An injunction may be granted in the following cases:
When it shall appear by the complaint that the plaintiff is entitled to the relief demanded, and such relief or any part thereof consists in restraining the commission or continuance of the act complained or, either for a limited period or perpetually.

60. Polymer80 is entitled to a Temporary Restraining Order, Preliminary Injunction, and Permanent Injunction restraining defendants from enforcing AB 286, since that statute is unconstitutionally vague under the Nevada Constitution and therefore void. Defendants cannot -- and, more to the point, should not be permitted to -- enforce an unconstitutional enactment, either now or in the future, against the Company or any other individual or entity in the State of Nevada.

61. Absent the requested Temporary Restraining Order, Preliminary Injunction, and Permanent Injunction, Polymer80 will suffer irreparable harm.

PRAYER FOR RELIEF

62. **WHEREFORE**, plaintiff Polymer80, Inc. respectfully requests that:


- (i) The Court enter a Declaratory Judgment declaring that AB 286 is void for vagueness and unconstitutional under the Due Process Clause of the Nevada Constitution;
- (ii) The Court issue a Temporary Restraining Order stopping defendants from enforcing AB 286 as to Polymer80 and/or anyone else subject to the jurisdiction of the State of Nevada prior to the Court's determination of the Company's request for a Preliminary Injunction;

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

12 DATED this 22nd day of June, 2021

13 **Simons Hall Johnston PC**

14 
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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 [omitted material] 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***



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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.



81st Session (2021)

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.



FILED

2021 DEC 10 AM 9:54

TANYA SCERINE
COURT ADMINISTRATOR
THIRD JUDICIAL DISTRICT

Kathy Thomas

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

19 Defendants.

**FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND
ORDER GRANTING SUMMARY
JUDGMENT IN FAVOR OF
PLAINTIFF, POLYMER80, INC.**

20 This matter is before the Court upon the parties' competing Motions for Summary Judgment
21 both filed on November 8, 2021, and duly opposed by each party on November 18, 2021. The matter
22 was set for argument on November 23, 2021. Plaintiff was present and represented by Brad
23 Johnston, Esq., of Simons Hall Johnston PC (via Zoom) and James J. McGuire, Esq., (pro hac vice)
24 of Greenspoon Marder LLP, who was present in Court. The Defendants were represented by Craig
25 A. Newby, Esq., Deputy Solicitor General, who was present in Court.

26 This Court, having reviewed and considered the parties' respective motions and oppositions
27 for summary judgment, considered the exhibits thereto and arguments therein, conducted a hearing
28 upon those motions, and heard oral argument from counsel for Polymer80 and for Defendants, and

1 good cause appearing, makes the following FINDINGS OF FACT, CONCLUSIONS OF LAW,
2 AND ORDERS.

3
4 I

5 **PROCEDURAL HISTORY**

6 During the 81st legislative session, the Nevada Legislature passed Assembly Bill 286 (“AB
7 286”). AB 286 is -- “AN ACT relating to crimes; prohibiting persons from engaging in certain acts
8 relating to unfinished frames or receivers under certain circumstances; ... providing penalties; and
9 providing other matters properly relating thereto.” Nevada Governor, Stephen Sisolak, signed AB
10 286 into law on June 7, 2021.

11 On June 22, 2021, Plaintiff, Polymer80, Inc. (“Polymer80”), filed this lawsuit against
12 Defendants, Stephen Sisolak, Governor of Nevada, Aaron Ford, Attorney General of Nevada,
13 George Togliatti, Director of the Nevada Department of Public Safety, and Mindy McKay,
14 Administrator of the Records, Communications, and Compliance Division of the Nevada
15 Department of Public Safety (collectively referred to as “Defendants”), alleging that Sections 3 and
16 3.5 of AB 286 are unconstitutionally vague under the Due Process Clause of the Constitution of the
17 State of Nevada (“Nevada Constitution”). In its Verified Complaint, Polymer80 sought a
18 Declaration from this Court that Sections 3 and 3.5 of AB 286 violate the Nevada Constitution and
19 a Permanent Injunction barring enforcement of the new law.

20 On June 25, 2021, Polymer80 filed its *Motion for Temporary Restraining Order and*
21 *Preliminary Injunction*. After briefing and a hearing, this Court, on July 16, 2021, entered its *Order*
22 *Granting Preliminary Injunction*, preliminarily barring enforcement of Section 3.5 of AB 286.¹ That
23 Order is currently pending appeal at the Nevada Supreme Court.

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28 ¹ At that time, this Court declined to enter a Preliminary Injunction as to the enforcement of AB 286
Section 3, because that portion of the new statute would not go into effect until January 1, 2022.

1 Thereafter, the Court held a Case Management and Scheduling Conference on July 14, 2021,
2 that resulted in a July 15, 2021, *Case Management and Trial Scheduling Order* setting an expedited
3 trial date of November 30, 2021. That Order also provided that the parties could engage in discovery
4 through November 1, 2021, and fixed November 8, 2021, as the deadline for filing dispositive
5 motions. By so ruling, this Court wanted to, and did, afford the parties the opportunity to develop
6 the evidentiary record to be presented upon motions for summary judgment and/or at trial.

7 In the ensuing months, the parties proceeded with discovery. Both Polymer80 and
8 Defendants timely filed Motions for Summary Judgment on November 8, 2021.² Pursuant to the
9 parties' Stipulation, this Court directed that they file their oppositions to the other side's summary
10 judgment motion on November 18, 2021, dispense with reply briefs, and proceed to a full hearing
11 on November 23, 2021. That hearing was held as scheduled and the Court heard substantial
12 argument from the parties. Notably, both parties agreed at that hearing that this Court could decide
13 this case upon the record before it at that point, and that a trial was unnecessary. At the conclusion
14 of the hearing, the Court rendered an oral ruling granting Polymer80 summary judgment. This Order
15 follows and memorializes that ruling.

16 Accordingly,

17 IT IS HEREBY ORDERED that the *Motion of Polymer80, Inc., for Summary Judgment* is
18 GRANTED, and that *Defendants' Motion for Summary Judgment* is DENIED, for the reasons set
19 forth herein and on the record at the November 23, 2021, hearing.

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24 ² Before the parties filed their competing Motions for Summary Judgment, Defendants filed an
25 appeal from this Court's *Order Granting Preliminary Injunction*. Thereafter, Defendants filed a
26 Motion to Stay this case in this Court, arguing, among other things, that this matter presented a pure
27 question of law that would be resolved upon their then-pending appeal. This Court denied
28 Defendants stay, largely because the issue on appeal was not the ultimate question of whether or not
AB 286 was and is unconstitutionally vague but whether or not this Court had abused its discretion
in granting interim relief. Moreover, a stay would have only delayed a ruling on the constitutionality
of AB 286, which would not have been in the best interests of either Plaintiff or Defendants.

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II

CONTESTED PROVISIONS OF AB 286

The 81st Nevada Legislature amended Chapter 202 of the Nevada Revised Statutes by adding, among others, the following provisions, which are the subject of this proceeding.

First, Section 3 of AB 286, effective as of January 1, 2022, provides as follows:

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 193.130.³

Plainly, this provision makes it a crime to “possess, purchase, transport or receive an unfinished frame or receiver” in the State of Nevada.

Second, Section 3.5 of AB 286, which became effective on June 7, 2021, provides as follows:

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.

³ NRS 193.130 provides that a category D felony is punishable by 1-4 years in Nevada State Prison and a fine of up to \$5,000.00.

- 1 2. A person who violates this section:
 - 2 (a) For the first offense, is guilty of a gross misdemeanor;
 - 3 and
 - 4 (b) For the second or any subsequent offense is guilty of a
5 category D felony and shall be punished as provided in NRS
6 193.130

7 This Section makes it a crime to “sell, offer to sell or transfer an unfinished frame or receiver”
8 in the State of Nevada.

9 Section 6 of AB 286 amended NRS 202.253 by adding the term “[u]nfinished frame or
10 receiver” to Nevada law and defines that term as follows:

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

19 Polymer80 argues that Sections 3 and 3.5 of AB 286 are unconstitutionally vague under the
20 Due Process Clause of the Nevada Constitution.⁴

21 III

22 STANDARD ON SUMMARY JUDGMENT

23 Summary judgment is appropriate, where “the pleadings, depositions, answers to
24 interrogatories, and admissions on file, together with the affidavits, if any, show that there is no
25 genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter
26 of law.” NRC 56(c). While this Court must construe the evidence in the light most favorable to
27 the nonmoving party upon such a motion, the nonmoving party “bears the burden to do more than
28 simply show that there is some metaphysical doubt as to the operative facts in order to avoid

⁴ This decision does not extend to Section 4 or 5 of AB 286 and this Court makes no judgment relating to the efficacy of those provisions.

