

Case No. 83999

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**IN THE SUPREME COURT OF THE STATE OF NEVADA**

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

Appellants,

v.

POLYMER80, INC.,

Respondent.

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**JOINT APPENDIX – VOLUME I**

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AARON D. FORD  
Nevada Attorney General  
STEVE SHEVORSKI (Bar No. 8256)  
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DATED this 2nd day of June, 2022.

AARON D. FORD  
Attorney General

By: /s/ Steve Shevorski  
Steve Shevorski (Bar No. 8256)  
Chief Litigation Counsel

## CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing document with the Clerk of the Court by using the electronic filing system on the 2nd day of June, 2022, and e-served the same on all parties listed on the Court's Master Service List.

*/s/ R. Carreau* \_\_\_\_\_  
R. Carreau, an employee of  
the office of the Nevada Attorney General

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CLERK OF DISTRICT COURT  
THIRD JUDICIAL DISTRICT

Victoria Tovar

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

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  
13 of Public Safety, MINDY MCKAY, Administrator  
14 of the Records, Communications, and Compliance  
Division of the Nevada Department of Public  
Safety,  
15 Defendants.

16 VERIFIED COMPLAINT

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

20 INTRODUCTION

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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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.

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

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

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

1 unfinished "frame" or "receiver" is.

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

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

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

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

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

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

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

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

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

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

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

25 38. While these allegations are grievously false and/or misleading, they do  
26 demonstrate that AB 286 was and is designed by its drafters -- and will undoubtedly be  
27 used by its enforcers -- with the Company's products in the forefront of their minds.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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- 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**

  
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michael.patrick@gmlaw.com  
mark.doerr@gmlaw.com

*Attorneys for Plaintiff*

**VERIFICATION OF DAVID BORGES**

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

DATED this 22<sup>nd</sup> 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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- 3 -

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

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

2. A person who violates this section:

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

3. As used in this section:

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

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

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

2. A person who violates this section:

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

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

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



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- 4 -

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



81st Session (2021)

- 5 -

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.



AARON D. FORD  
Attorney General

KYLE E. N. GEORGE  
First Assistant Attorney General

CHRISTINE JONES BRADY  
Second Assistant Attorney General



STATE OF NEVADA  
OFFICE OF THE ATTORNEY GENERAL

100 North Carson Street  
Carson City, Nevada 89701

JESSICA L. ADAIR  
Chief of Staff

LESLIE NINO PIRO  
General Counsel

HEIDI PARRY STERN  
Solicitor General

DATE RECEIVED: 6-24-2021 RECEIVED BY: K Rutledge

NAME OF ENTITY/PERSON SERVING: NOW (Wade)

CASE NAME: Polymer 80, Inc. v Steve Sisolak, Governor; Aaron Ford, Attorney General; George Todjetti, Director of Nevada DPS; Mordy Mofay, Administrator

CASE NUMBER: 21-CV-00690 COURT: 3rd judicial

DOCUMENT(S) RECEIVED: Summons-Civil: Gov Steve Sisolak; Attorney General Aaron Ford; Verified Complaint

Service of Process     Courtesy copy only (not Service of Process)  
**PURSUANT TO STATUTE**

**NOTICE**

**COMPLAINT:** NRS 41.031(2) provides in part that, in any action against the State of Nevada, the action must be brought in the name of the State of Nevada on relation of the particular department, commission, board or other agency of the state whose actions are the basis for the suit. In an action against the State of Nevada, the summons and a copy of the complaint must be served upon the Attorney General, at the Office of the Attorney General in Carson City and upon the person serving in the office of administrative head of the named agency. Service on the Attorney General or designee does not constitute service on any individual or administrative head.

This Receipt acknowledges that the documents described herein have been received by the Nevada Attorney General or the designee authorized by NRS 41.031(2)(a). This Receipt does not ensure that any party, person or agency has been properly served, nor does it waive any legal requirement for service.

**SUBPOENA:** Receipt of a subpoena by the Office of the Attorney General does not constitute valid service of the subpoena upon any individual or upon any state agency, with the exception of the Office of the Attorney General. Receipt of subpoena or any other process by the Attorney General or designee does not constitute service upon any individual, nor does it constitute service upon the administrative head of an agency pursuant to NRS 174.345.

**PETITION FOR JUDICIAL REVIEW:** NRS 233B.130(2)(c)(1) provides in part that all Petitions for Judicial Review of state agency decisions/judgments/orders must be served upon, the Attorney General, a person designated by the Attorney General or the Office of the Attorney General in Carson City.

This Receipt acknowledges that the documents described herein have been received by the Nevada Attorney General or the designee authorized by NRS 233B.130(2)(c)(1). This Receipt does not ensure that any party, person or agency has been properly served, nor does it waive any legal requirement for service.

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

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

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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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22 State Route 208  
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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  
New York, New York 10022  
Telephone: 212-524-5000  
Facsimile: 212-524-5050  
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[michael.patrick@gmlaw.com](mailto:michael.patrick@gmlaw.com)  
[mark.doerr@gmlaw.com](mailto:mark.doerr@gmlaw.com)

*Attorneys for Plaintiff Polymer80, Inc.*

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

1 Case No. 21-CV-00690

2 Dept. No. I

3 The undersigned affirms that this document  
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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 STEVE SISOLAK, Governor of Nevada:**

22 **Gov. Steve Sisolak, State Capitol Bldg.**  
23 **101 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.**

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

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

9 2. Unless you respond, your default will be entered upon application of the Plaintiff and failure to  
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  
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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

18 By: Victoria Toran

Senior Deputy Clerk

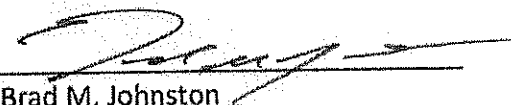
19 Date: 6/22/21

Third Judicial District Court

20 911 Nevin Way

Yerington, NV 89447

21 Submitted by:

22 

23 Brad M. Johnston

24 Nevada Bar No. 8515

25 SIMONS HALL JOHNSTON PC

26 22 State Route 208

27 Yerington, Nevada 89447

28 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  
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New York, New York 10022  
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*Attorneys for Plaintiff Polymer80, Inc.*

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CASE NO. 21-CV-00690

DEPT. I

THE THIRD JUDICIAL DISTRICT COURT - THE STATE OF NEVADA

IN AND FOR THE COUNTY OF LYON

THE HONORABLE JOHN P. SCHLEGELMILCH, DISTRICT JUDGE

POLYMER80, INC.,

PLAINTIFF,

v.

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

DEFENDANTS.

----- /

TRANSCRIPT OF PROCEEDINGS

MOTION FOR TEMPORARY RESTRAINING ORDER

JULY 14, 2021

COURTHOUSE

YERINGTON, NEVADA

Reported by: KATHY TERHUNE, CCR #209

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APPEARANCES:

FOR THE PLAINTIFF:

BRAD M. JOHNSTON, ESQ.  
22 State Route 208  
Yerington, NV 89447

JAMES J. MCGUIRE, ESQ.  
MARK T. DOERR, ESQ.  
MICHAEL PATRICK, ESQ.  
GREENSPOONMARDER, LLP  
590 Madison Avenue  
Suite 1800  
New York, 10022

FOR THE DEFENDANT:

GREGORY L. ZUNINO, ESQ.  
Deputy Solicitor General  
Attorney General's Office  
5420 Kietzke Lane  
Suite 202  
Reno, NV 89511

NO OTHER APPEARANCES.

\* \* \* \* \*

1 TRANSCRIPT OF PROCEEDINGS

2  
3 THE COURT: So, this is Case 21-CV-00690,  
4 Polymer80, Inc., versus Sisolak, et al. This time set  
5 for hearing on a motion for temporary restraining order  
6 and preliminary injunction. The Court has reviewed the  
7 pleadings that are filed in this case, including the  
8 complaint, the motion, the opposition, and the reply.

9 All right. So, who's going to argue?

10 Well, first of all, why don't everybody make  
11 their appearances now.

12 MR. JOHNSTON: Yes, Your Honor. Brad Johnston  
13 on the behalf of Polymer80. With me is James McGuire  
14 who's been admit pro hac vice. Mark Doerr, who's also  
15 been admitted, and Michael Patrick is here as well.  
16 His pro hoc application is in the process. I don't  
17 know if the Court has an objection to him sitting here  
18 with counsel.

19 THE COURT: That's fine.

20 MR. MCGUIRE: Good morning, Your Honor.

21 THE COURT: Good morning.

22 MR. JOHNSTON: And Mr. McGuire is arguing on  
23 behalf of Polymer80, Your Honor.

24 THE COURT: Okay. All right.

1           MR. ZUNINO: Your Honor, I'm Greg Zunino. I'm  
2 with the Office of the Attorney General, and I'm  
3 representing the State defendants in this matter. And  
4 actually I'll be arguing. Thank you.

5           THE COURT: Okay. Thank you, Mr. Zunino.

6           All right. So it's your motion. So,  
7 Mr. McGuire, why don't you go ahead?

8           MR. MCGUIRE: May I proceed, sir?

9           THE COURT: Please, go ahead.

10          MR. MCGUIRE: May it please the Court, good  
11 morning.

12          THE COURT: Good morning.

13          MR. MCGUIRE: Thank you for the privilege of  
14 allowing me to appear before you and argue on behalf of  
15 our client, Polymer80.

16                 You have before you our motion for temporary  
17 restraining order. Which at bottom is a facial  
18 challenge on constitutional grounds to the express  
19 language of Assembly Bill 286, which is a criminal  
20 statute. And our position is that it is void for  
21 vagueness under the Due Process Clause of the Nevada  
22 Constitution.

23                 Now, Your Honor, I have remarks prepared, but  
24 Your Honor has just stated that you've read the papers,

1 and if you'd like to begin with questions, I'd be happy  
2 to field them as the Court please, or I can go into my  
3 remarks.

4 THE COURT: Well, go into your remarks, and as  
5 I have questions, I'll let you know.

6 MR. MCGUIRE: Thank you. Your Honor, I think  
7 it makes sense at the start --

8 THE COURT: Well, I did have one question to  
9 start with. All right. So, it's somewhat unclear.

10 Are you seeking to find -- or are you seeking a  
11 due process relief on a facial challenge for the  
12 entirety of AD 286 or just sections 3 and 3.5?

13 MR. MCGUIRE: We challenge, Your Honor, three  
14 specific section, three point -- 3 sub 1, 3.5, and 6.9.

15 THE COURT: Okay. Go ahead.

16 MR. MCGUIRE: We are seeking the invalidation  
17 of those sections --

18 THE COURT: Okay.

19 MR. MCGUIRE: -- facially and globally, if you  
20 will.

21 THE COURT: All right. Okay. Go ahead.

22 MR. MCGUIRE: Thank you, sir.

23 Your Honor, I think it makes sense to begin by  
24 stating what this motion is not about and what it is

1 about. It's not about ghost guns no matter how many  
2 times the defendants repeat that phrase. It's not  
3 about the State's ability to regulate firearms. It's  
4 not about gun control. It's not about the Second  
5 Amendment. And it's not about politics or public  
6 policy. This motion is a surgical, simple examination  
7 of the express language of a new criminal statute which  
8 binds all Nevadans, not just Polymer80.

9 And the question, Your Honor, at hand is  
10 whether or not that language adheres to the Due Process  
11 Clause of the State Constitution. And more  
12 particularly, Your Honor, given the contents of our  
13 briefs, ten separate cases from the Nevada Supreme  
14 Court spanning 64 years, all of which to our knowledge  
15 are good law, have never been overturned, have never  
16 even been questioned, showing that when a criminal  
17 statute is void -- is vague, excuse me, and that  
18 vagueness permeates the text of that statute as AB 286  
19 does, that statute must be struck down under the Due  
20 Process Laws because of that vagueness.

21 At the end of day, Your Honor, I will speak  
22 bluntly. This motion is about whether or not the  
23 lawmakers, the defendants here, did their jobs, did  
24 their homework, did what they had to do to draft and



1 pass a statute based upon its plain language that  
2 satisfies the requirements of Nevada's Due Process Law.  
3 And we submit, of course, that they did not do their  
4 jobs, and that statute does not pass muster under that  
5 cause.

6 There's no dispute, Your Honor, here that  
7 AB 286 is a criminal statute. And there's no dispute  
8 that under settled Nevada law, a two-part task governs  
9 whether or not such a statute can be adjudged unduly  
10 vague and thus void under the Due Process Laws.

11 First, the first part is that the plain  
12 language of the statute must enable a Nevadan of  
13 ordinary intelligence to decipher and understand what  
14 the statute means, and most importantly, based on that  
15 understanding, can form his, her, or its conduct to the  
16 dictates of that statute.

17 Now, in other words, Your Honor, as we all  
18 learned early on in constitutional law in law school,  
19 the statute has to provide fair notice to everyone, to  
20 all Nevadans. And this statute must be looked at  
21 objectively, not subjectively. And that is a key point  
22 given the defendant's assertions in opposition to the  
23 motion.

24 The second part of the test is whether the

1 language is so vague and is so risky, that it leads to  
2 or raises the specter of arbitrary and discriminatory  
3 enforcement because of the lack of standards or  
4 guidelines contained in the language of the statute  
5 being challenged.

6 The bottom line, Your Honor, is, as I've stated  
7 already, that we must show that that vagueness that we  
8 allege exists permeates the test in most, not all, in  
9 most situations.

10 Now, Your Honor, as you've already pointed out,  
11 and as I've tried to make clear, our motion focuses on  
12 three provisions of AB 286, Section 3.1, Section  
13 3.5(1), and Section 6.9. 3

14 Section 3.1 makes it illegal and criminal to  
15 possess, transport, purchase, and/or receive "an  
16 unfinished frame or firearm". Now, we submit right off  
17 the bat that Section 3.1 is vague because it does not  
18 say what an unfinished frame or receiver is within the  
19 bounds of 3.1. However, there are definitions, and  
20 we'll come to those later in the argument if the Court  
21 would permit.

22 But the major problem with the notion in AB 286  
23 of an unfinished frame or receiver is that nowhere in  
24 that statute, or anywhere to our knowledge in Nevada

1 law, is there a definition of a finished frame or  
2 receiver so that the ordinary Nevadan doesn't know what  
3 a finished frame or receiver is, how could that citizen  
4 possibly know or understand what an unfinished frame or  
5 receiver is.

6 Section 3.5(1), Your Honor, the second  
7 provision states in substance, that a person shall not  
8 sell, offer to sell, or transfer, again, an unfinished  
9 frame or receiver. Same problem. No definition. No  
10 clarity in the statute. No definition of finished  
11 frame or receiver.

12 The definition comes, Your Honor, purportedly,  
13 in the third section that we focus on, Section 6.9.  
14 And there are two, if you will, sections of that  
15 definition, which if the Court will allow, I'd like to  
16 focus on separately.

17 The first portion of 6.9 states that an  
18 unfinished frame or receiver -- excuse me -- is a  
19 blank, a casting, or a machined body intended to be  
20 turned into the frame or lower receiver of a firearm  
21 or -- I'm sorry, intended to be turned into the frame  
22 or lower receiver of a firearm with additional  
23 machining.

24 And as we point out in our brief, Your Honor,

1 not only is there no definition of finished frame or  
2 receiver to elucidate what an unfinished frame or  
3 receiver is, but there's no definition in this statute  
4 of a blank, a casting, a machined body, a frame, or a  
5 lower receiver. Nor is there any clarity of what it  
6 means that something be intended to be turned into the  
7 undefined term of frame or the undefined term of a  
8 lower receiver.

9 The second section --

10 THE COURT: Okay.

11 MR. MCGUIRE: -- of the statute.

12 THE COURT: In relation to the term spring and  
13 lower receiver, aren't they commonly used? I mean, you  
14 know, anybody who has any familiarity at all with  
15 firearms understands what a receiver is.

16 MR. MCGUIRE: Your Honor, what I would say to  
17 the Court is yes, there are differing interpretations,  
18 definitions, views of what those items are.

19 THE COURT: No. I mean --

20 MR. MCGUIRE: But --

21 THE COURT: -- in relation to finished and  
22 unfinished, there might -- there might be something  
23 there. But as to what it is, of what a frame or a  
24 receiver is, I mean, isn't that commonly known?

1           MR. MCGUIRE: Respectfully, Your Honor, I don't  
2 think so, and I'll try to explain why.

3           You're aware, I'm sure, of the federal regime  
4 which we utilize regularly where products are submitted  
5 to the ATF and a request is made of the ATF to tell us  
6 whether a particular item, product --

7           THE COURT: Is a firearm.

8           MR. MCGUIRE: -- is a firearm or a frame or a  
9 receiver. In the record that the defendants themselves  
10 presented to the Court are three classification letters  
11 issued by the ATF during the Obama administration after  
12 we submitted frames and receivers of our pistol, our  
13 AR-10, and our AR-15 to the government and asked is  
14 this a frame or receiver under federal law and is this  
15 a firearm under federal law. And in all three of those  
16 letters, it came back no.

17           So, my point to Your Honor --

18           THE COURT: Well, no. It said that it -- the  
19 way I read those letters, it said it's not a firearm.

20           MR. MCGUIRE: But my point is in order to be a  
21 firearm, it has to be a frame or receiver. There's --  
22 you can't get the firearm without it being a frame or  
23 receiver. And my point to the Court is that we might  
24 have some sense or belief or argument as to what a

1 frame or receiver is under federal law, but we're not  
2 dealing with federal law here. We're dealing with  
3 state law, with Nevada law, and a brand new statute  
4 which doesn't make clear, and more importantly, does  
5 not incorporate federal law, definitions or --

6 THE COURT: Yeah. No --

7 MR. MCGUIRE: -- understanding.

8 THE COURT: -- it doesn't incorporate the  
9 definitions. But, I mean, it seems to me -- it seems  
10 to me that the terms themselves, frame or receiver, are  
11 commonly known.

12 Now, whether or not it requires a definition of  
13 what a finished frame is versus an unfinished frame,  
14 well, that's something different. You know, or a  
15 finished receiver or unfinished receiver is something  
16 different. But everybody knows it's what houses the  
17 moving mechanisms. I mean, it's, you know, as a  
18 general term, right? I mean, every manufacturer, every  
19 gun uses that term.

20 MR. MCGUIRE: Well --

21 THE COURT: Or those terms.

22 MR. MCGUIRE: Excuse me, Your Honor. I would  
23 also just, as I'm sure the Court --

24 THE COURT: I've never heard anything

1 different. Well, sometimes they'll call it a complete  
2 stock. But the stock with receiver in the stock on  
3 some rifles. But, you know, I mean, it's the same  
4 thing.

5 MR. MCGUIRE: There's also the term blank, Your  
6 Honor, casting and machined body. And we respectfully  
7 do not believe, if Your Honor is correct, that there's  
8 any commonly understood meaning for those terms. And  
9 those are all terms utilized expressly in this statute.

10 May I proceed?

11 THE COURT: Go ahead.

12 MR. MCGUIRE: Thank you.

13 Your Honor, the second, and we believe more  
14 important section, of the task or definition for what  
15 an unfinished frame or receiver is, is the test  
16 contained in the portion of the definition which says  
17 that in addition to being a blank casting, et cetera,  
18 it also must be an object "that has been formed or  
19 machined to the point at which most of the major  
20 machining operations have been completed to turn the  
21 blank, casting or machined body into a frame or lower  
22 receiver of a firearm, even if the fire control cavity  
23 of the blank, casting or machined body is still  
24 completely solid and unmachined".