1 summary judgment being entered in the moving party’s favor.” *Wood v. Safeway, Inc.*, 121 Nev.
2 724, 732 (2005) (quotations omitted). “The nonmoving party must, by affidavit or otherwise, set
3 forth specific facts demonstrating the existence of a genuine issue for trial or have summary
4 judgment entered against him.” *Id.* And, the party opposing summary judgment cannot build a case
5 on the ““gossamer threads of whimsy, speculation, and conjecture.”” *Id.* (quoting *Bulbman, Inc. v.*
6 *Nevada Bell*, 108 Nev. 105, 110 (1992)). Critically, the Nevada Supreme Court, as the parties have
7 acknowledged, has held that summary judgment is appropriate with respect to, as here, a facial Due
8 Process challenge on vagueness grounds to the constitutionality of a criminal statute. *See Flamingo*
9 *Paradise Gaming, LLC v. Chanos*, 125 Nev. 502, 508-09 (2009). As explained below, there are no
10 “genuine issues of material fact” precluding summary judgment, and this Court may properly resolve
11 this action on summary judgment upon the record before it.

12 IV

13 FINDINGS OF FACT AND CONCLUSIONS OF LAW

14 Polymer80 is a Nevada corporation headquartered in Dayton, Nevada, within Lyon County.
15 It manufactures, designs, and distributes gun-related products, components, and after-market
16 accessories. The legislative history reveals that AB 286 has targeted, at least partially, certain of
17 Polymer80’s business products. Defendants have also admitted as much in their Answer and in their
18 moving papers. As set forth in the testimony of Assemblywoman Sandra Jauregui:

19 . . . a Nevada based company, Polmer80, Inc., [is] one of the nation’s
20 largest manufacturers of ghost guns.

21 Minutes, Assembly Committee on Judiciary, p.6 (March 17, 2021). Assemblyman Wheeler stated
22 therein:

23 The kit guns you called ghost guns are used by a lot of hobbyists.
24 Under federal law, those are quite legal, so outlawing them in Nevada,
25 as this bill tries to do, basically puts a company [Polmer80] in my
26 district out of business. . . .
27 We are going to drive a company in my district out of business, but
28 people can still buy them in Kentucky. . .

1 Minutes, Assembly Committee on Judiciary, p.13-14 (March 17, 2021).⁵

2 **A. STANDING OF POLMER80**

3 In Defendants’ Answer and at the Motion for Preliminary Injunction hearing, the State of
4 Nevada contested Polymer80’s standing to contest the constitutional validity of AB 286. The
5 Defendants’ have not argued a lack of standing on summary judgment. However, Polymer80 asserts
6 in their Motion that they indeed have standing.

7 NRS 30.040 provides, in pertinent part:

8 **NRS 30.040. Questions of construction or validity of . . . statutes.**

9 1. Any person . . . whose rights, status or other legal relations
10 are affected by a statute . . . may have determined any question of
11 construction or validity arising under the . . . statute . . . and obtain a
12 declaration of rights, status or other legal relations thereunder.

12 NRS 30.040(1). In Nevada, the issue of Standing is a question of law. *Arguello v. Sunset Station,*
13 *Inc.*, 127 Nev. 365, 368 (2011). As explained recently by the Nevada Supreme Court:

14 The question of standing concerns whether the party seeking relief has
15 a sufficient interest in the litigation. The primary purpose of this
16 standing inquiry is to ensure the litigant will vigorously and
17 effectively present his or her case against an adverse party. Thus, a
18 requirement of standing is that the litigant personally suffer injury that
19 can be fairly traced to the allegedly unconstitutional statute and which
20 would be redressed by invalidating the statute. A general interest in
21 the matter is normally insufficient: a party must show a personal
22 injury.

23 *Flor Morency v Nevada Department of Education*, 137 Nev. Adv. Op. 63, p. 7, 496 P.3d 584 (Oct.
24 7, 2021), (Citations Omitted).

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27 ⁵ This Court notes that there are multiple references to Polmer80 in the legislative history of AB 286
28 all indicating the negative impact of the bill on their ability to conduct business in the State of
Nevada.

1 This Court finds that Polymer80 has standing to mount a facial vagueness challenge to the
2 constitutionality of AB 286. Like the Plaintiffs in *Flamingo Paradise Gaming, LLC v. Chanos*, 125
3 Nev. 502, 508-09 (2009), Polymer80 could be subject to criminal prosecution stemming from its
4 ongoing conduct. Polymer80’s facial challenge to AB 286 is ripe for this Court’s adjudication as
5 Section 3.5 of AB 286 took effect earlier this year upon approval by the Governor and Section 3 of
6 AB 286 takes effect January 1, 2022. Accordingly, it is ripe for this Court to determine whether or
7 not both of those Sections of AB 286 are unconstitutionally vague under the Due Process Clause of
8 the Nevada Constitution.
9

10 Polymer80 satisfies the requirement to show that they would “personally suffer injury that
11 can fairly be traced to the allegedly unconstitutional statute” by facing the prospect of felony
12 criminal prosecution each time they produce a product which allegedly falls under the purview of
13 the statute. Further, Polymer80 would suffer significant economic loss as set forth in the Deposition
14 testimony submitted, and uncontested by the Defendants. This, combined with the legislative history
15 showing that the thrust of the bill was to put Polymer80 out of business, clearly establishes that,
16 unlike any other potential litigant, Polymer80 will vigorously and effectively present the case for
17 facial invalidity of the statute – which is Polymer80’s only true redress.
18

19 This Court determines that Polymer80 will suffer irreparable harm in the absence of
20 declaratory and/or injunctive relief, since, as under *Flamingo*, that harm exists if a Nevadan, such as
21 Polymer80, must conduct its affairs in the wake of criminal jeopardy that fails to provide fair notice
22 of the conduct being criminalized.⁶
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27 ⁶ The Defendants previously argued at the preliminary injunction hearing that Section 3(1)(b) would
28 mitigate any harm as all Polymer80 would have to do is put a serial number on its products. The

1 **B. STANDARD OF REVIEW FOR A FACIAL VAGUENESS CHALLENGE**

2 The question before this Court is essentially whether or not AB 286 is unconstitutionally
3 vague under the Due Process Clause of the Nevada Constitution. It is undisputed that Section 3 and
4 Section 3.5 of AB286 are criminal statutes with penalties being elevated as high as category D
5 felonies.

6
7 Nevada’s Due Process Clause states simply that “No person shall be deprived of life, liberty,
8 or property, without due process of law.” Nev. Const., Art. 1, Sec. 8(2). In Nevada, the determination
9 of whether a statute is constitutional is a question of law. *Silvar v. Dist. Ct.*, 122 Nev. 289, 292, 129
10 P.3d 682, 684 (2006).

11 Statutes are presumed to be valid, and the challenger bears the burden
12 of showing that a statute is unconstitutional. The court must interpret
13 a statute in a reasonable manner, that is, [t]he words of the statute
14 should be construed in light of the policy and spirit of the law, and the
15 interpretation made should avoid absurd results. In reviewing a
16 statute, it should be given [its] plain meaning and must be construed
17 as a whole and not be read in a way that would render words or phrases
18 superfluous or make a provision nugatory.

19 *Flamingo Paradise Gaming v. Att’y General*, 125 Nev. 502, 509 (2009). In reviewing the statute,
20 “every reasonable construction must be resorted to, in order to save a statute from
21 unconstitutionality.” *State v. Castaneda*, 126 Nev. 478, 481, 245 P.3d 550, 552 (2010).

22 The Nevada Supreme Court has adopted a two-pronged test for determining whether a
23 criminal statute is so impermissibly vague as to run afoul of the due process clause of the Nevada
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27 argument was abandoned on summary judgment. Section 3(1)(b) and Section 3.5(1)(b) by their own
28 terms only provide relief when the “unfinished” frame or receiver is “required” by federal law to be
imprinted with a serial number. It is undisputed that the products produced by Polymer80 are not
required by federal law to have a serial number imprinted on them.

1 Constitution. See, e.g., *Flamingo Paradise Gaming*, 125 Nev. at 510; *Gallegos v. State*, 123 Nev.
2 289, 294 (2007).

3 A criminal statute can be invalidated for vagueness (1) if it fails to
4 provide a person of ordinary intelligence fair notice of what is
5 prohibited *or* (2) if it is so standardless that it authorizes or encourages
6 seriously discriminatory enforcement.

7 *Scott v. First Jud. Dist. Ct.*, 131 Nev. 1015, 1021 (2015). Although both civil and criminal statutes
8 are judged under the same test, the Nevada Supreme Court has explained:

9 [T]here are two approaches to a facial vagueness challenge depending
10 on the type of statute at issue. The first approach arises under a facial
11 challenge to a civil statute and the plaintiff must show that the statute
12 is impermissibly vague in all of its applications. In making this
13 showing, [a] complainant who engages in some conduct that is clearly
14 proscribed cannot complain of the vagueness of the law as applied to
15 the conduct of others. **But, when the statute involves criminal
16 penalties or constitutionally protected rights, the second
17 approach involves a higher standard of whether “vagueness
18 permeates the text.”**

19 *Flamingo*, 125 Nev. at 512.⁷ Where a statute imposes criminal penalties, as is the case with AB 286,
20 the more exacting standard for Constitutionality is imposed.

21 Under the higher standard, the question becomes whether vagueness
22 so permeates the text that the statute cannot meet these requirements
23 in most applications; and thus, this standard provides for the
24 possibility that some applications of the law would not be void, but
25 the statute would still be invalid if void in most circumstances.

26 *Flamingo*, 125 Nev. at 507.

27 ⁷ The Defendants have urged this Court to roll back *Flamingo* and apply the “clearly proscribed
28 conduct” test to this criminal statute as set forth in *Sheriff of Washoe Cty v. Martin*, 99 Nev. 336,
340 (1983) (citing *Hoffman Estates v. Flipside, Hoffman Estate, Inc.*, 455 U.S. 489, 495 (1982)). This
Court declines to do so as *Flamingo* made clear that under the Nevada Constitution the “clearly
proscribed conduct” analysis applies to vagueness challenges of civil statutes where facial vagueness
challenges need to show that the law is “impermissibly vague in all its applications.”

1 In this Court's view, AB 286, a criminal enactment, fails under both prongs for various
2 reasons resulting in an unconstitutionally vague statute under Nevada Constitutional law. While
3 similar, "the first prong is concerned with guiding those who may be subject to potentially vague
4 statutes, while the second -- and more important -- prong is concerned with guiding the enforcers of
5 statutes." *Silvar v. Dist. Ct.*, 122 Nev. 289, 293, 129 P.3d 682, 685 (2006).
6

7 **C. SECTIONS 3 AND 3.5 OF AB 286 FAIL TO PROVIDE A PERSON OF ORDINARY**
8 **INTELLIGENCE FAIR NOTICE OF WHAT IS PROHIBITED**

9 Section 3 and Section 3.5 of AB 286 fail to provide a person of ordinary intelligence with
10 fair notice of the conduct which it proscribes. The underlying purpose of this factor is to give a
11 person "notice of the law so they can conform their conduct to its requirements." *Gallegos v. State*,
12 123 Nev. 289, 295 (2007). Those sections of AB 286 criminalize the possession, purchase, transport,
13 receipt, transfer and sale of what the statute calls an "unfinished frame or receiver." While AB 286
14 purports to define the term "unfinished frame or receiver," that definition is as follows:

15 [A] blank, a casting or a machined body that is intended to be turned
16 into the frame or lower receiver of a firearm with additional
17 machining and which has been formed or machined to the point at
18 which most of the major machining operations have been completed
19 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.

20 This definition does not provide a person of ordinary intelligence with adequate notice of
21 what AB 286 criminalizes.

22 As stated above, the crimes established in Section 3 and 3.5 are purely the result of Nevada
23 legislative statutory enactment. The terms used in the definition of "unfinished frame or receiver"
24 are not defined elsewhere in the statute. These terms include - blank, casting, machined body,
25 machining, major machining operations, frame or lower receiver of a firearm, and/or fire-control
26 cavity area.

27 The definition does not tell anyone when during the manufacturing process a blank, casting,
28 or machined body (whatever those terms mean) has gone through the "major machining operations"

1 (whatever those are) to turn that blank, casting, or machined body into a frame or lower receiver of
2 a firearm (whatever that may be), a person of ordinary intelligence could not proscribe their conduct
3 to comply with the law. As a result, this Court finds that the text of AB 286 does not provide fair
4 notice of whatever it criminalizes. To this end, this Court asked on multiple occasions during oral
5 argument on the Motion for Summary Judgment what those terms as used in AB 286 mean.
6 Tellingly, the Defendants could not in any manner explain their meaning(s).

7 This Court inquired whether or not the common law defined the terms used in AB 286, and
8 the response that this Court received was clearly in the negative. As such, this Court cannot use the
9 common law to decipher, clarify, or define the inherently vague terms of AB 286. This fact
10 distinguishes this case from *State v. Castaneda*, 126 Nev. 478 (2010)(Common Law definition of
11 indecent exposure – a common law crime), where the Nevada Supreme Court found that that the
12 common law can provide a definition as to what conduct a statute prohibits. This Court inquired as
13 to whether any other Nevada statutes or Nevada case law defined the terms found in AB 286 and,
14 again, the answer was no. As a consequence, this case is also distinguishable from *Silverwing*
15 *Development v. Nevada State Contractors Board*, 136 Nev. Adv. Rep. 74, 476 P.3d 461 (2020),
16 (Commonly accepted definition of “subdivision” contained within the State’s planning and zoning
17 statutes) where the Nevada Supreme Court rejected a vagueness challenge, when Nevada law
18 elsewhere defined an allegedly ambiguous term. Thus, neither the common law nor any other
19 Nevada statutes or authorities define or clarify the vagueness that permeates the text of AB 286.

20 While portions of AB 286 incorporate certain terms that are defined in federal legislation,
21 this Court cannot imply that the Nevada Legislature wanted to incorporate all the existing federal
22 definitions relating to firearms or the Gun Control Act into AB 286. Here, the Nevada Legislature
23 purposely included some federal definitions into AB 286 but, deliberately did not include others.
24 From that fact, this Court can only conclude that the Nevada Legislature purposely did so absent
25 some legislative declaration to the contrary. Simply put, had the Nevada Legislature wished to
26 incorporate other federal definitions into AB 286, it knew how to do so and would have done so. It
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1 did not. And so, this Court will not do what the Nevada Legislature deliberately declined or failed
2 to do.⁸

3 In *Gallegos v. State*, 123 Nev. 289 (2007), the Nevada Supreme Court was faced with the
4 same dilemma. In *Gallegos*, the legislature criminalized the possession of firearms by a “fugitive
5 from justice.” The legislature failed to define what the term “fugitive from justice” meant in relation
6 to the statute. The District Court upheld the validity of the statute and applied the federal definition
7 of “fugitive from justice” into the statute to provide meaning. The Nevada Supreme Court reversed
8 stating:

9 Unlike Congress, the Nevada Legislature has not defined “fugitive
10 from justice.” By failing to adopt the federal definition of “fugitive
11 from justice” or include any definition of that phrase. . . , the
12 Legislature failed to provide the public with statutory notice of what
13 that term means. It could arguably encompass a wide variety of
14 circumstances. . . The fact that the district court, sua sponte, adopted
15 the 18 U.S.C. § 921(a)(15) definition in this case does not remedy that
16 deficiency.

17 *Gallegos v. State*, 123 Nev. @ 294-95.

18 Finally, the legislative history of AB 286 does not shed any light on the undefined terms used
19 in AB 286 nor the meaning of “unfinished frame or receiver.” To the contrary, that history illustrates
20 that the State Legislature received comments during the legislative process that AB 286 was vague,
21 and that the definition of “unfinished frame or receiver” was particularly uncertain. Rather than
22 address the issue through comments or revising the text of AB 286, the Nevada Legislature remained
23 silent. Thus, the legislative history does not aid this Court in unearthing the meaning of the vague

24 ⁸ The Defendants have proposed two separate definitions for the Court to “imply” into the statute to
25 define what a Frame or Receiver is. Both definitions differed substantially. Federal Law (27 CFR §
26 478.11) defines “firearm frame or receiver” as “that part of a firearm which provides housing for the
27 hammer, bolt or breechblock, and firing mechanism, and which is usually threaded at its forward
28 portion to receive the barrel.” The Defendants’ second proposed definition comes from the Glossary
of the Association of Firearm and Toolmark Examiners defining “frame or receiver” as “the finished
part which is capable of being assembled with other parts to put together a firearm.”

1 and undefined terms used in AB 286. It is noteworthy that the parties agreed that the legislative
2 history for AB 286 gives this Court no information to determine what the Nevada Legislature meant
3 when adopting and implementing the definition of “unfinished frame or receiver.” Tellingly, not
4 even Webster’s Dictionary defines a majority of these terms.