1           Your Honor, I'm not sure anyone, however expert  
2           in firearms or uninitiated, could possibly determine  
3           the meaning of that highly ambiguous and uncertain  
4           language. When is it? Where is the point at which  
5           most of the major machining operations have been  
6           completed? What are the major machining operations?  
7           When are they complete? What's the midway point?  
8           What's the quarter point? What's the three-quarter  
9           point? There's no clarity or definition in the statute  
10          as to what this test could possibly mean. And again,  
11          it's the understanding of the ordinary Nevadan that  
12          controls here.

13           Moreover, Your Honor, I would dare say that  
14          there's no definition of a fire control cavity as well  
15          in the statute. As I mentioned, Your Honor, we cite in  
16          what I would tell the Court in 37 years of legal  
17          practice is the longest string cite I've ever put in a  
18          brief. Three pages of citation and parenthetical going  
19          back 64 years to an unbroken string of Nevada Supreme  
20          Court decisions. Starting with Laiolo in 1967, running  
21          up to Scott a few years ago.

22           None are challenged by these defendants. There  
23          isn't a single word in their briefs where they say  
24          these cases don't apply, these cases are



1 distinguishable, these cases are wrong. And there's a  
2 reason for that. Because those cases are all good law.  
3 Now, those cases, Your Honor, as we read them, set up  
4 effectively two dominant and controlling propositions.

5 First, if there are no clear definitions of  
6 important terms, terms that do not have commonly  
7 understood meanings, apropos Your Honor's question and  
8 comment, then the statute is unconstitutionally vague  
9 under the Due Process Clause.

10 And secondly, as to the machining test that I  
11 just spoke about, if there are no workable standards or  
12 guidelines to understand the statute and the tests  
13 contained therein, then too the statute can be and will  
14 be struck down as unduly vague.

15 With respect to specific cases, Your Honor, as  
16 to that first point, the lack of clear and definite  
17 definitions, may I call the Court's attention  
18 respectfully to Flamingo in 2009, Nevada Supreme Court  
19 case dealing with the Nevada Clean Indoor Air Act? As  
20 I understand it, the issue was where and when can  
21 somebody smoke indoors.

22 Your Honor, that statute that was challenged in  
23 that case 12 years ago was struck down because there  
24 was no clear definition of "smoking paraphernalia".

1 And remarkably, especially in the context of this case,  
2 no clear definition of what "a large room" was.

3 In Gallegos, Your Honor, two years earlier in  
4 2007, the case that's probably closest to this one  
5 generally because it dealt with criminalizing  
6 possession of a firearm by a "fugitive from justice".  
7 That case, Your Honor, invalidated the statute at issue  
8 because the term "fugitive from justice" was  
9 insufficiently defined and unclear.

10 Can anyone responsibly tell this Court that  
11 that term is less clear than the terms that we are  
12 dealing with here, casting, machine body, blank, a fire  
13 control cavity? Surely, there is a commonly  
14 understood, sometimes discussed notion of what a  
15 fugitive from justice is.

16 In Washoe in 2002, which dealt with the  
17 manufacture of controlled substances, that statute was  
18 invalidated for vagueness because of an insufficient  
19 definition of the "ingredients". Ingredients, Your  
20 Honor. All of us have some idea of what ingredients  
21 are, and these were the ingredients, of course, that  
22 were being used in the manufacture of the illegal or  
23 controlled substances.

24 In Cunningham, Your Honor, in 1998, a telephone

1 solicitation statute was struck down, Your Honor. This  
2 is truly, truly, telling. The Court found that the  
3 definition of "seller, S-E-L-L-E-R" was insufficiently  
4 vague and/or absent. The definition of salesman was  
5 absent. And the definition of telephone solicitation  
6 was absent. And that was enough to strike that statute  
7 down.

8 In 1980, in Eaves, a case involving criminal  
9 vagrancy, the terms escort and special companion, the  
10 definitions or lack thereof and lack of clarity about  
11 those terms were enough to cause the invalidation of  
12 the statute on vagueness grounds under the Due Process  
13 Clause.

14 And finally in Laiolo -- forgive me if I'm  
15 mangling the name, L-A-I-O-L-O -- 1967, Your Honor, an  
16 un -- criminal unlicensed banking statute was struck  
17 down because "capitalization", a term we probably all  
18 bumped into in economics class or business class at  
19 some point, that term was deemed to be insufficiently  
20 vague and inadequately defined.

21 With regard to the second prong or principal  
22 that emerges from these ten Nevada Supreme Court cases,  
23 there's that second principal. Which is that if the  
24 statute lacks workable standards and workable

1 guidelines, the statute again and separately can be  
2 struck down on Due Process vagueness grounds.

3 I recall the Court's attention respectfully to  
4 Scott in 2015, involving hindering the carrying out of  
5 the duties of a sheriff's deputy, to Silvar in 2006,  
6 regarding loitering, loitering in connection with  
7 alleged prostitution to the TR, Thomas Robert case,  
8 2003, involving the rehabilitation of juvenile sex  
9 offenders to the Richard case in 1992, involving  
10 criminal vagrancy, and again of course the Eaves on the  
11 issue of escorts and companions.

12 To sum up, Your Honor, in regard to what we  
13 believe is the most important of the three-part test  
14 for the granting of a temporary restraining order,  
15 whether or not we have established, and we have the  
16 burden of establishing a likelihood of success on the  
17 merits, those ten cases and the other points that I've  
18 tried to elucidate here, show that we've carried our  
19 burden.

20 We have other burdens. We have to show that  
21 there is irreparable harm. We've set forth in our  
22 brief several cases, unchallenged, uncommented on in  
23 Nevada law. One of them is Sobol, stating essentially  
24 that damage to one's business and the threat of putting

1 one's business out of commission is, as a matter of  
2 law, sufficient, irreparable harm for Due Process  
3 purposes in a facial challenge to a criminal statute.

4 But the more important point is, Your Honor,  
5 that we have here irreparable injury because we have no  
6 adequate remedy at law. We can't sue the State. If  
7 they knock us out of business -- and our business is  
8 quite substantial. If they knock us out of business  
9 because of this statute, we can't go after them for  
10 damages. We'll never recover. We have no adequate  
11 remedy at law.

12 And finally, Your Honor, as we perhaps  
13 colloquially state in our briefs, we are stuck between  
14 a rock and a hard place. Either we go out of business  
15 and conform with the statute or we risk criminal  
16 prosecution. Which simply and only, if you look at it  
17 in a narrow perspective from the reputation and  
18 standing of the company, would be devastating.

19 Finally, Your Honor, we need to address and  
20 prove to Your Honor that the public interest is in  
21 favor of or in accordance with the invalidation of this  
22 statute. This is a facial challenge. This statute  
23 doesn't just apply to us. It applies to all Nevadans.  
24 And the risks that are attendant to our situation are

1 attendant in spades to the ordinary Nevadan, who  
2 admittedly, doesn't have the exposure and experience  
3 and knowledge in firearms that we do. And they are the  
4 ones, Your Honor, that are the key people here. It is  
5 their knowledge, their understanding of the statute  
6 that is key, and it is the risks to them that tilts the  
7 public interest in favor of invalidation of the  
8 statute.

9 Finally, Your Honor, we need to address the  
10 balance between that public interest and the hardships  
11 to the party. Now, again, we're in that rock or hard  
12 place position, and similarly so are all Nevadans. On  
13 the other hand, what is it that the defendants would  
14 have to do here? I said to you earlier they didn't do  
15 their homework, they didn't do their job, they didn't  
16 draft a constitutionally sound piece of legislation.  
17 Well, they can do that. They can amend the statute.  
18 Happens regularly in our country, and I dare say in  
19 Nevada.

20 The balance there, Your Honor, tips decidedly  
21 in favor of Polymer80, and respectfully suggest to the  
22 Court that that's an easy one in terms of the balancing  
23 task.

24 Now, I would like to reserve some time to --

1           THE COURT:  What type of -- what type of  
2 security are you proposing?

3           MR. MCGUIRE:  I'm not certain that any kind of  
4 security would be meaningful, Your Honor.  But we are  
5 not opposed to whatever security Your Honor might see  
6 fit to impose.  In other words --

7           THE COURT:  Well, Nevada law generally requires  
8 a court to impose security on an injunction.

9           MR. MCGUIRE:  Well, this is a temporary  
10 restraining order, Your Honor, and we're prepared to  
11 post whatever security --

12           THE COURT:  Or an -- I mean, whether or not  
13 it's a restraining order -- whether or not you want to  
14 term it as a preliminary injunction or a restraining  
15 order, the law requires security.

16           MR. MCGUIRE:  We would post whatever the Court  
17 saw fit to order us to post.

18           THE COURT:  Okay.

19           MR. MCGUIRE:  And finally, Your Honor, while,  
20 if I might, just reserving a few minutes in reply.

21           What do the defendants say to all this in their  
22 opposition paper?  We submit, with all respect to my  
23 colleague, not much, they're silent on those ten cases.  
24 And that silence is deafening.  Their own authorities

1 are either inapposite or immaterial. And they have  
2 mantras, Your Honor. Ghost guns, meaning Polymer80 is  
3 bad. Polymer80 is a bad citizen. Polymer80 shouldn't  
4 have the same rights as everyone else because they're  
5 in the firearms industry. Well, that doesn't work.  
6 That's not fair. That's not right. That's not the  
7 law. Although it is emotionally pleasing perhaps for  
8 some.

9 And secondly, Polymer80 knows. Polymer80 knows  
10 what all these terms mean. Polymer80 knows what's  
11 going on here. And again, Your Honor, what we know or  
12 don't know, as a matter of law, is irrelevant. That's  
13 not the test. The test is what the ordinary citizen  
14 can know. And finally, Your Honor, the truth is we  
15 don't know what the statute means within the bounds of  
16 Nevada law.

17 Finally, Your Honor, as a last resort, the  
18 defendants' dragging, kicking and screaming if you  
19 will, federal law. Now, with one exception, AB 286  
20 does not incorporate any federal definitions. There is  
21 one. In Section 6.5 they incorporate, and expressly  
22 so, the definition of "firearm or firearms" under  
23 18 U.S.C Section 924, the federal firearm statute, Gun  
24 Control Act.



1           So, the legislature here was able to  
2 incorporate that statute, but it did not, Your Honor.  
3 It --

4           THE COURT: Hold up. They also incorporated  
5 antique firearm, firearms import or manufacture. So,  
6 those terms they imported from 18 U.S.C Chapter 44 in  
7 921.

8           MR. MCGUIRE: I think that's that same gun  
9 control statute to which I was attempting to refer.  
10 But the more that they imported -- and I don't take  
11 issue with Your Honor's comment -- the more it shows  
12 that they didn't incorporate these other definitions,  
13 and these other terms now that they're trying to place  
14 before the Court.

15           In other words, they could have done it, but  
16 they didn't. They made the decision not to include  
17 those terms and those definitions in this statute. So,  
18 they can't possibly bind anyone if they're not in the  
19 statute moreover.

20           THE COURT: Which makes it more vague.

21           MR. MCGUIRE: Excuse me?

22           THE COURT: Which makes it more vague.

23           MR. MCGUIRE: I would agree, Your Honor.

24           THE COURT: Because those definitions aren't

1       there.

2               MR. MCGUIRE: I could not agree more.

3               Finally, Your Honor, as you know, the federal  
4 system, as I've already indicated with ATF and the  
5 submission products, et cetera, is apples and oranges  
6 to the Nevada system which does not have such a  
7 facility.

8               And finally, Your Honor, and this is perhaps  
9 the most ironic and circular part of the whole  
10 argument, if federal law, Your Honor, were to be  
11 imported into AB 286, in other words if you would have  
12 conjoined federal law and AB 286, the majority of our  
13 products would be deemed legal, products that this  
14 statute seek to criminalizes. Many of our products, I  
15 dare say most of our products, do not require  
16 serialization under federal law.

17               But they would under AB 286, and we don't  
18 believe that the intention of AB 286 is to allow us to  
19 do business with these legal products, but rather to  
20 make criminal -- our products at the risk of criminal  
21 sanction.

22               THE COURT: Well, why don't you comment one  
23 the -- one of the things that the State's saying is  
24 that all you got to do is stamp your guns with a serial

1 number.

2 MR. MCGUIRE: Well, first of all --

3 THE COURT: Well, all right. So, the frames --  
4 all right. Your frames and receivers. I shouldn't say  
5 guns. But your frames and -- because it's not. We're  
6 not talking about guns.

7 I mean, what the State's saying is all you have  
8 to do is stamp them with a serial number.

9 MR. MCGUIRE: Well, if the -- if the State had  
10 wanted us to serialize the frame or receiver, they  
11 could have legislated that. They didn't do that.  
12 That's the notion of importing something into the  
13 statute that isn't already there.

14 But secondly, Your Honor, we wouldn't know  
15 under Nevada law. Because of the total discretion  
16 given to law enforcement under the statute as to what  
17 would have to be serialized, as to which items or  
18 products to serialize. I will tell Your Honor, the  
19 frames and receivers addressed in those ATF letters,  
20 which the defendants put into the record from the Obama  
21 administration, do not require us to serialize those  
22 frame or receivers. So, if Nevada wanted us now to  
23 serialize them, they could have legislated that. They  
24 did not.

1           So, would serialization be possible?  
2       Certainly. And many of our products, Your Honor,  
3       perhaps, I don't know, 20 percent, maybe, of our  
4       products these days are serialized. But a lot of our  
5       products aren't, and federal law doesn't require that  
6       we do that. And I would submit to the Court that if  
7       Nevada was going to impose an additional burden on us,  
8       it should be included expressly in the statute, and  
9       it's not.

10           For all those reasons, Your Honor, we'd ask the  
11       Court to grant our motion and issue the requested  
12       temporary restraining order. Thank you, sir.

13           THE COURT: Okay. Thank you.

14           Mr. Zunino?

15           MR. ZUNINO: Thank you, Your Honor.

16           Just a note on the term ghost guns. I think  
17       that counsel responded to the brief that he thought I  
18       was going to write as opposed to the brief I actually  
19       wrote. I mean, I used the term ghost guns three times  
20       in 15 pages of text.

21           THE COURT: I read your brief.

22           MR. ZUNINO: And frankly, that's not a  
23       pejorative. You know, I mean, people who own ghost  
24       guns refer to them as ghost guns. So, the suggestion

1 that I'm kind of turning this into a political  
2 discussion, or that my intent to demonize this industry  
3 is not found anywhere in the actual text of the brief.

4 So, I note on Nevada case law, and opposing  
5 counsel indicated that there is this long string of  
6 cases that deals with this test that you apply when you  
7 make a facial challenge. And I'm not, as a preliminary  
8 matter, convinced that that's relevant. I mean, I  
9 don't know that as a practical matter --

10 THE COURT: Well, they have to demonstrate a  
11 likelihood of success on the merits.

12 MR. ZUNINO: Yeah, but I think that the test is  
13 going to -- I mean, I think if you satisfy one prong of  
14 the test, you satisfy the other prong and vice versa.  
15 I mean -- I mean, I can't imagine a scenario where you  
16 would -- you could establish that statute does not put  
17 kind of people on notice as to what's prohibited. And  
18 that would also -- that also satisfies this kind of  
19 arbitrary enforcement test. As a practical matter, I  
20 just don't understand how the existence of a two-part  
21 test is relevant here.

22 I think if they can satisfy one, they can  
23 satisfy the other and vice versa. But frankly, they  
24 can't satisfy either because as you noted, these terms

1 are commonly understood. They're -- they have an  
2 ordinary meaning, right? So, let me -- let me go back  
3 to actually the complaint that was filed here.

4 And if you read the complaint, it reads like  
5 they're bringing an action on behalf of random people  
6 who know nothing about firearms. And I would kind of  
7 readily concede --

8 THE COURT: But do you concede that the test in  
9 Nevada is an objective test, not a subjective test?

10 MR. ZUNINO: It's an objective test that  
11 applies in context, right? So, you have to in  
12 contextualize inquiry, right?

13 THE COURT: Well, that would be a -- that would  
14 be an as-applied challenge. This is -- this is a  
15 facial challenge.

16 MR. ZUNINO: Well, with even the cases that  
17 deal with facial challenge, and this Flamingo and this  
18 is Castaneda, they talk about circumstances, right?  
19 You look at whether this is vague given the  
20 circumstances to which the statute applies, right? And  
21 this statute governs commerce. It governs trade in  
22 firearm components, right? So, you don't ask whether  
23 this would be vague as applied to somebody who's never  
24 purchased a firearm, who's never owned a firearm, who

1 knows nothing about firearms. And I think that's a  
2 mischaracterization of the case law that --

3 THE COURT: But it makes those things illegal.

4 MR. ZUNINO: What's that?

5 THE COURT: It makes those things criminal.

6 So, it's not a regulatory scheme. It's a criminal  
7 scheme.

8 MR. ZUNINO: It is a criminal scheme. So, that  
9 takes me back to, I cited a U.S. Supreme Court case at  
10 the beginning of my brief. Okay, so it's Village of  
11 Hoffman Estates or something to that effect. And  
12 counsel took issue with that. And what that -- and I  
13 cited that case for a very simple proposition, right?  
14 And it's a proposition that's been embraced by Nevada  
15 as well. And that is that you have to have standing,  
16 right? Ultimately to bring a challenge.

17 So, if they can't show, as a preliminary  
18 matter, that this is vague as applied to them or to  
19 their customers, I mean, I don't -- I don't think we  
20 even get to the facial challenge. Because they can't  
21 clear the standing hurdle here. They can't demonstrate  
22 that this -- you know, and Flamingo does not stand for  
23 the proposition that someone can just come into court  
24 and bring an action on behalf of other persons, right?

1 And that's not what happened in Flamingo, the Flamingo  
2 and some small pubs and taverns.

3 THE COURT: Right. But in --

4 MR. ZUNINO: But it brought an action --

5 THE COURT: In Flamingo, they weren't -- they  
6 weren't --

7 MR. ZUNINO: See, I need --

8 THE COURT: I mean, you know, they weren't  
9 arrested yet.

10 MR. ZUNINO: No, they weren't. They brought a  
11 civil --

12 THE COURT: They were --

13 MR. ZUNINO: They brought a civil action, Your  
14 Honor. Which --

15 THE COURT: Which is the same type of action  
16 that we're doing here.

17 MR. ZUNINO: Yeah, it's a civil action which  
18 requires standing, right? I mean -- I mean -- if  
19 you're a criminal defendant and you're being  
20 prosecuted, you don't have to demonstrate standing. If  
21 you want to bring a civil action, you have to get over  
22 a standing hurdle. And --

23 THE COURT: Right. But because it affected  
24 them in relation to their employment and their business



1 and the ability to --

2 MR. ZUNINO: Well, Flamingo clearly had  
3 standing, right? You know, I think that statutory  
4 scheme was ambiguous as applied to Flamingo. And the  
5 court never suggested otherwise, right? What that case  
6 did effectively is it allowed Flamingo to bring an  
7 action on behalf of the entire casino industry. They  
8 said look, you can -- you know, and this is a question  
9 of remedies, right? It's a question of if I bring that  
10 as-applied challenge, I'm asking for injunction. I'm  
11 asking you, Judge, to enjoin the statute as it applies  
12 specifically to my conduct.