5 Defendants contend that since AB 286 includes a *scienter* element, the statute is not void for
6 vagueness. This Court finds this contention unpersuasive. The criminal acts defined in Sections 3
7 and 3.5 of AB 286 do not contain a *scienter* element, as they criminalize, among other things, the
8 possession and sale of “unfinished frames and receivers,” whatever those things may actually be.
9 And, the person possessing or selling those “unfinished frames and receivers” need not have any
10 particular specific intent. In fact, AB 286 only and very generally employs intent in the definition
11 of “unfinished frame or receiver,” stating an “unfinished frame or receiver” is “a blank, a casting or
12 a machined body that is *intended* to be turned into the frame or lower receiver of a firearm.” The
13 use of the word “intended” in this definition does not create the *scienter* element defendants claim
14 to exist within Section 3 and Section 3.5 of the bill.

15 Here, a literal reading of the definitional statute requires that the blank, casting or machined
16 body (all inanimate objects) be intended to be turned into the frame or lower receiver of a firearm.
17 Nowhere in the definitional statute does it indicate who would have to have intended the unfinished
18 frame or receiver to be transformed into a firearm. Is it the manufacturer like Polymer80? It is
19 undisputed that it is their intent not to make a firearm. Is it the seller of a gun kit? They have no
20 intent to make a firearm. The object itself cannot transfer specific intent to the possessor of the item.

21 Even if this Court were to assume an intent element was specifically meant to apply to any
22 individual purportedly violating Section 3 and 3.5, the statute would still be unconstitutionally
23 vague. For example, if Section 3 criminalized the possession of a blank, casting, or machined body
24 only if the person who possessed such an item (whatever it might actually be) specifically intended
25 to turn it into the frame or lower receiver of a firearm with additional machining, AB 286 would still
26 be unconstitutionally vague.

27 In this regard, the statute is expressly conjunctive, such that the blank, casting, or machined
28 body must: (i) be intended to be turned into the frame or lower receiver of a firearm with additional

1 machining, and (ii) already be formed or machined to the point at which most of the major machining
2 operations have been completed. Yet, none of these terms are defined, nor is there any way to know
3 when “most of the major machining operations have been completed,” and then what “additional
4 machining” must still occur and when. Accordingly, any specific intent that can be read into
5 Sections 3 and 3.5 of AB 286 does not salvage the statute, because, even with an intent element, AB
6 286 still fails to provide adequate notice as to what it specifically criminalizes.

7 Sections 3 and 3.5 of AB 286 create a new crimes that do not exist under federal law or
8 common law. Consequently, the only notice of what AB 286 criminalizes is provided in the statute
9 itself. However, the law does not provide adequate notice of what it criminalizes, given that the
10 definition of “unfinished frame or receiver” uses a myriad undefined terms. Moreover, the combined
11 use of these undefined terms results in an overall failure to provide a person of ordinary intelligence
12 with fair notice of what is criminalized. As there is no well-established or ordinary meaning to the
13 terms used in AB 286, Section 3 and Section 3.5 are unconstitutionally vague under the Due Process
14 Clause of the Nevada Constitution.

15
16 **D. SECTIONS 3 AND 3.5 OF AB 286 ARE SO STANDARDLESS THAT IT**
17 **AUTHORIZES OR ENCOURAGES SERIOUSLY DISCRIMINATORY ENFORCEMENT**

18 This Court now turns to whether AB 286 “is so standardless that it authorizes or encourages
19 seriously discriminatory enforcement.” *Scott v. First Jud. Dist. Ct.*, 131 Nev. 1015, 1021 (2015).
20 The Court finds that it is.

21 As explained by the Nevada Supreme Court:

22
23 The concern under this prong is the scope of discretion left to law
24 enforcement officials and prosecutors. Our fear is that absent adequate
25 guidelines, a criminal statute may permit a standardless sweep, which
would allow the police, prosecutors, and juries to ‘pursue their
personal predilections.’

26 *Gallegos*, 125 Nev. @ 296. (Citation Omitted)

27 AB 286 fails to establish clear standards that law enforcement can use to determine whether
28 the law is violated. At its most basic, there is no clear standard for law enforcement to use to

1 determine when an “unfinished frame or receiver” comes into existence. Unlike the federal
2 regulatory process to determine whether a frame or lower receiver is considered a firearm under the
3 Gun Control Act, Nevada has established no authority at all to determine when an “unfinished frame
4 or receiver” actually comes into existence. The most any court can glean from the definition is that
5 it is something less than a firearm and more than a block of raw material. Where on the scale in
6 between both extremes the ill-defined “unfinished frame or receiver” lands is unknown under the
7 law and left to the sole discretion of law enforcement and prosecutors. When does the machining
8 process start? When does the raw material become machined and through what processes? What
9 constitutes a “major machining operation” versus machining itself? Would the “fire-control cavity”
10 be considered a “major machining operation” or is it excluded? What additional machining needs to
11 be completed? It is unclear and undefined under the statute.

12 Nevadans would face the risk of discriminatory enforcement by police and prosecutors alike
13 as they, in their sole discretion and without guidance, could label almost anything an “unfinished
14 frame or receiver,” if it in any way even resembles a firearm’s undefined frame or lower receiver.
15 There is no clear statutory language to bridle that discretion or to prevent state actors from pursuing
16 their personal predilections.

17 Ordinary Nevada citizens are at risk of arbitrary and discriminatory enforcement of Section
18 3 and 3.5 of AB 286 owing to the vagueness that permeates the text of the law. Therefore,
19 enforcement of AB 286 is standardless to such a degree that it authorizes and/or encourages arbitrary
20 and discriminatory enforcement.

21 For this additional reason, the Court finds that Sections 3 and 3.5 of AB 286 are
22 unconstitutionally vague under the Nevada Constitution’s Due Process Clause.

23 **V**

24 **ORDER AND JUDGMENT**

25 Based upon all of the foregoing, the Court finds that Section 3 and 3.5 of AB 286 are
26 unconstitutionally vague, insofar as the law: (i) fails to provide a person of ordinary intelligence
27 with fair notice of the conduct that is prohibited, and (ii) is so standardless that it authorizes and
28 encourages seriously arbitrary and discriminatory enforcement.

1 Good cause appearing,

2 IT IS HEREBY ORDERED that the *Motion of Polymer80, Inc, for Summary Judgment* is
3 GRANTED.

4 IT IS HEREBY FURTHER ORDERED that *Defendants' Motion for Summary Judgment* is
5 DENIED.

6 IT IS HEREBY FURTHER ORDERED that a Declaratory Judgment be entered in favor of
7 Polymer80 and against Defendants; to wit,

8 IT IS HEREBY FURTHER ORDERED, DECREED AND DECLARED that Section 3 and
9 Section 3.5 AB 286 are unconstitutionally vague and violate the Due Process Clause of the Nevada
10 State Constitution.

11 IT IS HEREBY FURTHER ORDERED that a Permanent Injunction be entered in favor of
12 Polymer80 and against Defendants; to wit,

13 IT IS HEREBY ORDERED that the State of Nevada and Defendants, STEPHEN SISOLAK,
14 Governor of Nevada, AARON FORD, Attorney General of Nevada, GEORGE TOGLIATTI,
15 Director of the Nevada Department of Public Safety, MINDY MCKAY, Administrator of the
16 Records, Communications, and Compliance Division of the Nevada Department of Public Safety,
17 and their respective successors, officers, agents, servants, and employees and anyone acting in
18 concert with them, individually and/or collectively, are hereby permanently enjoined from enforcing
19 Section 3 and Section 3.5 of AB 286.

20 IT IS HEREBY FURTHER ORDERED that the security Polymer80 previously posted with
21 this Court pursuant to NRCP 65(c) in the amount of \$20,000.00 (Twenty Thousand Dollars) be
22 exonerated and released to Polymer80 forthwith.

23 THIS IS A FINAL JUDGMENT.

24 DATED this 10th day of December, 2021.

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JOHN P. SCHLEGELMILCH,
DISTRICT JUDGE

1 Case No. 21-CV-00690

2 Dept. No. I

3 **Certificate of Mailing**

4 I hereby certify that I, Andrew C. Nelson, am an employee of the Third Judicial District
5 Court, and that on this date pursuant to NRCP 5(b), a true copy of the foregoing document was
6 mailed at Yerington, Nevada addressed to:

7 Gregory L. Zunino, Esq.
8 *Emailed: gzunino@ag.nv.gov

9 Brad M. Johnston, Esq.
10 *Emailed: bjohnston@shjnevada.com


11 James J. McGuire, Esq.
12 *Emailed: james.mcguire@gmlaw.com

13 Michael Patrick, Esq.
14 *Emailed: michael.patrick@gmlaw.com

15 Mark Doerr
16 *Emailed: mark.doerr@gmlaw.com

17 Craig A. Newby, Esq.
18 *Emailed: CNewby@ag.nv.gov

19 DATED: This 10th day of December, 2021.

20
21 
22 Employee of Hon. John P. Schlegelmilch
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SIMONS HALL JOHNSTON PC
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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 DEC 13 AM 9:12

TANYA SCIRINE
COURT ADMINISTRATOR
THIRD JUDICIAL DISTRICT
TANYA SCIRINE
DEPUTY

**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 *Findings of Fact, Conclusions of Law, and Order Granting Summary Judgment in Favor of Plaintiff, Polymer80, Inc.* attached hereto as **Exhibit A**.

Dated this 13th day of December, 2021. SIMONS HALL JOHNSTON PC

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

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-and-

James J. McGuire
(Pro Hac Vice)
Mark T. Doerr
(Pro Hac Vice)
Greenspoon Marder LLP
590 Madison Avenue, Suite 1800
New York, New York 10022
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Attorneys for Plaintiff Polymer80, Inc.

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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 U.S. Mail and electronic mail on the following:

Gregory Zunino, Deputy Solicitor General
Craig Newby, Deputy Solicitor General
100 North Carson Street.
Carson City, Nevada 89701
gzunino@ag.nv.gov
cnewby@ag.nv.gov

DATED this 13th day of December 2021.



Brad M. Johnston

Exhibit A

Exhibit A

FILED

2021 DEC 10 AM 9:54

CLERK OF DISTRICT COURT
THIRD JUDICIAL DISTRICT

Kathy Thomas

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

19 Defendants.

**FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND
ORDER GRANTING SUMMARY
JUDGMENT IN FAVOR OF
PLAINTIFF, POLYMER80, INC.**

18 This matter is before the Court upon the parties' competing Motions for Summary Judgment
19 both filed on November 8, 2021, and duly opposed by each party on November 18, 2021. The matter
20 was set for argument on November 23, 2021. Plaintiff was present and represented by Brad
21 Johnston, Esq., of Simons Hall Johnston PC (via Zoom) and James J. McGuire, Esq., (pro hac vice)
22 of Greenspoon Marder LLP, who was present in Court. The Defendants were represented by Craig
23 A. Newby, Esq., Deputy Solicitor General, who was present in Court.
24

25 This Court, having reviewed and considered the parties' respective motions and oppositions
26 for summary judgment, considered the exhibits thereto and arguments therein, conducted a hearing
27 upon those motions, and heard oral argument from counsel for Polymer80 and for Defendants, and
28

1 good cause appearing, makes the following FINDINGS OF FACT, CONCLUSIONS OF LAW,
2 AND ORDERS.

3 I

4 **PROCEDURAL HISTORY**

5
6 During the 81st legislative session, the Nevada Legislature passed Assembly Bill 286 (“AB
7 286”). AB 286 is -- “AN ACT relating to crimes; prohibiting persons from engaging in certain acts
8 relating to unfinished frames or receivers under certain circumstances; ... providing penalties; and
9 providing other matters properly relating thereto.” Nevada Governor, Stephen Sisolak, signed AB
10 286 into law on June 7, 2021.

11 On June 22, 2021, Plaintiff, Polymer80, Inc. (“Polymer80”), filed this lawsuit against
12 Defendants, Stephen Sisolak, Governor of Nevada, Aaron Ford, Attorney General of Nevada,
13 George Togliatti, Director of the Nevada Department of Public Safety, and Mindy McKay,
14 Administrator of the Records, Communications, and Compliance Division of the Nevada
15 Department of Public Safety (collectively referred to as “Defendants”), alleging that Sections 3 and
16 3.5 of AB 286 are unconstitutionally vague under the Due Process Clause of the Constitution of the
17 State of Nevada (“Nevada Constitution”). In its Verified Complaint, Polymer80 sought a
18 Declaration from this Court that Sections 3 and 3.5 of AB 286 violate the Nevada Constitution and
19 a Permanent Injunction barring enforcement of the new law.

20 On June 25, 2021, Polymer80 filed its *Motion for Temporary Restraining Order and*
21 *Preliminary Injunction*. After briefing and a hearing, this Court, on July 16, 2021, entered its *Order*
22 *Granting Preliminary Injunction*, preliminarily barring enforcement of Section 3.5 of AB 286.¹ That
23 Order is currently pending appeal at the Nevada Supreme Court.

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¹ At that time, this Court declined to enter a Preliminary Injunction as to the enforcement of AB 286
28 Section 3, because that portion of the new statute would not go into effect until January 1, 2022.

1 Thereafter, the Court held a Case Management and Scheduling Conference on July 14, 2021,
2 that resulted in a July 15, 2021, *Case Management and Trial Scheduling Order* setting an expedited
3 trial date of November 30, 2021. That Order also provided that the parties could engage in discovery
4 through November 1, 2021, and fixed November 8, 2021, as the deadline for filing dispositive
5 motions. By so ruling, this Court wanted to, and did, afford the parties the opportunity to develop
6 the evidentiary record to be presented upon motions for summary judgment and/or at trial.

7 In the ensuing months, the parties proceeded with discovery. Both Polymer80 and
8 Defendants timely filed Motions for Summary Judgment on November 8, 2021.² Pursuant to the
9 parties' Stipulation, this Court directed that they file their oppositions to the other side's summary
10 judgment motion on November 18, 2021, dispense with reply briefs, and proceed to a full hearing
11 on November 23, 2021. That hearing was held as scheduled and the Court heard substantial
12 argument from the parties. Notably, both parties agreed at that hearing that this Court could decide
13 this case upon the record before it at that point, and that a trial was unnecessary. At the conclusion
14 of the hearing, the Court rendered an oral ruling granting Polymer80 summary judgment. This Order
15 follows and memorializes that ruling.

16 Accordingly,

17 IT IS HEREBY ORDERED that the *Motion of Polymer80, Inc., for Summary Judgment* is
18 GRANTED, and that *Defendants' Motion for Summary Judgment* is DENIED, for the reasons set
19 forth herein and on the record at the November 23, 2021, hearing.
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23 ² Before the parties filed their competing Motions for Summary Judgment, Defendants filed an
24 appeal from this Court's *Order Granting Preliminary Injunction*. Thereafter, Defendants filed a
25 Motion to Stay this case in this Court, arguing, among other things, that this matter presented a pure
26 question of law that would be resolved upon their then-pending appeal. This Court denied
27 Defendants stay, largely because the issue on appeal was not the ultimate question of whether or not
28 AB 286 was and is unconstitutionally vague but whether or not this Court had abused its discretion
in granting interim relief. Moreover, a stay would have only delayed a ruling on the constitutionality
of AB 286, which would not have been in the best interests of either Plaintiff or Defendants.

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II

CONTESTED PROVISIONS OF AB 286

The 81st Nevada Legislature amended Chapter 202 of the Nevada Revised Statutes by adding, among others, the following provisions, which are the subject of this proceeding.

First, Section 3 of AB 286, effective as of January 1, 2022, provides as follows:

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 193.130.³

Plainly, this provision makes it a crime to “possess, purchase, transport or receive an unfinished frame or receiver” in the State of Nevada.

Second, Section 3.5 of AB 286, which became effective on June 7, 2021, provides as follows:

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.

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³ NRS 193.130 provides that a category D felony is punishable by 1-4 years in Nevada State Prison and a fine of up to \$5,000.00.

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- 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

This Section makes it a crime to “sell, offer to sell or transfer an unfinished frame or receiver” in the State of Nevada.

Section 6 of AB 286 amended NRS 202.253 by adding the term “[u]nfinished frame or receiver” to Nevada law and defines that term as follows:

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.

Polymer80 argues that Sections 3 and 3.5 of AB 286 are unconstitutionally vague under the Due Process Clause of the Nevada Constitution.⁴

III

STANDARD ON SUMMARY JUDGMENT

Summary judgment is appropriate, where “the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” NRCp 56(c). While this Court must construe the evidence in the light most favorable to the nonmoving party upon such a motion, the nonmoving party “bears the burden to do more than simply show that there is some metaphysical doubt as to the operative facts in order to avoid

⁴ This decision does not extend to Section 4 or 5 of AB 286 and this Court makes no judgment relating to the efficacy of those provisions.