13 THE COURT: Absolutely.

14 MR. ZUNINO: If I bring a facial challenge, I'm  
15 asking you to wipe the statute off the books.

16 THE COURT: Exactly.

17 MR. ZUNINO: But in order to ask you to wipe  
18 that statute off the books, I have -- I still have to  
19 demonstrate an injury to me. I can't simply  
20 demonstrate -- there's people out there wandering  
21 around who might not understand what a frame or  
22 receiver is. That doesn't suffice. And that is, as I  
23 understand their argument, what they're saying. Right?

24 I can just out of -- out of -- you know, out of

1 the woods argue that well, somebody on Park Avenue  
2 sitting in a -- in a penthouse apartment might not  
3 understand what a frame or receiver is. You know and I  
4 know what a frame or receiver is. Those terms are well  
5 understood among people who buy and sell and own  
6 firearms, right? And if you open the owner's manual to  
7 your -- to your lever action rifle or your  
8 semi-automatic shotgun, you're probably going to see a  
9 diagram, and it's going to show you how to clean the  
10 gun, and it's going to show you exactly where your  
11 receiver is.

12 Same goes for a -- for a frame. You know, the  
13 frame, when we're talking about a pistol, a  
14 semi-automatic handgun, that forms the bottom half, you  
15 know. And manufacturers use -- they number those  
16 frames, right? So, they give -- they give customers a  
17 reference point. So, if I buy, for example, you know,  
18 a Glock 27, I know that I'm purchasing a subcompact,  
19 right? 40 caliber subcompact pistol, right? And  
20 that -- and that's a reference to the frame.

21 So, people who buy and sell firearms understand  
22 what these terms mean, right? And what you're  
23 suggesting is that --

24 THE COURT: But what's not so clear is -- all

1 right. Everybody has -- all right. So, there -- I  
2 think you're correct in the fact that there's a general  
3 understanding of what a frame or receiver is. But what  
4 is the difference in relation to an unfinished frame or  
5 receiver?

6 MR. ZUNINO: So, I think that's right.  
7 Arguably, that's a continuum, right? And I -- and I --

8 THE COURT: Well, but this is the problem.  
9 Like -- like smoking paraphernalia, it's a continuum,  
10 right?

11 MR. ZUNINO: Uh-hum.

12 THE COURT: So, what am I -- one of my things  
13 in relation to this from blank, all right, so you have  
14 a block of plastic or polymer or whatever you want to  
15 call it. Okay? So, and you heat up that block, and  
16 then you have a frame, a functional frame. Okay? And  
17 then in between there are all this -- these com -- you  
18 know, these different stages of what could be  
19 "completion". And the statute indicates -- and the --  
20 or the definition indicates to the point at which most  
21 of the major machining operations have been completed.  
22 What does that mean? What does that mean?

23 MR. ZUNINO: Yeah, that -- it's not --

24 THE COURT: I'm having a problem understanding

1       what that is.

2               MR. ZUNINO: I think it's synonymous with this  
3 kind of 80 percent kind of finished standard that the  
4 federal government -- I mean, that was -- that was the  
5 target, right? And that's why I discussed federal law.

6               THE COURT: All right. So, if it's 80 percent,  
7 their blanks are still legal.

8               MR. ZUNINO: No. Well, 79 percent then. I  
9 mean, there's a line at 80 percent, and manufacturers  
10 build these right up to that line. You know, as far as  
11 I know, right, they build them right up to the line.  
12 And that's what this statute is getting at.

13              THE COURT: Right. But it doesn't say -- but  
14 it doesn't -- it just has this most of major machines  
15 operations.

16              MR. ZUNINO: Most. They don't quantify it,  
17 right? They don't quantify --

18              THE COURT: They don't quantify. There's no --  
19 doesn't that lead to the possibility of arbitrary  
20 enforcement. In this particular -- in this particular  
21 case, well, you have a place to insert a magazine, so  
22 that's most of the -- is that most? So, if you put a  
23 magazine hole there?

24              MR. ZUNINO: I think you have to read that term

1 most in conjunction with the mens rea requirement,  
2 which is intent. So, and ultimately, that's -- that --  
3 all criminal statute, right, kind of rely upon juries  
4 to decide whether there's an intent to turn that into  
5 an operable firearm. Whether that was purchased or  
6 possessed with the intent to turn it into an operable  
7 firearm. And we don't -- you know --

8 THE COURT: But why didn't you put that?

9 MR. ZUNINO: What's that?

10 THE COURT: All right. So, if you were to  
11 just -- it seems to me that if you would have just  
12 stopped, you know, the definition would have said needs  
13 a blank, casting or machine body. And we'll get to  
14 those definitions. You know, I mean, I think that  
15 they're relatively clear. But there could be some  
16 continuity of misunderstanding in relation to those as  
17 well.

18 But that's intended to be turned into a frame  
19 or lower receiver of a firearm with additional  
20 machining period. Well, then if you do that --

21 MR. ZUNINO: Let me --

22 THE COURT: All right. So, if you do that --

23 MR. ZUNINO: You expand the range.

24 THE COURT: Then you -- then you don't add this

1 other requirement, then all there is an intent element.  
2 So, you intend that that become a finished frame?

3 MR. ZUNINO: Yeah, but you can't get into  
4 somebody's head obviously and know whether they intend  
5 to turn a block of steel into a --

6 THE COURT: There's a lot specific intent  
7 crimes out there. Murder in the first degree.  
8 Specific intent, premeditation. You don't -- you  
9 don't -- can't read the guy's mind. But by the actions  
10 of the parties you certainly can.

11 MR. ZUNINO: Well, and that's I guess the point  
12 I'm making. Is that -- is that this most absolutely  
13 narrows the range of potential scenarios, right?

14 THE COURT: I know --

15 MR. ZUNINO: Which is a good thing.

16 THE COURT: I know where is most? Is it  
17 just -- is it just the frame itself as long as there's  
18 no indentations in it or holes? Is it -- all right.  
19 So, this is -- this is the scenario. What if I'm at  
20 home, and I'm "machining a piece of wood". Okay? And  
21 my five-year-old wants a rubber band gun. Okay? So, I  
22 take that piece of wood, I turn it, I make it into --  
23 you know, I take a band saw, and I cut out what looks  
24 like a firearm. And I put a couple of sticks on it so

1 that you can put a rubber band on it when you push it  
2 up. You've seen a rubber band guns before, right?

3 So, is that mostly completed? Because all I  
4 have to do to make that a functional receiver or frame  
5 at that point is actually just -- all I have to do is  
6 take my router and route out the works on it. I mean,  
7 if I have the proper tools, take my Dremel or router,  
8 route out the proper works on it, put a couple of holes  
9 in it, and I can have a -- I can have a functional  
10 weapon.

11 So, where does that most come in?

12 MR. ZUNINO: Well, a firearm --

13 THE COURT: Where is that point?

14 MR. ZUNINO: I mean, a rubber band gun's not a  
15 firearm. I don't think you would ever be prosecuted  
16 under that scenario because you still have to have an  
17 intent to turn something into a firearm. And a  
18 rubber -- a wooden rubber band gun is not a firearm, I  
19 would submit. I mean, we can argue with that.

20 THE COURT: Well, it's not a firearm as defined  
21 by the statute because it has to be an explosive  
22 projectile. I mean -- okay. So, I think the firearm  
23 definition itself is fine.

24 But one of the problems is, you don't -- you

1 don't indicate -- there's continuity of potential  
2 arbitrary enforcement just like there was with the  
3 paraphernalia issue. All right. Just like, you know,  
4 in relation to the Clean Air Act and making that  
5 criminal because -- I mean, we could say it's obvious  
6 it's not an air freshener. I mean, like they said in  
7 Flamingo or -- but it's not so obvious with the huge  
8 range in between what is a piece of plastic  
9 potentially, or a piece of metal potentially, or a  
10 piece of wood potentially to the finished product.

11 And if you're going by the 80 percent rule of  
12 the federal government, then that 80 percent -- and  
13 then -- well, but you're not because you're pushing it  
14 down to the 79 percent. Well, maybe 60 percent. Or  
15 maybe 50 percent complete. And how do you determine  
16 50 percent completeness versus 80 percent completeness?  
17 Or a hundred percent complete? How do you determine  
18 those things when none of that is defined in the  
19 statute?

20 MR. ZUNINO: Well, I think the words most in  
21 the intent element narrow the possible range of  
22 prosecutions to a point to where you're just simply not  
23 going to have arbitrary enforcements, right? You're  
24 not going to have arbitrary enforcement within that



1 range, right? You know, I think it's always possible  
2 to kind of parse the statute and find ambiguity in it.  
3 I mean, that's true of every criminal statute, right?  
4 So, we kind of have to look at this from a common sense  
5 perspective, and we have to recognize that  
6 prosecutorial discretion weighs into the decision to  
7 charge anyone with a crime. And ultimately we trust  
8 our prosecutors to make responsible decisions, right?

9           So, I mean, like, let's take for example, the  
10 intent element of attempted murder, right? I mean,  
11 what if my wife decides that she's going to feed me,  
12 you know, meals that are high in cholesterol every  
13 night and that's -- and it's her intent to kill me?  
14 Well, I mean, that's absurd. I mean -- I mean, no one  
15 would ever prosecute her under those scenarios. But we  
16 can always kind of invent scenarios where the  
17 application of a statute would be vague. Right? And  
18 that's kind of what Polymer is suggesting.

19           Because I can conjure a scenario where this  
20 might be vague, and you have to strike it down, Your  
21 Honor. And that's simply not the test. I mean, the  
22 test is -- the text, you know, vagueness permeates the  
23 text such that an ordinary person couldn't understand  
24 what's prohibited here. And I think ordinary people

1 understand. Like, I shouldn't buy one of these things,  
2 one of these receivers that's nearly complete unless it  
3 has a serial number on it, right?

4 So, that, I suppose, takes me to the question  
5 of irreparable harm, right? Is we don't -- we don't  
6 right now know anything about Polymer80. We don't know  
7 where they're manufacturing operations are. We  
8 don't -- you know, I can glean from looking at their  
9 website that they sell stuff all over the country,  
10 right? This statute does not have any extra  
11 territorial application. I mean, it applies in Nevada,  
12 right?

13 THE COURT: Right. You can't -- you can't sell  
14 it from Nevada. So --

15 MR. ZUNINO: I think you can, right? There's  
16 an exception in there for transactions between licensed  
17 FFL's. Polymer80 is a licensed FFL. It can have  
18 subsidiary to transfer to these other states. I mean,  
19 there are easy, easy ways to mitigate any potential  
20 damage that would result from this. And they haven't  
21 even suggested, you know, what is the harm. They  
22 haven't even tried to quantify the harm or tell us.  
23 They just told us we're going to go out of business,  
24 right?

1           But common sense tells me otherwise. I mean,  
2 common sense tells me that they sell these things all  
3 over the country, and there are exemption for transfers  
4 between FFL's. They're not even challenging, as I  
5 understand it, Section four which deals with  
6 manufacture, right? And I don't know whether they have  
7 a manufacturing facility in the State of Nevada or  
8 whether they outsource that to other states.

9           THE COURT: Well, I think -- all right. So,  
10 but there's a difference with that one. Because that's  
11 manufacturing a firearm.

12           MR. ZUNINO: Well, there's --

13           THE COURT: Okay. So, it's not manufacturing  
14 an unfinished frame or receiver.

15           MR. ZUNINO: Well, it's --

16           THE COURT: It deals specifically with  
17 manufacturing and assembling a firearm.

18           MR. ZUNINO: But I guess the point is that  
19 that's the only provision in this statute that could  
20 conceivably put them out of business. Assuming they're  
21 manufacturing firearms in the State of Nevada. And we  
22 haven't heard any of those facts, right?

23           THE COURT: Well, I mean, but that's a federal  
24 violation too. I mean, if they're manufacturing

1 firearms without serializing them, it's a federal  
2 violation of the Gun Control Act.

3 MR. ZUNINO: Yes, it was a federal law that  
4 puts them out of business. It's not AB 286, right?

5 THE COURT: Well, on that one.

6 MR. ZUNINO: Yeah.

7 THE COURT: I would agree because it's firearm.  
8 We're talking about fire, not the first two sections of  
9 the bill which relates to criminal possession of and/or  
10 transfer and/or other things of "unfinished frames or  
11 receivers". All right. So, firearm is clearly  
12 defined, and it's clearly defined in the statute  
13 itself. So, and --

14 MR. ZUNINO: So, where's the harm?

15 THE COURT: And even the other section, even  
16 section five, shall not possess, sell, offer to sell  
17 transfer, purchase, transport, receive a firearm that  
18 is not imprinted with a serial number issued by a  
19 firearms importer or manufacturer in accordance with  
20 federal law. So, you can't have a firearm that doesn't  
21 have a serial number on it. It is illegal to possess  
22 it.

23 MR. ZUNINO: A consumer in Nevada.

24 THE COURT: Anybody.

1 MR. ZUNINO: A consumer in Nevada.

2 THE COURT: Anybody. I --

3 MR. ZUNINO: Well, an FFL --

4 THE COURT: A person is a -- is a large -- is a  
5 large thing. Now, and I agree that, you know, I mean a  
6 non-serialized weapon, that illegalizes people's  
7 possession of non-serialized guns, right?

8 MR. ZUNINO: Yeah.

9 THE COURT: So, you can't have it -- you can't  
10 own a gun that doesn't -- with a couple of exceptions  
11 that are in this statute itself.

12 MR. ZUNINO: But it does not prevent FFL's from  
13 transferring unserialized parts and firearms between  
14 themselves, right? I mean, at some point -- I mean, if  
15 the firearm or the unfinished frame or receiver is sold  
16 within the State of Nevada, then it has to have a  
17 serial number. If it's sold elsewhere, it doesn't  
18 necessarily have to have a serial number depending upon  
19 the law of the state where it's sold, right?

20 So, if it's sold in New York, you know, there's  
21 a -- there's a reg -- there's a registry, right? So,  
22 it's going to have to have a serial number in New York.

23 THE COURT: But it limits the ability to  
24 transfer only to other firearms importers or

1 manufactures.

2 MR. ZUNINO: Yeah. So, and dealers, right?  
3 So, we've got -- we've got dealer -- you know, we've  
4 got any -- according to the search warrant, right, that  
5 I --

6 THE COURT: Well, there's no -- there's no  
7 dealer provision except through January 1st, 2022.

8 MR. ZUNINO: Well --

9 THE COURT: Then you can't -- then you can't  
10 give it to a licensed dealer anymore. You can only  
11 give it to an importer or manufacturer.

12 MR. ZUNINO: Well, and that's a good point. Is  
13 virtually all of these provisions do not go into effect  
14 until January 1, 2022. So, we also have a ripeness  
15 issue with respect to the claim for a temporary  
16 restraining order. I mean, a temporary restraining  
17 order is good for 14 days. This thing doesn't go into  
18 effect for six months. So, what exactly are we  
19 restraining with the temporary restraining order?

20 I mean, a temporary restraining order issued  
21 within the context of this case amounts to an advisory  
22 opinion. It amounts to a kind of an advance ruling on  
23 the -- on the merits, right?

24 THE COURT: Right.

1 MR. ZUNINO: There's nothing to restrain.

2 THE COURT: All right. So, but Section 3.5  
3 became effective upon passage.

4 MR. ZUNINO: Yeah, but then there's this rule  
5 of construction that said it shall not be construed to  
6 prevent the sale of a firearm or the sale of an  
7 unfinished frame or receiver prior to January 1st. So,  
8 Section 10 deals with the effective date. And then  
9 Section 5.5 effectively provides this grace period that  
10 exists until January 21st, 2022. And so, there's -- at  
11 this point there's nothing to restrain, right? Unless  
12 they're -- unless -- unless they're manufacturing  
13 firearms, right?

14 And then Section Four applies, and that was  
15 effective upon passage and approval, and this rule of  
16 construction does not apply to Section Four. I mean --  
17 I mean, this is -- this is kind of difficult to  
18 decipher, you know. And it took me, you know, probably  
19 an hour or two to figure it all out and how --

20 THE COURT: You know, another --

21 MR. ZUNINO: -- the pieces fit.

22 THE COURT: -- another problem, you know, with  
23 the statute itself it's a negatory. Because it says  
24 the unfinished frame or receiver is required by federal

1 law to be imprinted with a serial number. Well,  
2 unfinished frames and receivers -- or frames or  
3 receivers that are not firearms don't require serial  
4 numbers.

5 MR. ZUNINO: Yeah, but again, this goes to the  
6 question of --

7 THE COURT: So, they're not required to put a  
8 serial on it. So, how do you -- how could they put a  
9 serial number on an unfinished frame or receiver?

10 MR. ZUNINO: They could because federal law  
11 doesn't forbid that. I mean, if they put a serial  
12 number on an unfinished frame or receiver, who's going  
13 to complain. The ATF's not going to complain. I mean,  
14 they could mitigate, assuming they have --

15 THE COURT: Who's going to track it? They  
16 don't have to report it on their -- on their reporting  
17 requirements.

18 MR. ZUNINO: Yeah.

19 THE COURT: All right. So --

20 MR. ZUNINO: You're right. It's a loophole.  
21 It's a loophole.

22 THE COURT: So, you have -- so, where are these  
23 serial numbers going to go? Is there any requirement  
24 for their manufacturer to maintain those serial numbers



1 anywhere in their business? Is there -- I mean, as  
2 opposed to the Gun Control Act?

3 MR. ZUNINO: No. I agree that the statute is  
4 flawed in that respect, right? But that doesn't make  
5 it unconstitutional.

6 THE COURT: I can put 123 on all my guns. It  
7 could be the same --

8 MR. ZUNINO: Yeah.

9 THE COURT: -- serial number.

10 MR. ZUNINO: And I think you avoid prosecution  
11 under that scenario. You know, there's a -- there's a  
12 loophole in this, right? And that doesn't make it  
13 unconstitutional, right? That has nothing to do  
14 with -- but it does go to the question of damages --

15 THE COURT: But --

16 MR. ZUNINO: -- and whether they're going to  
17 suffer irreparable harm as a result of the enactment --

18 THE COURT: The problem is --

19 MR. ZUNINO: -- of this statute.

20 THE COURT: The problem is it says, "The  
21 unfinished frame or receiver is required by federal law  
22 to be imprinted with the serial number". Okay? But  
23 there -- but if it's not a firearm, which is what  
24 you're saying an unfinished frame or receiver is not a

1 firearm and it's meant to deal with that gap, then it  
2 is not required by federal law to be imprinted with a  
3 serial number. That's the problem.

4 You put this require. Unfinished frame or  
5 receiver is required by federal law to be imprinted  
6 with a serial number. So, they can't just put a serial  
7 number on it because it's not required to have a serial  
8 number. Even if they put a serial number on it,  
9 because the unfinished frame or receiver is not  
10 required by federal law to be imprinted with it,  
11 they're still in violation the statute.

12 MR. ZUNINO: It says -- okay. So, the  
13 transport, it says, "Unlawful to possess, purchase,  
14 transport, or receive an unfinished frame or firearm.  
15 Person is" -- okay. So, or the -- "or the unfinished  
16 frame or receiver is required by federal law to be  
17 imprinted with a serial number issued by a firearms  
18 importer or manufacturer."

19 So, I mean, they can -- they can concede,  
20 right? They could concede. This is some -- I mean,  
21 whether it's finished or not is kind of, you know, an  
22 abstract discussion, right? I mean -- I mean, they can  
23 say look, under these circumstances we're going to  
24 treat this like it's -- like it's finished. We're not

1 going to invoke this 80 percent, 79 percent rule.  
2 We're going to serialize it, and we're going to record  
3 it. Right? They can do that very easily and avoid any  
4 damages under this -- under this.

5 You know, they can't prove -- my point is they  
6 can't prove irreparable harm. Because it's very easy  
7 for them to mitigate their damages virtually completely  
8 by putting a serial number on there. They -- I mean,  
9 they decide whether their frames are finished or not.  
10 Right? They -- you know, the ATF is not going to be  
11 looking over their shoulder saying wait, you can't put  
12 a serial number on that. That's not finished. I  
13 mean -- I mean, they don't -- they don't do that.  
14 They're not going to do that. Right?

15 Polymer80 decides what's finished or what's  
16 unfinished. So, it -- so, it has the ability to  
17 serialize these parts and to record them, and thereby  
18 mitigate any damage that might result from the  
19 enactment of this statute. Which by the way, hasn't  
20 gone into effect yet.

21 THE COURT: See, but that -- but that goes to  
22 the previous point. Who's determining what's finished  
23 and unfinished? And what most of the --

24 MR. ZUNINO: I think for purposes of

1 determining whether they're going to serialize a frame  
2 or receiver, they decide. They decide. Right? They  
3 can make that decision --

4 THE COURT: All right.

5 MR. ZUNINO: -- right? If they choose not to  
6 serialize --

7 THE COURT: Do they decide --

8 MR. ZUNINO: -- then they risk prosecution.  
9 Right? It's that simple.

10 THE COURT: Do they decide that most of the  
11 mechanisms are not there either?

12 MR. ZUNINO: Well, I mean, the only thing that  
13 has to be serialized is the frame or receiver. Right?  
14 The other components are not part of the analysis.  
15 Right? Although they suggest that they are. They say  
16 we sell all kinds of stuff, and we don't need --

17 THE COURT: I'm talking about the frame or  
18 receiver. Do they --

19 MR. ZUNINO: Okay.

20 THE COURT: Do they make the determination that  
21 most of the -- most of the major machining operations  
22 are not completed?

23 MR. ZUNINO: I think that that is --

24 THE COURT: Who makes that determination?

1           MR. ZUNINO:  -- a risk that every manufacturer  
2 has to take.  I mean -- I mean, if they want to -- if  
3 they want to kind of play games, and they want to  
4 target this market for unserialized firearm parts --  
5 which, I mean, that's where the demand is, right?  And  
6 the demand primarily is for AR-15.  That's why people  
7 are buying lowers and uppers and all that.  I mean,  
8 that -- they're dealing in parts for AR-15's, more or  
9 less, and semi-automatic pistols.

10           But I think the driver of this is the -- is the  
11 market for AR-15's.  Right?  And they -- and they have  
12 to make a decision, do we want to still kind of walk  
13 this, right?  Do we want to still play this 79 percent  
14 game?  Are we just going to put a serial number on this  
15 and stop worrying about this, and just take a chance  
16 that people are still going to buy our products, even  
17 if they don't have -- even if they have serial numbers,  
18 right?  And I would submit there's a lot of  
19 do-it-yourselfers that would buy these regardless of  
20 whether they have serial numbers.  Right?

21           So, I mean, that's a decision for them.  I  
22 mean, every business decision involves a risk if  
23 you're -- if you're going to kind of play along the  
24 fringes, right?  Or along the edge, right?  It's easy

1 for them to avoid prosecution, and it's easier -- it's  
2 very easy for them to mitigate their damages  
3 potentially under this. I mean, we don't have  
4 irreparable harm. And at some point, I would submit,  
5 you know, we have -- we should have a kind of a more  
6 lengthy, you know, discussion and hearing, maybe we  
7 even have evidence. We'll hear from a gunsmith or  
8 someone that can --

9 THE COURT: Well --

10 MR. ZUNINO: -- tell us that these words are --

11 THE COURT: We certainly will.

12 MR. ZUNINO: Yeah.

13 THE COURT: We certainly will for the trial in  
14 this case. I mean, at this time -- at this point, the  
15 standard is likelihood of success on the merits.  
16 That's the standard. And irreparable restraint. So,  
17 which could be a balancing of the public interest. So,  
18 you know, I mean, and under Nevada law, it's clear  
19 that, you know, the designation of injury to a business  
20 can be considered irreparable injury. There's case law  
21 on that.

22 MR. ZUNINO: Yeah, if there's an injury. I  
23 mean -- I mean, we don't have any facts that suggest  
24 there's --

1 THE COURT: Well, I have an affidavit.

2 MR. ZUNINO: What's that?

3 THE COURT: I have an affidavit.

4 MR. ZUNINO: I think we know very little about  
5 Polymer80 or how this is going to damage their  
6 business. Right? And it's very easy for them to  
7 mitigate, assuming there is going to be some damage,  
8 right?

9 I mean, if they're -- if they're a prominent  
10 national leader, they've got sales all over the  
11 country. Right? And there are ways to continue making  
12 those sales until we sort this out. Right? And I  
13 would -- I would submit that perhaps that --

14 THE COURT: But the one that focuses directly  
15 on their business interests becomes -- is effective  
16 now.

17 MR. ZUNINO: Well, the manufacturing provision  
18 is.

19 THE COURT: Right.

20 MR. ZUNINO: Right?

21 THE COURT: No.

22 MR. ZUNINO: That's the only one that's  
23 effective. I mean, because --

24 THE COURT: Read --

1 MR. ZUNINO: -- 3.5 --

2 THE COURT: 3.5 -- well, 3.5 is effective.

3 So --

4 MR. ZUNINO: It's --

5 THE COURT: Person shall not sell, offer to  
6 sell, transfer an unfinished receiver.

7 MR. ZUNINO: Unless the person is a firearms  
8 importer or manufacturer. That's Polymer80.  
9 They're --

10 THE COURT: And recipient of the unfinished  
11 frame or receiver is a firearm importer or  
12 manufacturer.

13 MR. ZUNINO: That's right. Yeah, the transfer  
14 has to occur between, you know, subsidiaries or related  
15 companies that sell them. Right?

16 You know, they can't sell their unfinished  
17 frames at this point without serial numbers to Nevada  
18 based consumers. Right? That's an easy one. But I  
19 don't agree that that's unconstitutional, that  
20 prohibition is unconstitutional, and I don't agree that  
21 puts them out of business.

22 THE COURT: Okay. So, what happens if they go  
23 and open a P.O. Box in Utah in their own business name,  
24 and they ship it to themselves in Utah because they're



1 an FFL, and then from Utah they ship it to somebody in  
2 Nevada?

3 MR. ZUNINO: Well, I mean, I don't -- well, I  
4 think the consumer's going to be subject to  
5 prosecution. That's a problem, right? I don't think  
6 that --

7 THE COURT: Well, I think that's a big problem,  
8 and so --

9 MR. ZUNINO: You know --

10 THE COURT: -- does the consumer.

11 MR. ZUNINO: I mean, that's a problem for the  
12 consumer, right? And I would hope that Polymer80  
13 wouldn't do that.

14 THE COURT: But I -- no, but what I'm -- all  
15 right. So, all right. Okay. Anything else?

16 MR. ZUNINO: So, just to point out kind of the  
17 balancing of equities. Right? I think there's overlap  
18 between the irreparable harm prong and the test and the  
19 balancing of that.

20 THE COURT: Okay. If the Court were to issue  
21 an injunction in this particular case, or preliminary  
22 injunction, what do you believe that the security  
23 posted should be?

24 MR. ZUNINO: You know, I have no idea because I

1 have no idea what their sales look like. You know,  
2 what their Nevada sales look like. I don't --

3 THE COURT: Well, I guess -- I guess the  
4 question I have for you is, have you come up with an  
5 estimate of costs to try this?

6 MR. ZUNINO: Cost to try it?

7 THE COURT: Right.

8 MR. ZUNINO: No. No idea.

9 THE COURT: Okay.

10 MR. ZUNINO: Thank you, Your Honor.

11 THE COURT: You're welcome. You're welcome.

12 So, I'll give you a chance to reply here in a  
13 second, Mr. McGuire. But we're going to take a brief  
14 recess.

15 (Recess.)

16

17 THE COURT: Okay. Mr. McGuire, do you have any  
18 rebuttal argument?

19 MR. MCGUIRE: Yes, Your Honor. Thank you, and  
20 I'll be brief.

21 Now, for the first time in argument, this  
22 morning, Your Honor, we heard Mr. Zunino raise on  
23 behalf of the defendants the issue of ripeness. Two of  
24 the three provisions that we challenge are in effect,

1 Section 3.5 and Section 6.9. He quite rightly pointed  
2 out that 3.1 is not in effect until January of next  
3 year.

4 However, the lead case that we have found on  
5 the ripeness, the TR case, which I referred to earlier  
6 from the Supreme Court of Nevada, dealt with the  
7 similar issue. And stated that ripeness is determined  
8 by whether or not there's hardship or harm to the  
9 parties in withholding judicial review and whether the  
10 issues before the Court are suitable for judicial  
11 review. Well, we would submit given the law that we've  
12 cited about the irreparable injury to us, presumed to  
13 us because of the Nevada law decisions you mentioned,  
14 the harm to us is quite clear if these issues were not  
15 addressed.

16 And secondly, that the issues of the  
17 constitutionality of a new criminal statute, I can't  
18 think of anything more suitable for a decision by this  
19 court than that.

20 So, I would submit to the Court that if you  
21 want briefing or further argument on ripeness, we'd be  
22 prepared to submit it. But we believe TR, and this  
23 would be 119 Nevada 646, disposes of the ripeness  
24 issue. Not to mention the fact that the issue was not

1 raised in the briefing at any point prior to today.

2 Your Honor, secondly on the issue of what we  
3 were calling, and I think it's an interesting point and  
4 term and useful, the continuum. It was precisely --  
5 and I didn't use that word, I probably should have.  
6 But that's kind of the core of the issue before the  
7 Court with regard to the second portion of the  
8 definition of unfinished frame or receiver.

9 And the core question is, is I think you put  
10 your finger on it. Where along that continuum do we  
11 enter what I crudely call criminal land. There's been  
12 no answer to that in the statute. There was no answer  
13 to that in the opening brief of the defendants'. And  
14 there was no answer today that I could detect from  
15 Mr. Zunino. It isn't -- understandably. I'm not  
16 faulting him. It's entirely uncertain. Entirely  
17 unclear, and that if you will is the guts of our  
18 argument to the Court.

19 Finally, Your Honor, on the issue of a bond. I  
20 am a New York lawyer, and you know I'm here pro hac  
21 vice. But my understanding of a bond after all these  
22 years of practice across the country is that in this  
23 kind of a setting, the bond -- the purpose of a bond  
24 would be to protect against any damage that might ensue

1 to the party against whom the restraint is issued  
2 stemming from that restraint.

3 We can't see any harm to the State, palpable,  
4 discernible harm to the State, that could be quantified  
5 in money that would redound to the State if Your Honor  
6 were to issue the requested relief. We will abide by  
7 whatever ruling Your Honor makes, but our position  
8 is --

9 THE COURT: Left and right, restraining orders  
10 issued by judges have been declared void by our Supreme  
11 Court because there's no security.

12 MR. MCGUIRE: Your Honor, I am not for a moment  
13 suggesting otherwise or that Your Honor shouldn't issue  
14 some form of security. Our position is it should be  
15 nominal or close to nominal. I think that we have a  
16 constitutional right to file this lawsuit. And the  
17 State's costs in defending it I don't think should be  
18 the measure of what the bond should be, respectfully.  
19 But we do agree that a bond is in order. We just ask  
20 that it be nominal or close to nominal. Thank you,  
21 sir.

22 THE COURT: Okay.

23 All right. So, a couple of things here. How  
24 long before we can get this tried? Because it seems to

1 me that the issues are pretty straightforward. There  
2 would be some evidence. How much discovery would be  
3 required to get this thing tried? I would assume there  
4 would be some expert testimony.

5 MR. MCGUIRE: As plaintiff, we would like to  
6 proceed as expeditiously as you'll allow. We, at  
7 trial, probably would, based upon what I'm thinking  
8 today, would probably proffer an expert. Obviously,  
9 we'd be prepared to provide discovery as relevant to  
10 these claims. I'm not sure what it is. But we're  
11 ready to go, Your Honor. We'd like to move forward.

12 THE COURT: And what do you think, Mr. Zunino,  
13 from the State's perspective?

14 MR. ZUNINO: Your Honor, I don't know that we'd  
15 need a great deal, if any discovery from --

16 THE COURT: Well --

17 MR. ZUNINO: -- Polymer80. I think we need --  
18 we need a -- I think they have the burden obviously.  
19 So, they're going to have put up a witness. They can't  
20 just say these --

21 THE COURT: Yeah, I would think you would have  
22 some kind of rebuttal expert.

23 MR. ZUNINO: And I think we'd have a rebuttal  
24 expert, you know, to discuss the kind of terms and what

1 they mean, and what the, you know. So, but I don't  
2 anticipate it would take a great deal of time to  
3 prepare for trial and to get it on. You know?

4 THE COURT: Okay. All right.

5 Okay. So, clearly in Nevada when a criminal  
6 statute is reviewed by a court on due process grounds  
7 for facial invalidity because of the vagueness issues  
8 in relation to the statute the standard is enhanced.  
9 Flamingo Paradise Gaming made clear that in Nevada  
10 under the Nevada Constitution, the criminal statute has  
11 a heightened test unlike a civil statute. Where in a  
12 civil statute it can certainly be "as applied" in any  
13 particular case as long as something out there in the  
14 civil statute could be deemed constitutional. But in a  
15 criminal statute that's not the case.

16 In a criminal statute all that's required is  
17 preliminary showing for a preliminary injunction is the  
18 likelihood of success on the merits. And in this  
19 particular matter, based upon the definitions as  
20 provided for in AB 286, and most specifically  
21 Section six subsection nine, which amends NRS 202.253,  
22 the definition of -- it appears to this Court  
23 preliminarily that the definition of unfinished frame  
24 or receiver is vague based upon the terms and lack of

1 definition in the statute.

2 Which indicates under Nevada case law that  
3 there's a likelihood of success on the merits in  
4 relation to what in fact an unfinished frame or  
5 receiver means. What it is. And it could be subject  
6 to arbitrary or discriminatory enforcement based upon  
7 there's a likelihood of success on that issue based  
8 upon the continuity or continuum of levels of what is  
9 or is not mostly completed in relation to a frame or a  
10 receiver.

11 It is also unclear as to what the legislature  
12 meant by blank casting or machine body. But in  
13 relation to those terms, they appear to the Court to  
14 potentially be general manufacturing terms. Now, if  
15 they are general manufacturing terms and that's  
16 indicated in the legislative history -- nobody provided  
17 me any legislature history for the preliminary  
18 injunction. So, I have no idea what the legislature  
19 intended at all in relation to this. That may or may  
20 not be sufficiently vague.

21 The Court does not believe in relation to this  
22 preliminary injunction that a frame or receiver is  
23 so -- a frame or lower receiver is so unclear as to be  
24 vague. I think they're common terms in relation to



1 firearms. So, that in and of itself I don't believe is  
2 vague. But I believe unfinished frame or receiver is  
3 vague at this point. So, specifically that's my  
4 statement of specifics in relation to entering a  
5 preliminary injunction.

6 The Court believes there's a reasonable  
7 probability of success on the merits in relation to  
8 this matter. And also because of the current enactment  
9 of Section 3.5 of AB 286, which deals specifically with  
10 selling unfinished frames or receivers, the Court finds  
11 that clearly the business may be impacted. Their  
12 ability to mail and sell frames and receivers or offer  
13 them for sale in the State of Nevada will be impacted,  
14 so there's a substantial hardship on the parties, on  
15 Polymer80.

16 And the Court also finds that because of that  
17 hardship, Polymer80 has that standing because they  
18 would be unable to conduct business as they commonly  
19 have in the past. So, the Court finds that there is a  
20 probable -- probability of irreparable injury if they  
21 are unable to conduct business.

22 Court also finds that the legislature, you  
23 know, in relation to this, only used limited  
24 definitions from the Gun Control Act, and at this point

1 it is presumed by this Court, because they failed to  
2 include the others, that they did so purposely. Which  
3 created additional -- which potentially created  
4 additional vagary in the law.

5 I would also indicate that there is support  
6 that the possibility of a loss of business certainly  
7 could give rise to irreparable harm, which is not  
8 measurable in this particular case. The Court at this  
9 point, without further evidence, is unconvinced that  
10 the plaintiffs could just serialize these frames,  
11 whatever they are, as they defined it in the statute.  
12 By definition under federal law an unfinished frame or  
13 receiver is not a firearm. So, therefore, an  
14 unfinished frame or receiver, which is not a fire --  
15 well, all right.

16 First of all, unfinished frame or receiver is  
17 never defined in federal law either. There's no  
18 definition for unfinished frame or receiver. It's a  
19 firearm. It's a firearm or not a firearm. So, there's  
20 no requirement for anything other than a firearm to be  
21 serialized. And if it's not a "firearm", that is what  
22 is being proposed as an unfinished frame or receiver,  
23 by definition in the State of Nevada, it's not required  
24 under the federal law to be imprinted with a serial

1 number.

2 And if it was required to be imprinted with a  
3 serial number, they -- I'm sure they would have serial  
4 numbers on it or else they wouldn't be in compliance  
5 with the Gun Control Act.

6 The Court is going to order security in the  
7 amount of \$20,000 bond. The Court is going to enter  
8 its injunction in relation to Section 3.5 of AB 286 to  
9 the enforcement by the State of Nevada to that section.

10 The Court does not find at this point that  
11 Section 3 of AB 286 that because it does not become  
12 effective until January 1st, 2022, that there's any  
13 hardship imposed because it is not currently effective  
14 and no person -- any person can still possess,  
15 purchase, and transport, and receive the same. So, I  
16 am not issuing an injunction as to Section 3.

17 MR. MCGUIRE: Is that 3.1, Your Honor?

18 THE COURT: All right. It's three. All  
19 right --

20 MR. MCGUIRE: Section 3.

21 THE COURT: Section 3. And then it's one and  
22 two.

23 MR. MCGUIRE: Got it.

24 THE COURT: So, it's Section 3 of AB 286.

1 There is no section 3.1. So, it's Section 3.

2 MR. MCGUIRE: Got it.

3 THE COURT: Okay? Because at this point it's  
4 not effective. And it won't be effective until  
5 January 1st of next year. And it's this Court's intent  
6 to have this matter tried prior to that time.

7 In the event we can't do that, the parties will  
8 be granted leave to request an additional injunction as  
9 against that section if it becomes a necessity.

10 Court also notes that Sections 4 and Sections 5  
11 of AB 286 are not at issue. And Sections 4 and  
12 Sections 5 of the statute clearly makes it unlawful,  
13 illegal, and criminal in the State of Nevada to own or  
14 possess or assemble or manufacture a firearm without a  
15 serial number. Now, the status of those sections are  
16 not before the Court, but with very few exceptions as  
17 provided for in the statute, you might get a Polymer80  
18 frame or receiver.