1 summary judgment being entered in the moving party's favor." *Wood v. Safeway, Inc.*, 121 Nev.
2 724, 732 (2005) (quotations omitted). "The nonmoving party must, by affidavit or otherwise, set
3 forth specific facts demonstrating the existence of a genuine issue for trial or have summary
4 judgment entered against him." *Id.* And, the party opposing summary judgment cannot build a case
5 on the "gossamer threads of whimsy, speculation, and conjecture." *Id.* (quoting *Bulbman, Inc. v.*
6 *Nevada Bell*, 108 Nev. 105, 110 (1992)). Critically, the Nevada Supreme Court, as the parties have
7 acknowledged, has held that summary judgment is appropriate with respect to, as here, a facial Due
8 Process challenge on vagueness grounds to the constitutionality of a criminal statute. *See Flamingo*
9 *Paradise Gaming, LLC v. Chanos*, 125 Nev. 502, 508-09 (2009). As explained below, there are no
10 "genuine issues of material fact" precluding summary judgment, and this Court may properly resolve
11 this action on summary judgment upon the record before it.

12 IV

13 FINDINGS OF FACT AND CONCLUSIONS OF LAW

14 Polymer80 is a Nevada corporation headquartered in Dayton, Nevada, within Lyon County.
15 It manufactures, designs, and distributes gun-related products, components, and after-market
16 accessories. The legislative history reveals that AB 286 has targeted, at least partially, certain of
17 Polymer80's business products. Defendants have also admitted as much in their Answer and in their
18 moving papers. As set forth in the testimony of Assemblywoman Sandra Jauregui:

19 . . . a Nevada based company, Polmer80, Inc., [is] one of the nation's
20 largest manufacturers of ghost guns.

21 Minutes, Assembly Committee on Judiciary, p.6 (March 17, 2021). Assemblyman Wheeler stated
22 therein:

23 The kit guns you called ghost guns are used by a lot of hobbyists.
24 Under federal law, those are quite legal, so outlawing them in Nevada,
25 as this bill tries to do, basically puts a company [Polmer80] in my
26 district out of business. . . .

26 We are going to drive a company in my district out of business, but
27 people can still buy them in Kentucky. . . .
28

1 Minutes, Assembly Committee on Judiciary, p.13-14 (March 17, 2021).⁵

2 **A. STANDING OF POLMER80**

3 In Defendants' Answer and at the Motion for Preliminary Injunction hearing, the State of
4 Nevada contested Polymer80's standing to contest the constitutional validity of AB 286. The
5 Defendants' have not argued a lack of standing on summary judgment. However, Polymer80 asserts
6 in their Motion that they indeed have standing.

7 NRS 30.040 provides, in pertinent part:

8 **NRS 30.040. Questions of construction or validity of . . . statutes.**

9 1. Any person . . . whose rights, status or other legal relations
10 are affected by a statute . . . may have determined any question of
11 construction or validity arising under the . . . statute . . . and obtain a
12 declaration of rights, status or other legal relations thereunder.

12 NRS 30.040(1). In Nevada, the issue of Standing is a question of law. *Arguello v. Sunset Station,*
13 *Inc.*, 127 Nev. 365, 368 (2011). As explained recently by the Nevada Supreme Court:

14 The question of standing concerns whether the party seeking relief has
15 a sufficient interest in the litigation. The primary purpose of this
16 standing inquiry is to ensure the litigant will vigorously and
17 effectively present his or her case against an adverse party. Thus, a
18 requirement of standing is that the litigant personally suffer injury that
19 can be fairly traced to the allegedly unconstitutional statute and which
20 would be redressed by invalidating the statute. A general interest in
21 the matter is normally insufficient: a party must show a personal
22 injury.

20 *Flor Morency v Nevada Department of Education*, 137 Nev. Adv. Op. 63, p. 7, 496 P.3d 584 (Oct.
21 7, 2021), (Citations Omitted).

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27 ⁵ This Court notes that there are multiple references to Polmer80 in the legislative history of AB 286
28 all indicating the negative impact of the bill on their ability to conduct business in the State of
Nevada.

1 This Court finds that Polymer80 has standing to mount a facial vagueness challenge to the
2 constitutionality of AB 286. Like the Plaintiffs in *Flamingo Paradise Gaming, LLC v. Chanos*, 125
3 Nev. 502, 508-09 (2009), Polymer80 could be subject to criminal prosecution stemming from its
4 ongoing conduct. Polymer80's facial challenge to AB 286 is ripe for this Court's adjudication as
5 Section 3.5 of AB 286 took effect earlier this year upon approval by the Governor and Section 3 of
6 AB 286 takes effect January 1, 2022. Accordingly, it is ripe for this Court to determine whether or
7 not both of those Sections of AB 286 are unconstitutionally vague under the Due Process Clause of
8 the Nevada Constitution.
9

10 Polymer80 satisfies the requirement to show that they would "personally suffer injury that
11 can fairly be traced to the allegedly unconstitutional statute" by facing the prospect of felony
12 criminal prosecution each time they produce a product which allegedly falls under the purview of
13 the statute. Further, Polymer80 would suffer significant economic loss as set forth in the Deposition
14 testimony submitted, and uncontested by the Defendants. This, combined with the legislative history
15 showing that the thrust of the bill was to put Polymer80 out of business, clearly establishes that,
16 unlike any other potential litigant, Polymer80 will vigorously and effectively present the case for
17 facial invalidity of the statute – which is Polymer80's only true redress.
18

19 This Court determines that Polymer80 will suffer irreparable harm in the absence of
20 declaratory and/or injunctive relief, since, as under *Flamingo*, that harm exists if a Nevadan, such as
21 Polymer80, must conduct its affairs in the wake of criminal jeopardy that fails to provide fair notice
22 of the conduct being criminalized.⁶
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27 ⁶ The Defendants previously argued at the preliminary injunction hearing that Section 3(1)(b) would
28 mitigate any harm as all Polymer80 would have to do is put a serial number on its products. The

1 **B. STANDARD OF REVIEW FOR A FACIAL VAGUENESS CHALLENGE**

2 The question before this Court is essentially whether or not AB 286 is unconstitutionally
3 vague under the Due Process Clause of the Nevada Constitution. It is undisputed that Section 3 and
4 Section 3.5 of AB286 are criminal statutes with penalties being elevated as high as category D
5 felonies.
6

7 Nevada's Due Process Clause states simply that "No person shall be deprived of life, liberty,
8 or property, without due process of law." Nev. Const., Art. 1, Sec. 8(2). In Nevada, the determination
9 of whether a statute is constitutional is a question of law. *Silvar v. Dist. Ct.*, 122 Nev. 289, 292, 129
10 P.3d 682, 684 (2006).

11 Statutes are presumed to be valid, and the challenger bears the burden
12 of showing that a statute is unconstitutional. The court must interpret
13 a statute in a reasonable manner, that is, [t]he words of the statute
14 should be construed in light of the policy and spirit of the law, and the
15 interpretation made should avoid absurd results. In reviewing a
16 statute, it should be given [its] plain meaning and must be construed
17 as a whole and not be read in a way that would render words or phrases
18 superfluous or make a provision nugatory.

19 *Flamingo Paradise Gaming v. Att'y General*, 125 Nev. 502, 509 (2009). In reviewing the statute,
20 "every reasonable construction must be resorted to, in order to save a statute from
21 unconstitutionality." *State v. Castaneda*, 126 Nev. 478, 481, 245 P.3d 550, 552 (2010).

22 The Nevada Supreme Court has adopted a two-pronged test for determining whether a
23 criminal statute is so impermissibly vague as to run afoul of the due process clause of the Nevada
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26 argument was abandoned on summary judgment. Section 3(1)(b) and Section 3.5(1)(b) by their own
27 terms only provide relief when the "unfinished" frame or receiver is "required" by federal law to be
28 imprinted with a serial number. It is undisputed that the products produced by Polymer80 are not
required by federal law to have a serial number imprinted on them.

1 Constitution. See, e.g., *Flamingo Paradise Gaming*, 125 Nev. at 510; *Gallegos v. State*, 123 Nev.
2 289, 294 (2007).

3 A criminal statute can be invalidated for vagueness (1) if it fails to
4 provide a person of ordinary intelligence fair notice of what is
5 prohibited *or* (2) if it is so standardless that it authorizes or encourages
seriously discriminatory enforcement.