19 But the fact of the matter is, you better not  
20 put it together because -- in the State of Nevada  
21 because if it doesn't have a serial number on it,  
22 you're in possession of it, it is going to be illegal.  
23 And that goes -- that is effective as of right now.  
24 So, Sections 4 and 5 -- oh, no. Five goes into effect

1 January 1st. But four is effective right now.

2 So, if any person manufactures or assembles a  
3 firearm right now without a serial number on it in the  
4 State of Nevada, they are subject to the criminal  
5 penalties that are set forth in the statute. And I  
6 would indicate that assemble and manufacture are  
7 defined in that statute.

8 I'm surprised that they held off -- well, I'm  
9 not really surprised that they held off until January  
10 1st first on Section 5. But the fact of the matter is,  
11 that's the possession statute. I guess it gives people  
12 the ability to get rid of their unserialized weapons  
13 prior to January 1st of 2022, before it becomes  
14 illegal, and simple possession becomes a gross  
15 misdemeanor and then a felony.

16 So, this injunction only relates to Section  
17 3.5. The State is prohibited from enforcing the  
18 statute, and all defendants are prohibited from  
19 enforcing the statute pending final determination by  
20 the Court. Okay. So, that'll be the order.

21 All right. So, what, two days to try? Maybe  
22 three? What do you think?

23 MR. MCGUIRE: We'd say three to four days, Your  
24 Honor.

1 MR. ZUNINO: Three sounds adequate to me.

2 THE COURT: All right. So, I can do it  
3 November 30th through December 3rd.

4 MR. MCGUIRE: Is that November 30th through  
5 December 3rd, Your Honor, did you say?

6 THE COURT: Yes. Or we can do it the 21st  
7 through the 23rd. But does everybody want to be here  
8 right before Christmas Eve?

9 MR. MCGUIRE: We're clear from the 30th to the  
10 3rd, Your Honor, if that's convenient for you.

11 MR. ZUNINO: Your Honor, I prefer that window  
12 as well.

13 THE COURT: All right. So, we'll set it for  
14 trial the 30th through the 3rd. Discovery opens as of  
15 right now. We're not going to hold a case management  
16 conference. I'm going to waive your necessity to do  
17 early case conference in this particular matter.

18 Discovery will open right away. Any 16.1  
19 disclosures will be provided to the parties immediately  
20 within the next ten days.

21 We're going to have expert disclosures, initial  
22 expert disclosures will be on or before August 20th.  
23 Rebuttal disclosures on or before September 20th. Just  
24 wanted to make sure it wasn't on a weekend. Discovery

1 will close November 1st.

2 Any motion in limine's will be to the Court by  
3 November 8th. Trial statements will be due to the  
4 Court pursuant to Third Judicial District Court Rule.  
5 And I will order that the parties meet and confer prior  
6 to that time to resolve any evidentiary issues prior  
7 to, and I will provide that in my order.

8 I don't believe that this is a subject for  
9 settlement conference, so the Court's not going to  
10 order one. It's a legislative enactment. I don't  
11 believe that the attorney general has any authority to  
12 settle this matter. Okay?

13 MR. MCGUIRE: If the parties are inclined to  
14 file a motion for summary judgment, Your Honor,  
15 deadline for that?

16 THE COURT: I'll put it on the 8th too.  
17 Because it's a -- it's a complete legal issue. But,  
18 you know -- all right.

19 So, I'm going to hear the evidence on November  
20 30th to December 3rd. So, you know -- you know, any  
21 other evidence that may exist in this particular  
22 matter. So, you know, the fact of the matter is, you  
23 know, doing -- because of the timelines that we have  
24 here and the fact that we're going to get this thing

1     tried in five months, even if you file a motion for  
2     summary judgment, I'd probably consolidate it with the  
3     trial. So, I just want to say, I would likely  
4     consolidate it with the trial.

5             MR. MCGUIRE: Understood.

6             THE COURT: So, you know, I mean, everybody  
7     indicated to this Court that they could do it in an  
8     expedited time frame, and that's what we're going to  
9     do, so.

10            So, this is what I'm -- this is what I'll do.  
11     Mr. McGuire, Mr. Johnston, you folks draft the  
12     preliminary injunction order for the Court, run it by  
13     Mr. Zunino, and provide it to the Court for signature.

14            MR. MCGUIRE: By when, Your Honor?

15            THE COURT: As soon as possible. Because if  
16     you don't have the order in your hand.

17            MR. MCGUIRE: We want to make sure I can get  
18     the transcript to conform Your Honor's remarks with  
19     what we're going to present you to. That's why I was  
20     asking.

21            THE COURT: As soon as you can get it to me.  
22     My oral pronouncement for the -- for the -- for the  
23     injunction is as good as an oral pronouncement on an  
24     injunction, which is error.



1 MR. MCGUIRE: Understood.

2 THE COURT: So, it needs to be in written  
3 format. It needs to have the specifics in it. It  
4 needs to indicate the factual findings of the Court and  
5 bond that's provided. You need to also post that bond  
6 within the next five days.

7 MR. MCGUIRE: Your Honor, would that be five  
8 days from today or five days after the issuance of the  
9 order?

10 THE COURT: Five days from today.

11 I won't issue the order without the bond being  
12 -- within five days.

13 MR. JOHNSTON: And just, Your Honor, is it  
14 still acceptable to deposit -- for Polymer80 to deposit  
15 cash with the Court.

16 THE COURT: Yeah. Yeah, cash bond is fine.

17 MR. JOHNSTON: Okay.

18 THE COURT: Cash bond or --

19 MR. JOHNSTON: That just may be easier than  
20 trying to find a third party to issue.

21 THE COURT: Yeah, cash -- the cash bond is  
22 fine. Yeah, cash bond. We'll just put it in our trust  
23 account. You don't get any interest on it though.

24 MR. MCGUIRE: Understood.

1           THE COURT: All right. What we will do is  
2 we'll set a status conference -- I have trial after  
3 trial after trial. All right.

4           We'll set it status conference on October 25th  
5 at 1:30 to see if everything is in line at that point.  
6 So, if you want to, we can do the status by Zoom.  
7 Which is more for me to know where you guys are at and  
8 make sure there's nothing holding up anything. You  
9 know? Because if we have to juggle something around, I  
10 want to know.

11          MR. MCGUIRE: Yes, sir.

12          THE COURT: And discovery will close that  
13 next -- that following Monday. So, probably the best  
14 time to do it. Okay?

15          So, October 25th at 1:30. We'll do a status  
16 hearing. And like I said, if you want to do that by  
17 Zoom, that would be fine, so.

18          MR. MCGUIRE: Would the Court like these  
19 scheduling deadlines in the same order that grants the  
20 preliminary injunction?

21          THE COURT: What?

22          MR. MCGUIRE: Would you like these deadlines  
23 and schedules set forth in the same order that grants  
24 the preliminary injunction?

1           THE COURT: No. I'll do a separate scheduling  
2 order. And that will probably get issued by this  
3 afternoon, the scheduling order. Okay?

4           All right. So, any other questions?

5           MR. MCGUIRE: None from the plaintiff, Your  
6 Honor. Thank you.

7           MR. ZUNINO: I do have a question. I mean,  
8 will the -- will the injunction apply to everybody or  
9 does it apply to enforcement as to --

10          THE COURT: Because it's a facial challenge,  
11 it's going to apply to everybody.

12          MR. ZUNINO: Okay.

13          THE COURT: So, we will -- like I said, you  
14 know, my intention and I would very much like to get  
15 this thing done as fast as possible. So, and one way  
16 or another, by either side, however it winds up at the  
17 end of day, you're only talking about five months of  
18 non-enforcement potentially of Section 3.5, Mr. Zunino.  
19 I don't think that that's a huge obligation by the  
20 State at this point. I think that the public interest  
21 weighs in favor of delaying.

22          And I don't know why the legislature made this  
23 specific section or some of the sections immediately  
24 active on passage and approval. I think -- you know, I

1 mean, so delayed enforcement of 3.5 for five months, I  
2 don't see is overly burdensome weighing the public  
3 interests, so. And like I said, we will get this thing  
4 tried, you know, as soon as possible.

5 And either way it goes at the time of trial,  
6 you'll have it to the Supreme Court by January if  
7 necessary by either your party. Because I would  
8 guess -- I would guess probably both of you would  
9 appeal one way or another. You now, what I'm saying?  
10 Which is -- which is fine. You know, I mean, like I  
11 said, I mean, this Court's used to getting appealed.  
12 So, not used to getting reversed much, but used to  
13 getting appealed. Okay?

14 All right. So, if anybody has any other  
15 questions, I'd be more than happy to address them.

16 MR. ZUNINO: No, Your Honor.

17 MR. MCGUIRE: Nothing from us.

18 THE COURT: All right. So, the Court's in  
19 recess. Those will be the orders. Thank you.

20

21 (End of Proceedings.)

22

23

\* \* \* \* \*

24



FILED

1 Case No. 21-CV-00690

2021 JUL 16 PM 2:41

2 Dept. No. 1

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

NEVADA JUDICIAL  
CLERK ADMINISTRATION  
THIRD JUDICIAL DISTRICT

*Andrea Andersen*

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,

17 Defendants.

19 **ORDER GRANTING PRELIMINARY INJUNCTION**

20 This Court, having reviewed and considered Plaintiff Polymer80, Inc.'s (i) *Verified*  
21 *Complaint*, (ii) Plaintiff Polymer80, Inc.'s *Motion for Temporary Restraining Order and Preliminary*  
22 *Injunction*, (iii) *Defendants' Opposition to Application for Temporary Restraining Order*, and (iv) the  
23 *Reply Memorandum of Points and Authorities of Polymer80, Inc. in Further Support of Its Motion*  
24 *for Temporary Restraining Order*, and having considered the exhibits thereto and the arguments  
25 therein, and having conducted a hearing on July 14, 2021 on Plaintiff Polymer80, Inc.'s *Motion for*  
26 *Temporary Restraining Order and Preliminary Injunction* and having heard oral argument from  
27 counsel for Plaintiff Polymer80, Inc. and Defendants, and good cause appearing,  
28

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

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

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

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

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

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

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



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

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

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

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

28

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

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

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

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

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

24  
25   
26 JOHN P. SCHLÉGELMILCH  
27 DISTRICT JUDGE  
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CASE NO.: 21-CV-00690  
DEPT. NO.: 1

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TANYA SCIFIRINE  
COURT ADMINISTRATOR  
JUDICIAL DISTRICT

IN THE THIRD JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF LYON


*Bayley Baptist*

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.

**DEFENDANTS' ANSWER TO PLAINTIFF'S COMPLAINT**

Defendants Stephen Sisolak, Governor of Nevada, Aaron Ford, Attorney General of Nevada, George Togliatti, Director of the Nevada Department of Public Safety, Mindy McKay, Administrator of the Records, Communications, and Compliance Division of the Nevada Department of Public Safety (Defendants), by and through counsel, hereby submit their Answer to Plaintiff's Complaint.

DATED this 23<sup>rd</sup> day of September 2021.

AARON D. FORD  
Attorney General  
  
By:   
GREGORY L. ZUNINO, Bar #4805  
Deputy Solicitor General  
100 N. Carson Street  
Carson City, Nevada 89701  
(775) 684-1237  
gzunino@ag.nv.gov  
*Attorneys for Defendants*

I.

1  
2 1. Defendants admit that Plaintiff seeks the various forms of relief that Plaintiff  
3 has outlined in Paragraph 1. Defendants deny that Plaintiff is entitled to any such relief.

4 2. The Nevada Constitution speaks for itself, such that no response is required  
5 to Paragraph 2 of the Complaint.

6 3. Paragraph 3 contains mere characterizations, legal contentions, and  
7 conclusions to which no response is required.

8 4. Paragraph 4 contains mere characterizations, legal contentions, and  
9 conclusions to which no response is required.

10 5. Paragraph 5 contains mere characterizations, legal contentions, and  
11 conclusions to which no response is required. To the extent a response is required  
12 concerning AB 286's alleged constitutional infirmities, Defendants deny the allegations.

13 6. Paragraph 6 contains mere characterizations, legal contentions, and  
14 conclusions to which no response is required. To the extent a response is required  
15 concerning AB 286's alleged constitutional infirmities, Defendants deny the allegations.

16 7. AB 286 speaks for itself, such that no response is required to Paragraph 7 of  
17 the Complaint.

18 8. AB 286 speaks for itself, such that no response is required to Paragraph 8 of  
19 the Complaint. To the extent a response is required concerning AB 286's alleged  
20 constitutional infirmities, Defendants deny the allegations.

21 9. Paragraph 9 contains mere characterizations, legal contentions, and  
22 conclusions to which no response is required. To the extent a response is required,  
23 Defendants deny the allegations.

24 10. Defendants deny the allegations in Paragraph 10.

25 **PARTIES AND JURISDICTION**

26 11. Defendants admit the allegation in Paragraph 11.

27 12. Defendants admit the allegations in Paragraph 12.

28 13. Defendants admit the allegations in Paragraph 13.

1 14. Defendants admit the allegations in Paragraph 14.

2 15. Defendants admit the allegations in Paragraph 15.

3 16. Defendants deny that the Court has subject matter jurisdiction over the  
4 Complaint, as Plaintiff does not have standing to maintain its “facial” challenge to AB  
5 286. More specifically, Plaintiff cannot satisfactorily frame the issues relevant to AB  
6 286’s general applicability because Plaintiff is not a proper representative of the industry  
7 and market participants whom Plaintiff seeks to represent via its facial challenge to the  
8 law. *See, e.g., Get Outdoors II, LLC v. City of San Diego*, 506 F.3d 886, 891 (9th Cir. 2007)  
9 (holding that principles of standing require a showing that plaintiff has suffered a  
10 constitutional in its own right and can satisfactorily frame the issues on behalf of non-  
11 parties).

12 17. As noted above, Defendants deny that the Court has subject matter over the  
13 Complaint. For this reason, Defendants deny that venue is proper in Lyon County.

14 **I. AB 286.**

15 18. Defendants admit the allegation in Paragraph 18.

16 19. AB 286 speaks for itself, such that no response is required to Paragraph 19 of  
17 the Complaint.

18 20. Defendants admit that AB 286 amended chapter 202 of NRS.

19 **II. AB 286 Section 3**

20 21 AB 286 speaks for itself, such that no response is required to Paragraph 21 of  
21 the Complaint.

22 22. AB 286 speaks for itself, such that no response is required to Paragraph 22 of  
23 the Complaint. To the extent a response is required concerning AB 286’s alleged  
24 constitutional infirmities, Defendants deny the allegations.

25 **III. AB 285 Section 3.5**

26 23. AB 286 speaks for itself, such that no response is required to Paragraph 23 of  
27 the Complaint.

28 ///



1 35. Defendants are without sufficient information or knowledge to form a belief  
2 as to the truth or falsity of the allegations in Paragraph 35.

3 36. Defendants are without sufficient information or knowledge to form a belief  
4 as to the truth or falsity of the allegations in Paragraph 36.

5 37. Defendants are without sufficient information or knowledge to form a belief  
6 as to the truth or falsity of the allegations in Paragraph 37.

7 38. Paragraph 38 contains mere characterizations, legal contentions, and  
8 conclusions to which no response is required. To the extent a response is required,  
9 Defendants deny the allegations.

10 39. Paragraph 39 contains mere characterizations, legal contentions, and  
11 conclusions to which no response is required. To the extent a response is required,  
12 Defendants deny the allegations.

13 40. Paragraph 40 contains mere characterizations, legal contentions, and  
14 conclusions to which no response is required. To the extent a response is required,  
15 Defendant denies the allegations.

16 41. Paragraph 41 contains mere characterizations, legal contentions, and  
17 conclusions to which no response is required. To the extent a response is required,  
18 Defendants deny the allegations.

19 **CAUSES OF ACTION**

20 **COUNT I**

21 42. Defendants repeat their above responses as they pertain to Paragraphs 1  
22 through 41 of the Complaint.

23 43. NRS 30.040 speaks for itself, such that no response is required to Paragraph  
24 43 of the Complaint.

25 44. Paragraph 44 contains mere characterizations, legal contentions, and  
26 conclusions to which no response is required. To the extent a response is required,  
27 Defendants deny the allegations.

28 45. Defendants admit Plaintiff engages in conduct that is proscribed by AB 286.

1           46. Paragraph 46 contains mere characterizations, legal contentions, and  
2 conclusions to which no response is required. To the extent a response is required  
3 concerning AB 286's alleged constitutional infirmities, Defendants deny the allegations.

4           47. Paragraph 47 contains mere characterizations, legal contentions, and  
5 conclusions to which no response is required. To the extent a response is required  
6 concerning AB 286's alleged constitutional infirmities, Defendants deny the allegations.

7           48. AB 286 speaks for itself, such that no response is required to Paragraph 48 of  
8 the Complaint. To the extent a response is required concerning AB 286's alleged  
9 constitutional infirmities, Defendants deny the allegations.

10          49. AB 286 speaks for itself, such that no response is required to Paragraph 49 of  
11 the Complaint. To the extent a response is required concerning AB 286's alleged  
12 constitutional infirmities, Defendants deny the allegations.

13          50. Paragraph 50 contains mere characterizations, legal contentions, and  
14 conclusions to which no response is required. To the extent a response is required,  
15 Defendants deny the allegations.

16          51. Paragraph 51 contains mere characterizations, legal contentions, and  
17 conclusions to which no response is required. To the extent a response is required,  
18 Defendants deny the allegations.

19          52. Paragraph 52 contains mere characterizations, legal contentions, and  
20 conclusions to which no response is required. To the extent a response is required,  
21 Defendants deny the allegations.

22          53. Paragraph 53 contains mere characterizations, legal contentions, and  
23 conclusions to which no response is required. To the extent a response is required,  
24 Defendants deny the allegations.

25          54. Defendants admit that absolute precision in drafting statutes is not required  
26 to withstand constitutional scrutiny. Defendants further admit that criminal statutes  
27 must generally delineate the boundaries of unlawful conduct. Defendants deny the  
28 remaining allegations in Paragraph 54.



1 55. Paragraph 55 contains mere characterizations, legal contentions, and  
2 conclusions to which no response is required. To the extent a response is required,  
3 Defendants deny the allegations.

4 56. Paragraph 56 contains mere characterizations, legal contentions, and  
5 conclusions to which no response is required. To the extent a response is required,  
6 Defendants deny the allegations.

7 57. Paragraph 57 contains mere characterizations, legal contentions, and  
8 conclusions to which no response is required. To the extent a response is required,  
9 Defendants deny the allegations.

10 CAUSES OF ACTION

11 COUNT II

12 58. Defendants repeat their above responses as they pertain to Paragraphs 1  
13 through 57 of the Complaint.

14 59. NRS 33.010 speaks for itself, such that no response is required to Paragraph  
15 59 of the Complaint.

16 60. Paragraph 60 contains mere characterizations, legal contentions, and  
17 conclusions to which no response is required. To the extent a response is required,  
18 Defendant denies the allegations.

19 61. Paragraph 61 contains mere characterizations, legal contentions, and  
20 conclusions to which no response is required. To the extent a response is required,  
21 Defendant denies the allegations.