6 *Scott v. First Jud. Dist. Ct.*, 131 Nev. 1015, 1021 (2015). Although both civil and criminal statutes
7 are judged under the same test, the Nevada Supreme Court has explained:

8 [T]here are two approaches to a facial vagueness challenge depending
9 on the type of statute at issue. The first approach arises under a facial
10 challenge to a civil statute and the plaintiff must show that the statute
11 is impermissibly vague in all of its applications. In making this
12 showing, [a] complainant who engages in some conduct that is clearly
13 proscribed cannot complain of the vagueness of the law as applied to
14 the conduct of others. **But, when the statute involves criminal
penalties or constitutionally protected rights, the second
approach involves a higher standard of whether “vagueness
permeates the text.**

15 *Flamingo*, 125 Nev. at 512.⁷ Where a statute imposes criminal penalties, as is the case with AB 286,
16 the more exacting standard for Constitutionality is imposed.

17 Under the higher standard, the question becomes whether vagueness
18 so permeates the text that the statute cannot meet these requirements
19 in most applications; and thus, this standard provides for the
20 possibility that some applications of the law would not be void, but
the statute would still be invalid if void in most circumstances.

21 *Flamingo*, 125 Nev. at 507.

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25 ⁷ The Defendants have urged this Court to roll back *Flamingo* and apply the “clearly proscribed
26 conduct” test to this criminal statute as set forth in *Sheriff of Washoe Cty v. Martin*, 99 Nev. 336,
27 340 (1983) (citing *Hoffman Estates v. Flipside, Hoffman Estate, Inc.*, 455 U.S. 489, 495 (1982)). This
28 Court declines to do so as *Flamingo* made clear that under the Nevada Constitution the “clearly
proscribed conduct” analysis applies to vagueness challenges of civil statutes where facial vagueness
challenges need to show that the law is “impermissibly vague in all its applications.”

1 In this Court's view, AB 286, a criminal enactment, fails under both prongs for various
2 reasons resulting in an unconstitutionally vague statute under Nevada Constitutional law. While
3 similar, "the first prong is concerned with guiding those who may be subject to potentially vague
4 statutes, while the second -- and more important -- prong is concerned with guiding the enforcers of
5 statutes." *Silvar v. Dist. Ct.*, 122 Nev. 289, 293, 129 P.3d 682, 685 (2006).
6

7 **C. SECTIONS 3 AND 3.5 OF AB 286 FAIL TO PROVIDE A PERSON OF ORDINARY**
8 **INTELLIGENCE FAIR NOTICE OF WHAT IS PROHIBITED**

9 Section 3 and Section 3.5 of AB 286 fail to provide a person of ordinary intelligence with
10 fair notice of the conduct which it proscribes. The underlying purpose of this factor is to give a
11 person "notice of the law so they can conform their conduct to its requirements." *Gallegos v. State*,
12 123 Nev. 289, 295 (2007). Those sections of AB 286 criminalize the possession, purchase, transport,
13 receipt, transfer and sale of what the statute calls an "unfinished frame or receiver." While AB 286
14 purports to define the term "unfinished frame or receiver," that definition is as follows:

15 [A] blank, a casting or a machined body that is intended to be turned
16 into the frame or lower receiver of a firearm with additional
17 machining and which has been formed or machined to the point at
18 which most of the major machining operations have been completed
19 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.

20 This definition does not provide a person of ordinary intelligence with adequate notice of
21 what AB 286 criminalizes.

22 As stated above, the crimes established in Section 3 and 3.5 are purely the result of Nevada
23 legislative statutory enactment. The terms used in the definition of "unfinished frame or receiver"
24 are not defined elsewhere in the statute. These terms include - blank, casting, machined body,
25 machining, major machining operations, frame or lower receiver of a firearm, and/or fire-control
26 cavity area.

27 The definition does not tell anyone when during the manufacturing process a blank, casting,
28 or machined body (whatever those terms mean) has gone through the "major machining operations"

1 (whatever those are) to turn that blank, casting, or machined body into a frame or lower receiver of
2 a firearm (whatever that may be), a person of ordinary intelligence could not proscribe their conduct
3 to comply with the law. As a result, this Court finds that the text of AB 286 does not provide fair
4 notice of whatever it criminalizes. To this end, this Court asked on multiple occasions during oral
5 argument on the Motion for Summary Judgment what those terms as used in AB 286 mean.
6 Tellingly, the Defendants could not in any manner explain their meaning(s).

7 This Court inquired whether or not the common law defined the terms used in AB 286, and
8 the response that this Court received was clearly in the negative. As such, this Court cannot use the
9 common law to decipher, clarify, or define the inherently vague terms of AB 286. This fact
10 distinguishes this case from *State v. Castaneda*, 126 Nev. 478 (2010)(Common Law definition of
11 indecent exposure – a common law crime), where the Nevada Supreme Court found that that the
12 common law can provide a definition as to what conduct a statute prohibits. This Court inquired as
13 to whether any other Nevada statutes or Nevada case law defined the terms found in AB 286 and,
14 again, the answer was no. As a consequence, this case is also distinguishable from *Silverwing*
15 *Development v. Nevada State Contractors Board*, 136 Nev. Adv. Rep. 74, 476 P.3d 461 (2020),
16 (Commonly accepted definition of “subdivision” contained within the State’s planning and zoning
17 statutes) where the Nevada Supreme Court rejected a vagueness challenge, when Nevada law
18 elsewhere defined an allegedly ambiguous term. Thus, neither the common law nor any other
19 Nevada statutes or authorities define or clarify the vagueness that permeates the text of AB 286.

20 While portions of AB 286 incorporate certain terms that are defined in federal legislation,
21 this Court cannot imply that the Nevada Legislature wanted to incorporate all the existing federal
22 definitions relating to firearms or the Gun Control Act into AB 286. Here, the Nevada Legislature
23 purposely included some federal definitions into AB 286 but, deliberately did not include others.
24 From that fact, this Court can only conclude that the Nevada Legislature purposely did so absent
25 some legislative declaration to the contrary. Simply put, had the Nevada Legislature wished to
26 incorporate other federal definitions into AB 286, it knew how to do so and would have done so. It

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1 did not. And so, this Court will not do what the Nevada Legislature deliberately declined or failed
2 to do.⁸

3 In *Gallegos v. State*, 123 Nev. 289 (2007), the Nevada Supreme Court was faced with the
4 same dilemma. In *Gallegos*, the legislature criminalized the possession of firearms by a “fugitive
5 from justice.” The legislature failed to define what the term “fugitive from justice” meant in relation
6 to the statute. The District Court upheld the validity of the statute and applied the federal definition
7 of “fugitive from justice” into the statute to provide meaning. The Nevada Supreme Court reversed
8 stating:

9 Unlike Congress, the Nevada Legislature has not defined “fugitive
10 from justice.” By failing to adopt the federal definition of “fugitive
11 from justice” or include any definition of that phrase. . . , the
12 Legislature failed to provide the public with statutory notice of what
13 that term means. It could arguably encompass a wide variety of
14 circumstances. . . The fact that the district court, sua sponte, adopted
15 the 18 U.S.C. § 921(a)(15) definition in this case does not remedy that
16 deficiency.

17 *Gallegos v. State*, 123 Nev. @ 294-95.

18 Finally, the legislative history of AB 286 does not shed any light on the undefined terms used
19 in AB 286 nor the meaning of “unfinished frame or receiver.” To the contrary, that history illustrates
20 that the State Legislature received comments during the legislative process that AB 286 was vague,
21 and that the definition of “unfinished frame or receiver” was particularly uncertain. Rather than
22 address the issue through comments or revising the text of AB 286, the Nevada Legislature remained
23 silent. Thus, the legislative history does not aid this Court in unearthing the meaning of the vague

24 ⁸ The Defendants have proposed two separate definitions for the Court to “imply” into the statute to
25 define what a Frame or Receiver is. Both definitions differed substantially. Federal Law (27 CFR §
26 478.11) defines “firearm frame or receiver” as “that part of a firearm which provides housing for the
27 hammer, bolt or breechblock, and firing mechanism, and which is usually threaded at its forward
28 portion to receive the barrel.” The Defendants’ second proposed definition comes from the Glossary
of the Association of Firearm and Toolmark Examiners defining “frame or receiver” as “the finished
part which is capable of being assembled with other parts to put together a firearm.”

1 and undefined terms used in AB 286. It is noteworthy that the parties agreed that the legislative
2 history for AB 286 gives this Court no information to determine what the Nevada Legislature meant
3 when adopting and implementing the definition of “unfinished frame or receiver.” Tellingly, not
4 even Webster’s Dictionary defines a majority of these terms.