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**AFFIRMATION**

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

DATED this 23rd day of September, 2021

AARON D. FORD  
Attorney General

By:



GREGORY L. ZUNINO (Bar No. 4805)  
Deputy Solicitor General  
100 N. Carson Street  
Carson City, Nevada 89701  
Telephone: (775) 684-1237  
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[gzunino@ag.nv.gov](mailto:gzunino@ag.nv.gov)


*Attorneys for Defendant*

CERTIFICATE OF SERVICE

I, Caitie Collins, hereby certify that I am an employee of the State of Nevada, Office of the Attorney General, and that on September 23, 2021, I served the foregoing document, by causing a true and correct copy thereof to be served via U.S. Mail, addressed to the following:

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

*Attorneys for Polymer80, Inc.*

  
\_\_\_\_\_  
State of Nevada  
Office of the Attorney General

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1 CASE NO.: 21-CV-00690

2 DEPT. NO.: 1

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4

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

5

*Lindsey McCabe* DEPUTY

6 POLYMER80, INC.

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Plaintiff,

8

vs.

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10

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,

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Defendants.

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**DEFENDANTS' MOTION FOR SUMMARY JUDGMENT**

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Defendants Stephen Sisolak, Governor of Nevada, Aaron Ford, Attorney General of Nevada, George Togliatti, Director of the Nevada Department of Public Safety, Mindy McKay, Administrator of the Records, Communications, and Compliance Division of the Nevada Department of Public Safety (collectively "Defendants"), move for summary judgment under NRCP 56(a).

21

**MEMORANDUM OF POINTS AND AUTHORITIES**

22

**I. INTRODUCTION**

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This Court should grant Defendants' motion for summary judgment. At the heart of Polymer80's complaint is an irreconcilable contradiction that dooms its procedural due process vagueness challenge. Polymer80 asserts in its verified complaint that it knows that AB 286 is specifically designed "to criminalize [its] business," but Polymer80 does not know what AB 286 means. No authority permits a vagueness challenge by a plaintiff "who has engaged in conduct that is clearly proscribed [to] complain of the vagueness of the law

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TANYA SCHEIDT  
CLERK, ADMINISTRATION  
THIRD JUDICIAL DISTRICT

1 as applied to the conduct of others.” *Sheriff of Washoe Cty. v. Martin*, 99 Nev. 336, 340, 662  
2 P.2d 634, 637 (1983) (citing *Village of Hoffman Estates v. Flipside Hoffman Estates, Inc.*,  
3 455 U.S. 489, 495 (1982)).

4 Polymer80 complains that words within AB 286 are not defined such “blank, casting,  
5 or machined body.” Polymer80 gets nowhere with this argument because its person most  
6 knowledgeable testified that it knows these terms are used in its industry, Polymer80  
7 knows their common meaning, and Polymer80 uses them, as is clear by their  
8 communications with the federal government. Polymer80’s assertion that AB 286 uses  
9 adjectives such as “most” and “major” is also a non-starter under a vagueness analysis.  
10 These words have ordinary meanings to guide enforcement and no precedent requires  
11 mathematical precision. *Nelson v. State*, 123 Nev. 534, 540–41, 170 P.3d 517, 522 (2007).

12 Finally, Polymer80 never grapples with AB 286’s scienter requirement. Laws that  
13 require specific intent to produce a prohibited result provide sufficient notice and protect  
14 against arbitrary enforcement.

## 15 **II. LEGAL BACKGROUND: ASSEMBLY BILL 286**

16 Nevada’s legislature passed AB 286. Several of its sections are relevant here.

17 Section 3.5(1) provides:

- 18 1. A person shall not sell, offer to sell or transfer an  
19 unfinished frame or receiver unless:
  - 20 (a) The person is:
    - 21 (1) A firearms importer or manufacturer; and
    - 22 (2) The recipient of the unfinished frame or receiver  
23 is a firearms importer or manufacturer; or
  - 24 (b) The unfinished frame or receiver is required by  
25 federal law to be imprinted with a serial number  
26 issued by an importer or manufacturer and the  
27 unfinished frame or receiver has been imprinted with  
28 the serial number.

26 **Ex. A, AB 286.** Section 3(1) contains a similar prohibition against the “possession,  
27 purchase, transport or recei[pt] [of] and unfinished frame or receiver.” *Id.*, §3(1). A first  
28

1 offense of sections 3 or 3.5 is a gross misdemeanor. *Id.*, §§3(2)(a), 3.5(2)(a). A second or  
2 subsequent offense is a category D felony. *Id.*, §§3(2)(b), 3.5(2)(b).

3 The term “unfinished frame or receiver” is defined in section 9. The definition  
4 provides:

5 9. “Unfinished frame or receiver” means a blank, a casting  
6 or machined body that is intended to be turned into the frame or  
7 lower receiver of a firearm with additional machining and which  
8 has been formed or machined to the point at which most of the  
9 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-controlled cavity area of the blank,  
casting or machined body is still completely sold and  
unmachined.

10 *Id.*, §9.

### 11 III. PROCEDURAL HISTORY

#### 12 A. Plaintiff’s Allegations and Cause of Action

13 Polymer80 challenges an Assembly bill, AB 286, in this action. **Ex. B**, Complaint  
14 at ¶1. Polymer80’s sole cause of action is based on Nevada’s procedural due process clause.  
15 *Id.* at ¶¶2-3. Polymer80 alleges that neither it nor a person of ordinary intelligence can  
16 determine what AB 286 means. *Id.* at ¶6.

17 Polymer80’s gripe with AB 286 concentrates on the definition of unfinished frame or  
18 receiver in section 9. It complains that “frame, receiver, lower receiver” are not defined in  
19 AB 286. *Id.* at ¶26. Plaintiff next asserts that “blank, casting, and machined body” are  
20 also not defined. *Id.* at ¶27. Finally, Plaintiff alleges that the phrase “major machining  
21 operations have been completed” is not defined. *Id.* at ¶28.

#### 22 B. This Court’s Preliminary Injunction Order

23 This Court granted in part Polymer80’s motion for preliminary injunction. **Ex. C**.  
24 The Court enjoined section 3.5 of AB 286. *Id.* at 5:13-15. The Court held that the term  
25 “unfinished frame or receiver” is impermissibly vague. *Id.* at 2:25-26. The Court ruled that  
26 it would not use federal law to “fill holes” in AB 286. *Id.* at 3:18-22.

27 ...

28 ...

1 **IV. STATEMENT OF UNDISPUTED MATERIAL FACTS**

2 **1. Admissions in Plaintiff's Complaint Regarding Itself and its Customers**

3 Polymer80 filed a verified complaint. **Ex. B** at 16.<sup>1</sup> Polymer80 describes itself as a  
4 "major commercial entity." Compl. ¶6. Polymer80 alleges it is a "leading manufacturer of  
5 the innovative gun-related products, components, and aftermarket accessories." *Id.* at ¶33.  
6 Polymer80 sells products to customers to allow them to "participate in the build process" of  
7 making firearms. *Id.* at ¶34.

8 Polymer80 further writes that it is the target of AB 286. Polymer writes, "[t]ellingly,  
9 Nevada legislators and officials have made clear that the purpose of AB 286 is to  
10 criminalize Polymer80's business." *Id.* at ¶36. Polymer80 then admits that "AB 286 was  
11 and is designed by its drafters – and will be undoubtedly be used by its enforcers – with  
12 the Company's product in the forefront of their minds." *Id.* at ¶38.

13 In short, Polymer80 (i) is a sophisticated company, (ii) it alleges it was the target of  
14 AB 286, (iii) Polymer80's customer base buys its products to make firearms, and (iv)  
15 Polymer80 knows its products are subject to AB 286.

16 **2. Polymer80's Customers Can Turn its Products into Guns in 30 Minutes**

17 Polymer80's person most knowledgeable, Daniel McCalmon, was deposed. After  
18 testifying that Polymer80 did not know what the term 80 percent defined as a company,  
19 Mr. McCalmon testified as follows:

20 Q. Is 80 percent a term that Polmer80 uses?

21 A. Yes.

22 Q. What does Polymer80 assert that 80 percent means when  
23 it uses that term?

24 A. It asserts that it means the product in question is no more  
25 or less than 80 percent completed, meaning there is an  
additional process relative to time, money, knowledge,  
experience, tools required to finish the product.

26  
27 <sup>1</sup> Factual allegations in a verified complaint are binding judicial admissions that  
28 withdraw a fact from contention. *Keller v. U.S.*, 58 U.S. 1194, 1199 n.8 (7th Cir. 1995)  
(citing Michael H. Graham, *Federal Practice and Procedure: Evidence* § 6726 (Interim  
Edition); see also John William Strong, *McCormick on Evidence* § 254, at 142 (1992)).

1 **Ex. D**, Transcript of Polmer80's PMK, 63:1-17.

2 Mr. McCalmon then testified how long it may take a Polymer80 customer to build a  
3 firearm with Polymer80's purchased product:

4 Q. What are those estimates obtained from customers?

5 A. It actually varies quiet greatly. We have had some people  
6 say it takes them as short as 30 minutes. Others as long  
as three to four hours.

7 *Id.* at 94:5-9. The time to build the gun using Polymer80's product may vary based on the  
8 customer's skill, time, and resources. *Id.* at 94:10-19.

9 **3. AB 286 Uses Terms Common in Polymer80's Industry**

10 Polymer80 has used many of the terms it now says are vague to describe its own  
11 products. For example, Polymer80's counsel in a letter to the Bureau of Alcohol, Tobacco,  
12 Firearms and Explosives used the terms "receiver blanks," "casting," "lower receiver  
13 blank," "un-machined," and "machined," and "machine work." **Ex. E**, September 4, 2014  
14 Letter.<sup>2</sup> Polymer80 repeatedly used these terms in similar letters to ATF. *See Ex. F.*

15 In another letter, Polymer80 writes that many of the words it now disputes are  
16 understood by reference to "ordinary nomenclature." The term "frame or receiver" means  
17 "the finished part which is capable of being assembled with other parts to put together a  
18 firearm." **Ex. G** at ATF0249 (quoting Glossary of the Association of Firearm and Toolmark  
19 Examiners (2nd ed. 1985), 111.)). Further "machining" is synonymous with fabricating by  
20 drilling or milling. *Id.* at ATF0249. Polymer80 then listed the "machining operations" that  
21 were not yet completed in its product. *Id.* at ATF0251. Polymer80 classified these  
22 "machining operations" as "critical." *Id.*

23 In its deposition, Polymer80 concedes that the terms are used both by ATF and those  
24 in its industry. Mr. McCalmon testified that the terms unfinished frames and receivers  
25 are synonymous. They are "[i]ncapable of accepting additional components to be completed  
26 into a functioning firearm." **Ex. D** at 58:22-59:3. Polymer80's understanding is that the

27 \_\_\_\_\_  
28 <sup>2</sup> Mr. Davis was acting as Polmer80's attorney when he submitted this and other  
letters to ATF and had authority to do so. **Ex. D**, 81:1-21.



1 terms are meant to have the same definition under Nevada law. *Id.* at 59:4-7. Mr.  
2 McCalmon testified that he had an understanding as to how the term blank was used in  
3 the accessories industry. *Id.* at 64:9-13. The term blank is used in the accessories industry  
4 to describe “an unfinished frame or receiver.” *Id.* at 64:12-13. Mr. McCalmon then testified  
5 that he knew that the terms casting and machined body were used synonymously by the  
6 ATF under federal law. *Id.* at 66:3-24. He testified that he had no reason to believe that  
7 the terms machined body and casting meant something different in Nevada law as  
8 compared to federal law. *Id.* at 66:3-67:3.

## 9 V. LEGAL STANDARDS

10 Summary judgment is warranted “when the pleadings, depositions, answers to  
11 interrogatories, admissions, and affidavits, if any, that are properly before the court  
12 demonstrate that no genuine issue of material fact exists, and the moving party is entitled  
13 to judgment as a matter of law.” *See Cuzze v. Univ. & Cmty. Coll. Sys. of Nev.*, 123 Nev.  
14 598, 602–03, 172 P.3d 131, 134 (2007).

15 How each party meets its burden of production depends on who has the burden of  
16 persuasion on the claim at trial. *Id.* “[I]f the nonmoving party will bear the burden of  
17 persuasion at trial, the party moving for summary judgment may satisfy the [summary  
18 judgment standard] by ... pointing out ... that there is an absence of evidence to support the  
19 nonmoving party's case.” *Id.*

20 “The constitutionality of a statute is a question of law.” *Cornella v. Justice Court*,  
21 132 Nev. 587, 591, 377 P.3d 97, 100 (2016). “Statutes are presumed to be valid, and the  
22 burden is on the challenging party to demonstrate that a statute is unconstitutional.” *Id.*  
23 With these principles in play, Polymer80’s vagueness argument fails for several reasons.

## 24 VI. LEGAL DISCUSSION

### 25 A. Polymer80 Engages in Conduct “clearly proscribed” by AB 286

26 Precedent forecloses Polymer80’s procedural due process vagueness claim. The  
27 vagueness doctrine holds that “[a] conviction fails to comport with due process if the statute  
28 under which it is obtained fails to provide a person of ordinary intelligence fair notice of

1 what is prohibited, or is so standardless that it authorizes or encourages seriously  
2 discriminatory enforcement.” *Ford v. State*, 127 Nev. 608, 612, 262 P.3d 1123, 1125 (2011)  
3 (quoting *United States v. Williams*, 553 U.S. 285, 304 (2008)).

4 Polymer80 contends throughout its complaint that AB 286 does not provide ordinary  
5 persons sufficient notice of the prohibited conduct. Ex. B, ¶¶3, 46, and 51-54. But  
6 Polymer80’s vagueness argument cannot be built on the back of others where Polymer80’s  
7 conduct is clearly proscribed by AB 286. *Martin*, 99 Nev. at 340, 662 P.2d at 637.  
8 Polymer80’s conduct is clearly proscribed and it knows it. Polymer80 in its verified  
9 complaint alleges the Legislature targeted it with the passage of AB 286. Ex. B, ¶36-38.  
10 Polymer80 also asserted that AB 286 was drafted with its products in mind. *Id.* Polymer80  
11 cannot have it both ways. Polymer80 cannot gripe about being the target of AB 286 and  
12 then complain it does not know what AB 286 means.

13 Polymer80’s testimony in its deposition that it does not know the meaning of words  
14 used in AB 286 such as receiver, blank, machined body, and casting is irrelevant. *See, e.g.*,  
15 Ex. D at 56:16-68-6. First, this testimony is belied by Polymer80’s letters to ATF. Exs. E-  
16 G. Second, Polymer80 cannot escape summary judgment by pleading its own ignorance.  
17 The test, even under the higher standard applicable to criminal laws, is whether vagueness  
18 so permeates the text that it would be void in most circumstances. *Flamingo Paradise*  
19 *Gaming, LLC v. Chanos*, 125 Nev. 502, 513, 217 P.3d 546, 554 (2009).

20 Polymer80’s vagueness argument fails under this objective standard. Polymer80 in  
21 its deposition confirmed it knows how receiver, blank, machined body, and casting are used  
22 in its industry. Ex. D at 58:22-59:3, 59:4-7, 64:9-13, and 66:3-24. Further, it makes no  
23 difference to a vagueness analysis that section 9 of AB 286 did not incorporate the Gun  
24 Control Act by reference. As Polymer80 testified, ATF’s use of these terms in its regulation  
25 has resulted in their common use in the industry where Polymer80 operates. Polymer80  
26 cannot avoid summary judgment by feigning ignorance of them.

27 Finally, AB 286 has a scienter requirement. Criminal laws requiring specific intent  
28 to produce a prohibited result may avoid vagueness, both by giving the defendant notice of

1 what is prohibited and by affording adequate law enforcement standards. *Ford*, 127 Nev.  
2 at 621, 262 P.3d at 1132 (citing *City of Las Vegas v. District Court (Krampe)*, 122 Nev. 1041,  
3 1051, 146 P.3d 240, 247 (2006)). Section 9 of AB 286 in its definition of unfinished frame  
4 or receiver requires the intent to turn the blank, casting or machined body into a firearm.  
5 **Ex. A.** Whether an entity such as Polymer80 had the requisite specific intent to violate AB  
6 286 is a question of fact in a possible, future enforcement action, not reason to ditch AB 286  
7 on vagueness grounds.

8 **B. There is No Danger of Arbitrary Enforcement Against Polymer80**

9 Polymer80's burden is to establish a clear showing of AB 286's invalidity. *Silvar v.*  
10 *Eighth Jud. Dist. Ct.*, 122 Nev. 289, 292, 129 P.3d 682, 684 (2006). Polymer80 accordingly  
11 has the heavy burden to show that AB 286 is so vague that it lacks sufficient standards  
12 and encourages arbitrary enforcement. *Silvar*, 122 Nev. at 293, 129 P.3d at 685. Statutes  
13 like AB 286 only lack sufficient standards where they would allow "police, prosecutors, and  
14 juries to 'pursue their personal predilections.'" *Id.* (quoting *Kolender v. Lawson*, 461 U.S.  
15 352, 358 (1983)). Nothing in AB 286 even approaches that threshold.

16 The lack of statutory definitions for such adjectives such as "major" or "most" is not  
17 a reason to strike down AB 286 on vagueness grounds. The common dictionary definitions  
18 give sufficient standards to guide enforcement and are sufficiently definite to guide  
19 ordinary people who intend to build firearms. The word "most" when used as an adjective,  
20 such as in section 9 of AB 286, means "greatest in quantity, extent or degree" or "the  
21 majority of." *The New Oxford American Dictionary*, 2nd Ed. 2005. The word "major" when  
22 used as an adjective means as "important, serious, or significant." *Id.* Because these words  
23 have plain, ordinary meaning they give sufficient notice to persons of ordinary intelligence  
24 and protect against arbitrary enforcement. *Ford*, 127 Nev. at 622, 262 P.3d at 1132.

25 The fact that the legislature in crafting AB 286 did not use a mathematical  
26 percentage of completion such as 51% or use a word favored by Polymer80 such as "critical"  
27 instead of the word it did use, major, is of no moment. First, mathematical precision is not  
28 required. *State v. Castaneda*, 126 Nev. 478, 482, 245 P.3d 550, 553 (2010). Second, the fact

1 that a different, synonymous adjective could have been used by the legislature does not  
2 make a statute's enforcement wholly subjective. If anything, Polymer80 is really arguing  
3 that it may be a close case whether the product sold by Polymer80 was not at the stage  
4 where "most of the major machining operations have been completed." Ex. A. But close  
5 cases do not pose a vagueness problem because they are addressed by the "requirement of  
6 proof beyond a reasonable doubt." *U.S. v. Williams*, 553 U.S. 285, 306 (2008).

7 Here, there is no danger of arbitrary enforcement against Polymer80 or anyone who  
8 buys its products. Polymer80 specifically sells kits that are 80 percent complete towards  
9 building a firearm. Polymer80 admits that its customers can use their kits to build a  
10 firearm in as little as 30 minutes where the builder has the requisite skill and tools. It is  
11 beyond peradventure that Polymer80 is selling blanks, castings, or machine bodies where  
12 most of the major machining operations have been completed to turn those blanks, castings,  
13 and machine bodies into firearms.

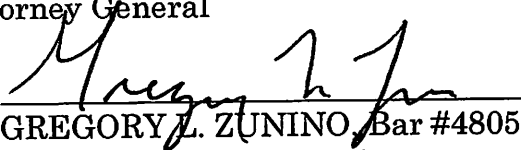
14 Polymer80's real problem with AB 286 is *not* that Polymer80 does not know whether  
15 its conduct is prohibited by AB 286. Its problem is that it believes it is being unfairly  
16 targeted by Nevada's Legislature, or that AB 286 is an unwise law. *See e.g., Ex. B* at ¶32-  
17 38. "To determine whether [AB 286 is] wise or effective is not, of course, the province of  
18 [any court]." *Village of Hoffman Estates*, 455 U.S. at 505.

## 19 VII. CONCLUSION

20 For these reasons, this Court should grant Defendants' motion for summary  
21 judgment.

22 DATED this 8th day of November 2021.

AARON FORD  
Attorney General

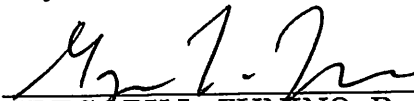
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24 By:   
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27 100 N. Carson Street  
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gzunino@ag.nv.gov  
*Attorneys for Defendants*

**AFFIRMATION**

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

DATED this 8th day of November 2021.

AARON D. FORD  
Attorney General

By:   
GREGORY L. ZUMINO, Bar #4805  
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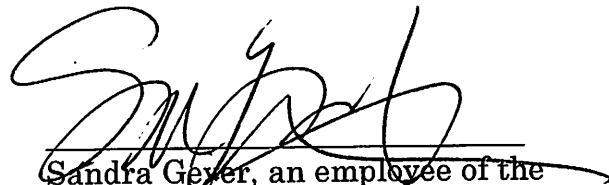
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**CERTIFICATE OF SERVICE**

I certify that I am an employee of the State of Nevada, Office of the Attorney General, and that on this 8th day of November 2021, I served a true and correct copy of the foregoing **DEFENDANTS' MOTION FOR SUMMARY JUDGMENT** via regular U.S. Mail, addressed to the following:

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

*Attorneys for Polymer80, Inc.*



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

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# 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



81st Session (2021)

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.

---

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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*



*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*



*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



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.



**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.



# EXHIBIT B

SIMONS HALL JOHNSTON PC  
22 State Route 208  
Yerington, Nevada 89447

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Case No. 21-CV-00690

Dept. No. I

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

FILED

2021 JUN 22 PM 3:18

CLERK OF DISTRICT COURT  
THIRD JUDICIAL DISTRICT

Victoria Tovar

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.

VERIFIED COMPLAINT

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

INTRODUCTION

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



SIMONS HALL JOHNSTON PC  
22 State Route 208  
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

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

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

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

#### 17 PARTIES AND JURISDICTION

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

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

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

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

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.

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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  
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.

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

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

1 unfinished "frame" or "receiver" is.

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

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

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

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

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

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

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

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

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

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

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

25           38. While these allegations are grievously false and/or misleading, they do  
26 demonstrate that AB 286 was and is designed by its drafters -- and will undoubtedly be  
27 used by its enforcers -- with the Company's products in the forefront of their minds.



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21           53. Second and substantially increasing the extensive ambiguity of "unfinished  
22 frame or receiver," its statutory definition further sets forth that such an item has been  
23 "formed or machined to the point at which most of the major machining operations have  
24 been completed." The phrase "formed or machined to the point at which most of the  
25 major machining operations have been completed" does not give persons of ordinary  
26 intelligence adequate notice of the point at which "most of the major machining  
27 operations have been completed."  
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**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.

DATED this 22nd day of June, 2021

Simons Hall Johnston PC

  
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for Pro Hac Vice Forthcoming*)  
Michael Patrick, Esq. (*Application for  
Pro Hac Vice Forthcoming*)  
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*Attorneys for Plaintiff*

**VERIFICATION OF DAVID BORGES**

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

DATED this 22<sup>nd</sup> day of June, 2021.



David Borges

# EXHIBIT C

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1 Case No. 21-CV-00690

2 Dept. No. 1

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.

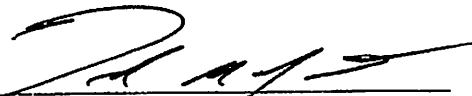
20 **NOTICE OF ENTRY OF ORDER**

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

23 **Exhibit A.**

24 Dated this 16th day of July, 2021

SIMONS HALL JOHNSTON PC

25 By:   
26 Brad M. Johnston, Esq.  
27 Nevada Bar No. 8515  
28 22 State Route 208  
Yerington, Nevada 89447  
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-and-

James J. McGuire  
*Pro Hac Vice*  
Michael R. Patrick  
*(Pro Hac Application Forthcoming)*  
Mark T. Doerr  
*Pro Hac Vice*  
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**CERTIFICATE OF SERVICE**

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

Gregory Zunino, Deputy Solicitor General  
Craig Newby, Deputy Solicitor General  
Laena St-Jules, Deputy Attorney General  
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[lstjules@ag.nv.gov](mailto:lstjules@ag.nv.gov)

DATED this 16th day of July 2021.

  
\_\_\_\_\_  
Brad M. Johnston

**Exhibit A**

**Exhibit A**

FILED

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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.

CLERK OF THE COURT  
THIRD JUDICIAL DISTRICT  
*Andrea Andersen*

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

**IN AND FOR THE COUNTY OF LYON**

**POLYMER80, INC.,**

**Plaintiff,**

**vs.**

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

**Defendants.**

**ORDER GRANTING PRELIMINARY INJUNCTION**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22  
23 DATED this 11th day of July, 2021.

  
\_\_\_\_\_  
JOHN P. SCHLEGELMILCH  
DISTRICT JUDGE



# EXHIBIT D



1 MR. McGUIRE: Objection to form.

2 You may answer.

3 THE WITNESS: Yes, it would.

4 BY MR. NEWBY:

5 Q. How so?

6 A. It would have a negative impact to our sales.

7 Q. What additional decrease in sales would  
8 Polymer80 estimate would occur should the federal rule  
9 making -- proposed federal rule making come into  
10 effect?

11 MR. McGUIRE: Same objection.

12 You may answer.

13 THE WITNESS: I would estimate that it would  
14 be at least an additional 30 percent.

15 BY MR. NEWBY:

16 Q. Does Polymer80 have an understanding of what  
17 the term unfinished frame means?

18 MR. McGUIRE: Just to be clear are you asking  
19 him does the company or does he have an understanding?

20 MR. NEWBY: I'm asking Polymer80 --

21 MR. McGUIRE: Sorry.

22 MR. NEWBY: I shouldn't talk over you, I  
23 apologize.

24 MR. McGUIRE: I'm just trying to clarify.  
25 Are you asking whether he Mr. McCalmon has such an

1 understanding given his role as the 30b(6) witness, or  
2 are you asking him whether the company beyond him -- in  
3 addition to him has an understanding of that term?

4 MR. NEWBY: I'm asking him as Polymer80's  
5 designee pursuant to topic 16 of the 30(b)(6) notice  
6 what Polymer80's understanding of the term unfinished  
7 frame is so that would be for Polymer80 and that's who  
8 he is testifying for, and that's who I'm asking for.

9 MR. McGUIRE: I will object to the form of  
10 the question.

11 You may answer if you can.

12 THE WITNESS: Yes, I do.

13 BY MR. NEWBY:

14 Q. What does the term unfinished frame mean?

15 A. In my opinion an unfinished frame is one that  
16 is not capable of accepting components to be  
17 manufactured into a complete firearm.

18 Q. I appreciate you said that's your  
19 understanding. Do you have any reason to think that  
20 Polymer80's understanding of what the term unfinished  
21 frame means is not different than yours given that you  
22 are here testifying for Polymer80 as its designee  
23 rather than based on your own personal knowledge?

24 A. I do not.

25 Q. What is Polymer80's understanding of what the

1 term unfinished frame means based upon?

2 A. It's based upon the product's ability to be  
3 completed into a fully functioning working firearm.

4 Q. Sitting here today does Polymer80 have any  
5 reason to understand that the term unfinished frame  
6 means something different under Nevada law than what  
7 Polymer80's understanding is?

8 MR. McGUIRE: Objection to form.

9 You may answer if you can.

10 THE WITNESS: Can you rephrase or clarify the  
11 question, please?

12 BY MR. NEWBY:

13 Q. We have covered that Polymer80 has an  
14 understanding of what the term unfinished frame means,  
15 correct?

16 A. Correct.

17 Q. Does Polymer80 have any reason to believe  
18 that the term unfinished frame means something  
19 different under the Nevada statute that's at issue in  
20 this case which brings us here today?

21 A. No, I don't believe so.

22 Q. Does Polymer80 have an understanding of what  
23 the term unfinished receiver means?

24 A. Yes.

25 Q. What is that understanding?

1 A. It's the same understanding as unfinished  
2 frame. Incapable of accepting additional components to  
3 be completed into a functioning firearm.

4 Q. Does Polymer80 have any reason to understand  
5 that term unfinished receiver to mean something  
6 different under Nevada statute?

7 A. No.

8 Q. Does Polymer80 have an understanding of what  
9 the term 80 percent frame means?

10 A. No.

11 Q. Has Polymer80 seen the term 80 percent frame  
12 used before?

13 A. Yes.

14 Q. Can you explain why Polymer80 does not have  
15 an understanding of what the term 80 percent frame  
16 means when it's used by others?

17 A. The term itself is not defined by Polymer80.  
18 It's defined based on the determination letter provided  
19 to us by the BATF Firearms Technology Branch.

20 Q. As Polymer80's designee are you familiar with  
21 the ATF's determination letter process?

22 A. Yes.

23 Q. Can you briefly describe what that process  
24 is?

25 A. Working with our legal counsel when we

1 develop a product through the product development  
2 process prior to initiating production on the product  
3 we submit that product with a letter for request for  
4 determination to the Firearms Technology Branch of the  
5 ATF. The ATF reviews the product based on the  
6 parameters outlined in the Gun Control Act to determine  
7 if it is or is not considered to be legally a firearm  
8 and then they respond in kind with a determination  
9 letter.

10 MR. MCGUIRE: Can I spend 10 seconds with my  
11 client please before the next question. We don't need  
12 to go off the record.

13 MR. NEWBY: Okay.

14 MR. MCGUIRE: Thank you.

15 BY MR. NEWBY:

16 Q. So when the term 80 percent frame has been  
17 used at Polymer80 can you recall who has used that term  
18 with Polymer80?

19 A. I don't understand your question.

20 Q. That's fair. I'm trying to -- part of the  
21 testimony is this 80 percent frame is not a term that's  
22 defined by Polymer80 and it's not a term -- I'm trying  
23 to understand because you said Polymer80 has heard  
24 others use that. I'm trying to understand the  
25 categories of people who would have used that. I'm

1 trying to understand that.

2           To ask a more specific question, is the term  
3 80 percent framed something that's been used by ATF  
4 with Polymer80?

5           A.    Yes.  The term is actually derived from the  
6 Gun Control Act that defines whether it's legal or not  
7 legal to finish a frame or receiver at home for  
8 personal use.  It's defined as the item you start with  
9 cannot be more than 80 percent complete before you  
10 acquire it or begin working on it.  Does that make  
11 sense?

12          Q.    I appreciate you explaining that to me.  Is  
13 the term 80 percent frame something that's used by  
14 others within Polymer80's industry such as by others  
15 who sell accessories to the marketplace?

16          A.    Yes.

17          Q.    Is this a term that would be used by end  
18 consumers of the accessories?

19          A.    Yes.

20          Q.    Is this a term that would be used by various  
21 media within the accessories marketplace?

22                   MR. MCGUIRE:  Objection to form.

23                   You may answer if you can.

24                   THE WITNESS:  Yes.

25 BY MR. NEWBY:



1 Q. Does Polymer80 have an understanding of what  
2 the term 80 percent receiver means?

3 MR. McGUIRE: I think that's been asked and  
4 answered, but if you can answer it you may do so.

5 THE WITNESS: I believe my previous answer  
6 was no.

7 BY MR. NEWBY:

8 Q. To help this out, your answers with regards  
9 to 80 percent receiver would be the same as they were  
10 for 80 percent frame with the exception of referring to  
11 a receiver rather than a frame?

12 A. That is correct.

13 Q. Does Polymer80 have an understanding of what  
14 the term blank means?

15 A. No.

16 Q. Why not?

17 A. A blank could be a number of things.

18 Q. Like what?

19 A. Like if I had a block of aluminum it could be  
20 considered a blank. It may not have a shape or form to  
21 it, but someone could say that that's considered a  
22 blank.

23 Q. What other potential meanings are there for  
24 blank? You mentioned one, you described it. What are  
25 the other ones?

1           A.    I think it's vague.  It's up to user  
2 interpretation.  My interpretation or Polymer80's  
3 interpretation of a blank could vary and be different  
4 from anyone else.  It also speaks to my previous  
5 response concerning the term 80 percent, where does  
6 that come from and what is Polymer80's understanding of  
7 it.  It's not a term that Polymer80 defines as a  
8 company.

9           Q.    Is 80 percent a term that Polymer80 uses?

10          A.    Yes.

11          Q.    What does Polymer80 assert that 80 percent  
12 means when it uses that term?

13          A.    It asserts that it means the product in  
14 question is no more or less than 80 percent completed,  
15 meaning there is an additional process relative to  
16 time, money, knowledge, experience, tools required to  
17 finish the product.

18          Q.    Does Polymer80 use the term blank in terms of  
19 its products?

20          A.    For the purposes of marketing and sales, no.

21          Q.    Does Polymer80 use the term blank for any  
22 other purposes for its business?

23          A.    No.

24          Q.    Do others within the accessory industry use  
25 the term blank?

1 MR. MCGUIRE: Objection to form.

2 You may answer if you can.

3 BY MR. NEWBY:

4 Q. Do they use that term?

5 MR. MCGUIRE: Same objection.

6 THE WITNESS: Yes, I've heard other people  
7 refer -- utilizing the term blank.

8 BY MR. NEWBY:

9 Q. What, if anything, was Polymer80's  
10 understanding of others using the term blank in the  
11 accessories industry?

12 A. They are referring to an unfinished frame or  
13 receiver.

14 Q. Does Polymer80 have an understanding of what  
15 the term casting means?

16 A. No.

17 Q. Why not?

18 MR. MCGUIRE: Objection to form.

19 You may answer if you can.

20 THE WITNESS: Again, it's a singular word  
21 that has a broad scope to it, and it could be defined  
22 as a great many things.

23 BY MR. NEWBY:

24 Q. Has Polymer80 used the term casting in the  
25 course of its business in the accessories market?

1 A. No.

2 Q. Is Polymer80 familiar with others in the  
3 accessories industry utilizing the term casting?

4 A. No.

5 Q. Does Polymer80 have an understanding of what  
6 the term machined body means?

7 A. No.

8 Q. Why not?

9 MR. McGUIRE: Objection to form.

10 You may answer if you can.

11 THE WITNESS: Same response as previous with  
12 casting in that it's a broad term. A machined body  
13 could be any number of things.

14 BY MR. NEWBY:

15 Q. Has Polymer80 used the term machined body in  
16 the course of its business in the accessories industry?

17 A. No, it has not.

18 Q. Is Polymer80 familiar with other businesses  
19 in the accessory industry using the term machined body?

20 A. No.

21 Q. Is Polymer80 aware of whether the term  
22 machined body is defined under federal law applying to  
23 Polymer80's accessories' business?

24 MR. McGUIRE: Objection to form.

25 You may answer if you can.

1 THE WITNESS: Yes, it is.

2 BY MR. NEWBY:

3 Q. Does Polymer80 have an understanding of what  
4 machined body -- what is Polymer80's understanding of  
5 what machined body means under federal law?

6 A. Yes.

7 Q. What is that understanding, not if Polymer80  
8 has an understanding?

9 A. That understanding is derived from the  
10 verbiage utilized in the determination letters provided  
11 by the ATF.

12 Q. Does Polymer80 have any reason to understand  
13 that the term machined body means something different  
14 under Nevada statute than what it does under federal  
15 law?

16 A. No.

17 Q. Does Polymer80 have an understanding of what  
18 the term casting means as a matter of federal law  
19 applying to the accessories industry?

20 A. Yes.

21 Q. What is Polymer80's understanding of what the  
22 term casting means under applicable federal law?

23 A. As defined by the ATF in the determination  
24 letter same as machined body.

25 Q. Does Polymer80 have any reason to understand

1 that the term casting to mean something different under  
2 Nevada statute?

3 A. No.

4 Q. Does Polymer80 have an understanding of what  
5 the term blank means under applicable federal law for  
6 the accessories industry?

7 A. No.

8 Q. Does Polymer80 have an understanding of what  
9 the term 80 percent receiver means under federal law  
10 applicable to the accessories industry?

11 A. Yes.

12 Q. What is that, what is Polymer80's  
13 understanding of what that term means?

14 A. I feel like we have answered that question  
15 already. It's a product that is not capable of  
16 accepting additional components and is determined by  
17 the ATF to be only 80 percent completed.

18 Q. We did cover that with regard to the term  
19 unfinished receiver. I'm asking about each of these  
20 individual terms and trying to be as precise as  
21 possible here.

22 Does Polymer80 have any reason to understand  
23 the term 80 percent receiver to mean something  
24 different other than what is set forth under federal  
25 law?

1 A. No.

2 Q. Same question with regards to the term 80  
3 percent frame. Does Polymer80 have an understanding of  
4 what that term means as a matter of federal law as  
5 applicable to the action industry?

6 A. No.

7 Q. Is now an acceptable time to take the  
8 proposed lunch break?

9 A. I'm good with that.

10 MR. NEWBY: Let's go off the record.

11 THE VIDEOGRAPHER: Going off the record. The  
12 time is 10:16.

13 (A recess was taken.)

14 THE VIDEOGRAPHER: We are back on the video  
15 record at 11:22.

16 MR. MCGUIRE: Let me just begin this  
17 proceeding by saying and clarifying the record that we  
18 will be circulating shortly to counsel to defendants a  
19 proposed protective order in the hope that we can agree  
20 on one relating to discovery and other communications  
21 in this case and would be then our intention to submit  
22 to the court any protective order that we can agree on  
23 or if we cannot agree on we will be requesting judicial  
24 intervention in that regard.

25 At this point I am going to designate the

1           Sitting here today as Polymer80's designee,  
2 you have no reason to doubt that Polymer80's attorneys  
3 were authorized to submit those requests for  
4 confirmation to ATF on behalf of Polymer80, fair?

5           A.    Fair.  No, I have no reason to doubt.

6           Q.    Are you familiar with the law offices of  
7 Davis and Associates?

8           A.    Yes.

9           Q.    Who are they?

10          A.    I'm familiar with Mr. Jason Davis who has  
11 been the gentleman as you can see on the screen right  
12 here who has represented us in assisting with  
13 submitting requests for letters of determination to the  
14 ATF.

15          Q.    And to try to speed this along to make sure I  
16 understand this correctly.  To the extent that Mr.  
17 Davis submitted letters to the ATF on behalf of  
18 Polymer80, these would not have been letters you would  
19 have reviewed in your role at Polymer80, correct?

20          A.    That's correct.  At the time they were  
21 submitted I had no interaction with them.

22          Q.    To the extent Polymer80 management was  
23 involved that would have been at the CEO level, whether  
24 the current CEO or the former CEO, fair?