5 Defendants contend that since AB 286 includes a *scienter* element, the statute is not void for
6 vagueness. This Court finds this contention unpersuasive. The criminal acts defined in Sections 3
7 and 3.5 of AB 286 do not contain a *scienter* element, as they criminalize, among other things, the
8 possession and sale of “unfinished frames and receivers,” whatever those things may actually be.
9 And, the person possessing or selling those “unfinished frames and receivers” need not have any
10 particular specific intent. In fact, AB 286 only and very generally employs intent in the definition
11 of “unfinished frame or receiver,” stating an “unfinished frame or receiver” is “a blank, a casting or
12 a machined body that is *intended* to be turned into the frame or lower receiver of a firearm.” The
13 use of the word “intended” in this definition does not create the *scienter* element defendants claim
14 to exist within Section 3 and Section 3.5 of the bill.

15 Here, a literal reading of the definitional statute requires that the blank, casting or machined
16 body (all inanimate objects) be intended to be turned into the frame or lower receiver of a firearm.
17 Nowhere in the definitional statute does it indicate who would have to have intended the unfinished
18 frame or receiver to be transformed into a firearm. Is it the manufacturer like Polymer80? It is
19 undisputed that it is their intent not to make a firearm. Is it the seller of a gun kit? They have no
20 intent to make a firearm. The object itself cannot transfer specific intent to the possessor of the item.

21 Even if this Court were to assume an intent element was specifically meant to apply to any
22 individual purportedly violating Section 3 and 3.5, the statute would still be unconstitutionally
23 vague. For example, if Section 3 criminalized the possession of a blank, casting, or machined body
24 only if the person who possessed such an item (whatever it might actually be) specifically intended
25 to turn it into the frame or lower receiver of a firearm with additional machining, AB 286 would still
26 be unconstitutionally vague.

27 In this regard, the statute is expressly conjunctive, such that the blank, casting, or machined
28 body must: (i) be intended to be turned into the frame or lower receiver of a firearm with additional

1 machining, and (ii) already be formed or machined to the point at which most of the major machining
2 operations have been completed. Yet, none of these terms are defined, nor is there any way to know
3 when “most of the major machining operations have been completed,” and then what “additional
4 machining” must still occur and when. Accordingly, any specific intent that can be read into
5 Sections 3 and 3.5 of AB 286 does not salvage the statute, because, even with an intent element, AB
6 286 still fails to provide adequate notice as to what it specifically criminalizes.

7 Sections 3 and 3.5 of AB 286 create a new crimes that do not exist under federal law or
8 common law. Consequently, the only notice of what AB 286 criminalizes is provided in the statute
9 itself. However, the law does not provide adequate notice of what it criminalizes, given that the
10 definition of “unfinished frame or receiver” uses a myriad undefined terms. Moreover, the combined
11 use of these undefined terms results in an overall failure to provide a person of ordinary intelligence
12 with fair notice of what is criminalized. As there is no well-established or ordinary meaning to the
13 terms used in AB 286, Section 3 and Section 3.5 are unconstitutionally vague under the Due Process
14 Clause of the Nevada Constitution.

15
16 **D. SECTIONS 3 AND 3.5 OF AB 286 ARE SO STANDARDLESS THAT IT**
17 **AUTHORIZES OR ENCOURAGES SERIOUSLY DISCRIMINATORY ENFORCEMENT**

18 This Court now turns to whether AB 286 “is so standardless that it authorizes or encourages
19 seriously discriminatory enforcement.” *Scott v. First Jud. Dist. Ct.*, 131 Nev. 1015, 1021 (2015).
20 The Court finds that it is.

21 As explained by the Nevada Supreme Court:

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23 The concern under this prong is the scope of discretion left to law
24 enforcement officials and prosecutors. Our fear is that absent adequate
25 guidelines, a criminal statute may permit a standardless sweep, which
would allow the police, prosecutors, and juries to ‘pursue their
personal predilections.’

26 *Gallegos*, 125 Nev. @ 296. (Citation Omitted)

27 AB 286 fails to establish clear standards that law enforcement can use to determine whether
28 the law is violated. At its most basic, there is no clear standard for law enforcement to use to

1 determine when an “unfinished frame or receiver” comes into existence. Unlike the federal
2 regulatory process to determine whether a frame or lower receiver is considered a firearm under the
3 Gun Control Act, Nevada has established no authority at all to determine when an “unfinished frame
4 or receiver” actually comes into existence. The most any court can glean from the definition is that
5 it is something less than a firearm and more than a block of raw material. Where on the scale in
6 between both extremes the ill-defined “unfinished frame or receiver” lands is unknown under the
7 law and left to the sole discretion of law enforcement and prosecutors. When does the machining
8 process start? When does the raw material become machined and through what processes? What
9 constitutes a “major machining operation” versus machining itself? Would the “fire-control cavity”
10 be considered a “major machining operation” or is it excluded? What additional machining needs to
11 be completed? It is unclear and undefined under the statute.

12 Nevadans would face the risk of discriminatory enforcement by police and prosecutors alike
13 as they, in their sole discretion and without guidance, could label almost anything an “unfinished
14 frame or receiver,” if it in any way even resembles a firearm’s undefined frame or lower receiver.
15 There is no clear statutory language to bridle that discretion or to prevent state actors from pursuing
16 their personal predilections.

17 Ordinary Nevada citizens are at risk of arbitrary and discriminatory enforcement of Section
18 3 and 3.5 of AB 286 owing to the vagueness that permeates the text of the law. Therefore,
19 enforcement of AB 286 is standardless to such a degree that it authorizes and/or encourages arbitrary
20 and discriminatory enforcement.

21 For this additional reason, the Court finds that Sections 3 and 3.5 of AB 286 are
22 unconstitutionally vague under the Nevada Constitution’s Due Process Clause.

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ORDER AND JUDGMENT

Based upon all of the foregoing, the Court finds that Section 3 and 3.5 of AB 286 are
unconstitutionally vague, insofar as the law: (i) fails to provide a person of ordinary intelligence
with fair notice of the conduct that is prohibited, and (ii) is so standardless that it authorizes and
encourages seriously arbitrary and discriminatory enforcement.

1 Good cause appearing,

2 IT IS HEREBY ORDERED that the *Motion of Polymer80, Inc, for Summary Judgment* is
3 GRANTED.

4 IT IS HEREBY FURTHER ORDERED that *Defendants' Motion for Summary Judgment* is
5 DENIED.

6 IT IS HEREBY FURTHER ORDERED that a Declaratory Judgment be entered in favor of
7 Polymer80 and against Defendants; to wit,

8 IT IS HEREBY FURTHER ORDERED, DECREED AND DECLARED that Section 3 and
9 Section 3.5 AB 286 are unconstitutionally vague and violate the Due Process Clause of the Nevada
10 State Constitution.

11 IT IS HEREBY FURTHER ORDERED that a Permanent Injunction be entered in favor of
12 Polymer80 and against Defendants; to wit,

13 IT IS HEREBY ORDERED that the State of Nevada and Defendants, STEPHEN SISOLAK,
14 Governor of Nevada, AARON FORD, Attorney General of Nevada, GEORGE TOGLIATTI,
15 Director of the Nevada Department of Public Safety, MINDY MCKAY, Administrator of the
16 Records, Communications, and Compliance Division of the Nevada Department of Public Safety,
17 and their respective successors, officers, agents, servants, and employees and anyone acting in
18 concert with them, individually and/or collectively, are hereby permanently enjoined from enforcing
19 Section 3 and Section 3.5 of AB 286.

20 IT IS HEREBY FURTHER ORDERED that the security Polymer80 previously posted with
21 this Court pursuant to NRCP 65(c) in the amount of \$20,000.00 (Twenty Thousand Dollars) be
22 exonerated and released to Polymer80 forthwith.

23 THIS IS A FINAL JUDGMENT.

24 DATED this 10th day of December, 2021.

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JOHN P. SCHLEGELMILCH,
DISTRICT JUDGE

1 Case No. 21-CV-00690

2 Dept. No. I

3 **Certificate of Mailing**

4 I hereby certify that I, Andrew C. Nelson, am an employee of the Third Judicial District
5 Court, and that on this date pursuant to NRCP 5(b), a true copy of the foregoing document was
6 mailed at Yerington, Nevada addressed to:

7 Gregory L. Zunino, Esq.
8 *Emailed: *gzunino@ag.nv.gov*

9 Brad M. Johnston, Esq.
10 *Emailed: *bjohnston@shjnevada.com*


11 James J. McGuire, Esq.
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15 Mark Doerr
16 *Emailed: *mark.doerr@gmlaw.com*

17 Craig A. Newby, Esq.
18 *Emailed: *CNewby@ag.nv.gov*

19 DATED: This 10th day of December, 2021.

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21 
22 Employee of Hon. John P. Schlegelmilch

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