25          A.    That is correct.



1 STATE OF NEVADA )  
2 COUNTY OF CLARK )

2

3 CERTIFICATE OF REPORTER

4 I, Donna E. Mize, a licensed court reporter,  
5 Clark County, State of Nevada, do hereby certify:

6 That I remotely reported the taking of the  
7 deposition of Daniel McCalmon, commencing on Friday,  
8 October 22, 2021, at the hour of 8:02 a.m.;

9 That the witness was, by me, remotely sworn to  
10 testify to the truth and that I thereafter transcribed  
11 my shorthand notes into typewriting, and that the  
12 typewritten transcript of said deposition is a  
13 complete, true, and accurate transcription of said  
14 shorthand notes;

15 I further certify that I am not a relative or  
16 employee of any of the parties involved in said action,  
17 nor a person financially interested in said action;

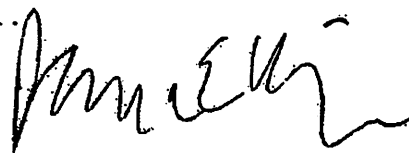
18 That the reading and signing of the transcript  
19 was requested.

20 IN WITNESS WHEREOF, I have hereunto set my hand  
21 in my office in the County of Clark, State of Nevada,  
22 this 28th day of October 2021.

23

24

25



\_\_\_\_\_  
DONNA E. MIZE, CCR NO. 675

# EXHIBIT E



The Law Offices of  
**DAVIS & ASSOCIATES**

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Direct (949) 310-0817/Fax (949) 288-6894 Jason@CalGunLawyers.com  
www.CalGunLawyers.com

EVAL.

302-663

RECEIVED  
SEP 10 2014  
F.T.B.

September 4, 2014

Earl Griffith  
Bureau of Alcohol, Tobacco, Firearms, and Explosives  
Firearms Technology Branch  
244 Needy Road  
Martinsburg, West Virginia 25405 USA  
VIA FED-EX

Related to:

EVAL. 302-384-AG  
302-385-AG

Re: In re: POLYMER 80, INC.

Dear Mr. Griffith:

I write regarding my client, POLYMER 80, INC. (P80) and their intent to manufacture receiver blanks. Specifically, we are asking for clarification as to whether the AR-type lower receiver blank named the G-150 that my client intends to manufacture is a "firearm" as defined in 18 U.S.C. §921(a)(3) or a merely a casting.

We have enclosed an exemplar P80 G-150 AR-15 type casting for your review and examination. The following features are included on the AR-15 lower receiver blank:

- Magazine well;
- Magazine catch;
- Receiver extension/buffer tube;
- Pistol-grip area;
- Pistol-grip screw hole;
- Pistol-grip upper receiver tension hole;
- Pistol-grip tension screw hole;
- Bolt catch;
- Front pivot-pin takedown hole;
- Rear-pivot pin takedown hole.

**The submitted G-150 receiver blank is a solid core unibody design made out of a single casting without any core strengthening inserts. Moreover, it is void of any indicators that designate or provide guidance in the completion of the firearm.** Finally, the sample is completely un-machined in the fire-control recess area and, accordingly, is not a "firearm" as

DEF0235  
ATF0208

APP 000183

Re: **In re: POLYMER 80, INC.**

September 4, 2014

Page 2

defined in the GCA. Nevertheless, in an abundance of caution, we request clarification from the Bureau of Alcohol, Tobacco, Firearms, and Explosives – Firearms Technology Branch.

### DEFINITION OF FIREARM

Title I of the Gun Control Act, 18 U.S.C. §§ 921 *et seq.*, primarily regulates conventional firearms (i.e., rifles, pistols, and shotguns). Title II of the Gun Control Act, also known as the National Firearms Act, 26 U.S.C. §§ 5801 *et seq.*, stringently regulates machine guns, short barreled shotguns, and other narrow classes of firearms. “Firearm” is defined in § 921(a)(3) as:

(B) Any weapon (including a starter gun) which will or is designed to or may readily be converted expel a projectile by the action of an explosive; (B) the frame or receiver of any such weapon; (C) any firearm muffler or firearm silencer; or (D) any destructive device. Such term does not include an antique firearm.

As noted, the term “firearm” means a “weapon . . . which will or is designed to or may readily be converted to expel a projectile,” and also “the *frame or receiver* of any such weapon.” (18 U.S.C. §921(a)(3).) Both the “designed” definition and the “may readily be converted” definition apply to a weapon that expels a projectile, not to a frame or receiver. A frame or receiver is not a “weapon,” will not and is not designed to expel a projectile, and may not readily be converted to expel a projectile.

The issue therefore becomes whether the raw material “casting,” with the specified features, may constitute a “frame or receiver.”

ATF’s regulatory definition, 27 C.F.R. §478.11, provides: “*Firearm frame or receiver*. That part of a firearm which provides housing for the hammer, bolt or breechblock, and firing mechanism, and which is usually threaded at its forward portion to receive the barrel. (The same definition appears in 27 C.F.R. §479.11.) “Breechblock” is defined as the locking and cartridge head supporting mechanism of a firearm that does not operate in line with the axis of the bore.” (*Glossary of the Association of Firearms and Toolmark Examiners* (2<sup>nd</sup> Ed. 1985, 21).)

Assuming that a lower receiver is deemed a “frame or receiver” for licensing purposes, the statute refers to “the frame or receiver of any such weapon,” not raw material which would require further milling, drilling, and other fabrication to be usable as a frame or receiver. Referring to ATF’s definition in §478.11, an unfinished piece of metal is not a “part” that “provides housing” (in the present tense) for the hammer, bolt, or breechblock, and other components of the firing mechanism, unless and until it is machined to accept these components. The definition does not include raw materials that “would provide housing” for such components “. . . if further machined.” Nor may it be said that such piece of metal “is . . . threaded at its forward portion” so that a barrel may be installed.

Re: **In re: POLYMER 80, INC.**

September 4, 2014

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In ordinary nomenclature, the frame or receiver is a finished part which is capable of being assembled with other parts to put together a firearm.” (*Receiver*. The basic unit of a firearm which houses the firing and breech mechanism and to which the barrel and stock are assembled. *Glossary of the Association of Firearm and Toolmark Examiners* (2<sup>nd</sup> ed. 1985), 111.) Raw material requires further fabrication. The Gun Control Act recognizes the distinction between “Assembly and “fabrication.” (Compare 18 U.S.C. §921(a)(29) (defining “handgun” in part as “any combination of parts from which a firearm described in subparagraph (A) can be assembled”) with §921(a)(24) (referring to “any combination of parts, designed or redesigned, and intended for use in *assembling or fabricating* a firearm silencer or firearm muffler” (emphasis added).) The term “assemble” means “to fit or join together (the parts of something, such as a machine); to assemble the parts of a kit.” (Assemble. *Dictionary.com. Collins English Dictionary - Complete & Unabridged 10th Edition*. HarperCollins Publishers. <http://dictionary.reference.com/browse/assemble> (accessed: January 23, 2013).) The term “fabricate” is broader, as it also synonymous with manufacture: “to make, build, or construct.” (Fabricate. *Dictionary.com. Collins English Dictionary - Complete & Unabridged 10th Edition*. HarperCollins Publishers. [http://dictionary.reference.com/ browse/fabricate](http://dictionary.reference.com/browse/fabricate) (accessed: January 23, 2013).) Thus, drilling, milling, and other machining would constitute fabrication, but assembly more narrowly means putting together parts already fabricated.

Moreover, “Congress did not distinguish between *receivers integrated into an operable weapon and receivers sitting in a box, awaiting installation.*” (*F.J. Vollmer Co., Inc. v. Higgins*, 23 F.3d 448, 450 (D.C. Cir. 1994)(Emphasis added.) The absence of a single hole and the presence of a piece of extra metal may mean that an item is not a frame or receiver.” (*Id.* at 452 (“In the case of the modified HK receiver, the critical features were the lack of the attachment block and the presence of a hole”; “welding the attachment block back onto the magazine and filling the hole it had drilled” removed the item from being a machinegun receiver.))

### ANALOGOUS DETERMINATIONS

In an analogous situation, ATF has defined a receiver in terms of whether it was “capable of accepting all parts” necessary for firing. Like the term “firearm,” the term “machinegun” is also defined to include the “frame or receiver of any such weapon.” (26 U.S.C. §5845(b). The same definition is incorporated by reference in 18 U.S.C. §921(a)(3).) The Chief of the ATF Firearms Technology Branch wrote in 1978 concerning a semiautomatic receiver which was milled out to accept a full automatic sear, but the automatic sear hole was not drilled. He opined: “in such a condition, the receiver is not capable of accepting all parts normally necessary for full automatic fire. Therefore, such a receiver is not a machinegun. . . . As soon as the receiver is capable of accepting all parts necessary for full automatic fire, it would be subject to all the provisions of the NFA.” (Nick Voinovich, Chief, ATF Firearms Technology Branch, Feb. 13, 1978, T:T:F:CHB, 7540. Similar opinions were rendered by the Chief, ATF Firearms Technology

Re: **In re: POLYMER 80, INC.**

September 4, 2014

Page 4

Branch, Aug. 3 1977 (reference number deleted); and C. Michael Hoffman, Assistant Director (Technical and Scientific Services), May 5, 1978, T:T:F:CHB, 1549?).)

That being said, the ATF has taken differing opinions as to what extent raw material must be machined in order to be deemed a firearm.

In a 2002 determination, ATF stated the following about an unfinished lower receiver for an AR 15 that "by performing minor work with hand tools, this receiver can be assembled into a complete rifle." (Curtis H.A. Bartlett, Chief, Firearms Technology Branch, Oct. 22, 2002, 903050:RV.) The letter continues:

The minor work includes:

1. Drilling the holes for the takedown/assembly pins;
2. Drilling the holes for the trigger and hammer pins;
3. Drilling the holes for the magazine catch; and
4. Drill and tap the holes for the pistol grip screw.

Our evaluation reveals that the submitted receiver can be readily converted to expel a projectile by the action of an explosive," and is, therefore, a firearm . . . .

The above assumes that the "can be readily converted" clause refers to a frame or receiver, when actually that clause refers to a *weapon* that can be so converted. A frame or receiver cannot, by itself, be converted to a weapon that expels a projectile. That would require the presence of all the other firearm parts, and even then the above machine work would be required, together with assembly.

By contrast, and more recently, ATF determined the following "unfinished AR15 lower" not to be sufficiently machined to constitute a frame or receiver:

The FTB examination of your submission confirmed that machining operations have been performed for the following:

- Magazine well;
- Magazine catch;
- Receiver extension / buffer tube;
- Pistol grip;
- Bolt catch;
- Trigger guard;
- Pivot pin and take down holes (drilled).

**Rc: In re: POLYMER 80, INC.**  
September 4, 2014  
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The FTB examination found that this item, in its current condition, has not reached a point in manufacturing to be classified as a "firearm" per the GCA definition, Section 921(a)(3).

(John R. Spencer, Chief, Firearms Technology Branch, November 19, 2012, 903050:MRC 3311/2012-1034.) (See also: 903050:MCP 3311/302035 (opining that a nearly identical polymer receiver blank is not a firearm regulated by the GCA); 903050:AG 3311/2011-703; 903050:KB 3311/300863; 903050:KB3311/300862)

It is clear that the P80 casting does not provide housing for the "hammer, bolt or breechblock, and firing mechanism." In this regard, the operations performed on the exemplar casting are more akin to the later examination than the former. As such, it is our belief that the exemplar casting does not constitute a "receiver" or a "firearm." But, again, we request your clarification on this point.

Thank you for taking the time to address this issue. We look forward to hearing from you. Please let us know if you have any further questions or concerns. **When complete, please return the submitted parts via Fed-Ex using account number: 321690653.**

Sincerely,

**DAVIS & ASSOCIATES**

s/ *Jason Davis*

**JASON DAVIS**

From: (849) 310-0817  
Earl Griffith  
BATFE: Firearms Technology Branch  
244 NEEDEY RD  
MARTINSBURG, WV 25405

Origin ID: WDBA



Ship Date: 04SEP14  
ActWgt: 1.0 LB  
CAD: 1049514641NET3550

*EVAL.*  
*302-663*

Delivery Address Bar Code



SHIP TO: (949) 310-8817  
**Jason Davis**  
**Davis & Associates**  
41593 Winchester Rd.,  
Suite 200  
Temecula, CA 92591

BILL SENDER

Ref # Polymer 80 - G-150

RNA #:  
Return Reason:

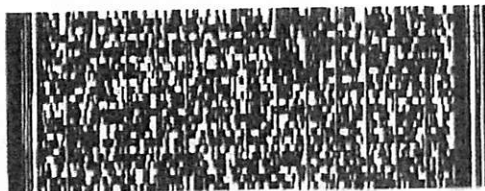
**RETURNS MON-FRI**  
**\*\* 2DAY \*\***

TRK# 7900 4794 5083

0221

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CA-US



522G1/COM/1AC9

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DEF0240  
ATF0213  
APP 000188



# EXHIBIT F



EVAL. 302-384-46

The Law Offices of  
**DAVIS & ASSOCIATES**

41593 Winchester Rd. Suite 200, Temecula, CA 92591  
Direct (949) 310-0817/Fax (949) 288-6894 Jason@CalGunLawyers.com  
www.CalGunLawyers.com

RECEIVED  
JUN 06 2014  
BY: ..... F.T.B.

June 4, 2014

Earl Griffith  
Bureau of Alcohol, Tobacco, Firearms, and Explosives  
Firearms Technology Branch  
244 Needy Road  
Martinsburg, West Virginia 25405 USA  
**VIA FED-EX**

Re: **In re: POLYMER 80, INC.**

Dear Mr. Griffith:

I write regarding my client, POLYMER 80, INC. (P80) and their intent to manufacture receiver blanks. Specifically, we are asking for clarification as to whether the AR-type lower receiver blank that my client intends to manufacture is a "firearm" as defined in 18 U.S.C. §921(a)(3) or a merely a casting.

We have enclosed an exemplar P80 AR-15 type casting for your review and examination. The following features are included on the AR-15 lower receiver blank:

- Magazine well;
- Magazine catch;
- Receiver extension/buffer tube;
- Pistol-grip area;
- Pistol-grip screw hole;
- Pistol-grip upper receiver tension hole;
- Pistol-grip tension screw hole;
- Bolt catch;
- Front pivot-pin takedown hole;
- Rear-pivot pin takedown hole.

Moreover, the submitted receiver blank is void of any indicators that designate or provide guidance in the completion of the firearm. And, the sample is completely solid and un-machined in the fire-control recess area and, accordingly, is not a "firearm" as defined in the GCA. But, in an abundance of caution, we request clarification from the Bureau of Alcohol, Tobacco, Firearms, and Explosives – Firearms Technology Branch.

DEF0241  
ATF0202  
**APP 000190**

Re: In re: POLYMER 80, INC.

June 4, 2014

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### DEFINITION OF FIREARM

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As noted, the term "firearm" means a "weapon . . . which will or is designed to or may readily be converted to expel a projectile," and also "the *frame or receiver* of any such weapon." (18 U.S.C. §921(a)(3).) Both the "designed" definition and the "may readily be converted" definition apply to a weapon that expels a projectile, not to a frame or receiver. A frame or receiver is not a "weapon," will not and is not designed to expel a projectile, and may not readily be converted to expel a projectile.

The issue therefore becomes whether the raw material "casting," with the specified features, may constitute a "frame or receiver."

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Re: **In re: POLYMER 80, INC.**

June 4, 2014

Page 3

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Re: In re: POLYMER 80, INC.

June 4, 2014

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Branch, Aug. 3 1977 (reference number deleted); and C. Michael Hoffman, Assistant Director (Technical and Scientific Services), May 5, 1978, T:T:F:CHB, 1549?).)

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- Pistol grip;
- Bolt catch;
- Trigger guard;
- Pivot pin and take down holes (drilled).

Re: **In re: POLYMER 80, INC.**  
June 4, 2014  
Page 5

RECEIVED  
JUN 06 2014

BY: ..... F.T.B.

The FTB examination found that this item, in its current condition, has not reached a point in manufacturing to be classified as a "firearm" per the GCA definition, Section 921(a)(3).

(John R. Spencer, Chief, Firearms Technology Branch, November 19, 2012, 903050:MRC 3311/2012-1034.) (See also: 903050:MCP 3311/302035 (opining that a nearly identical polymer receiver blank is not a firearm regulated by the GCA); 903050:AG 3311/2011-703; 903050:KB 3311/300863; 903050:KB3311/300862)

It is clear that the P80 casting does not provide housing for the "hammer, bolt or breechblock, and firing mechanism." In this regard, the operations performed on the exemplar casting are more akin to the later examination than the former. As such, it is our belief that the exemplar casting does not constitute a "receiver" or a "firearm." But, again, we request your clarification on this point.

Thank you for taking the time to address this issue. We look forward to hearing from you. Please let us know if you have any further questions or concerns. **When complete, please return the submitted parts via Fed-Ex using account number: 321690653.**

Sincerely,

**DAVIS & ASSOCIATES**

s/ *Jason Davis*

**JASON DAVIS**

6/4/2014.

FedExShip Manager - Print Your Label(s)

From: (949) 310-0817  
Earl Griffith  
BATFE: Firearms Technology Branch  
244 NEEDY RD

Origin ID: WDBA



MARTINSBURG, WV 25405

Ship Date: 04JUN14  
ActWgt: 1.5 LB  
CAD: 104951404/NET3490

Delivery Address Bar Code



SHIP TO: (949) 310-0817

BILL SENDER

Jason Davis  
Davis & Associates  
41593 Winchester Rd. Suite 200  
Suite 300  
Temecula, CA 92691

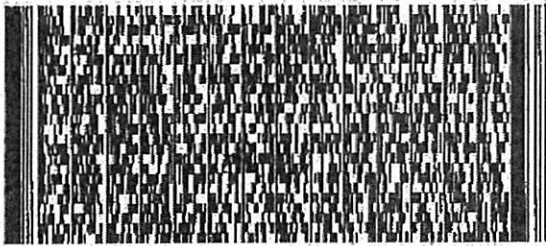
Ref # Polymer 80

RMA #:  
Return Reason:

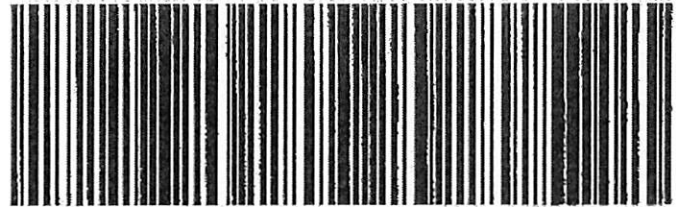
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\*\* 2DAY \*\*

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to recover from FedEx for any loss, including intrinsic value of the package, loss of  
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very cannot exceed actual documented loss. Maximum for items of extraordinary  
truments and other items listed in our Service Guide. Written claims must be filed



*The Law Offices of*  
**DAVIS & ASSOCIATES**

---

41593 Winchester Rd, Suite 200, Temecula, CA 92591  
Direct (949) 310-0817/Fax (949) 288-6894 Jason@CalGunLawyers.com  
www.CalGunLawyers.com

February 3, 2015

Michael R. Curtis, Acting Chief  
Bureau of Alcohol, Tobacco, Firearms, and Explosives  
Firearms Technology Branch  
244 Needy Road  
Martinsburg, West Virginia 25405 USA  
**VIA FED-EX**

Re: **In re: POLYMER 80, INC.**

Dear Mr. Griffith:

I write regarding my client, POLYMER 80, INC. (P80) and their intent to manufacture receiver blanks. Specifically, we write in reference to your letter dated January 16, 2015, requesting additional information. In your letter you request "a comprehensive description of the manufacturing process used to produce these items." Below is a description of the manufacturing process for the two submissions.

**Submission 1 (Two Stage Production):**

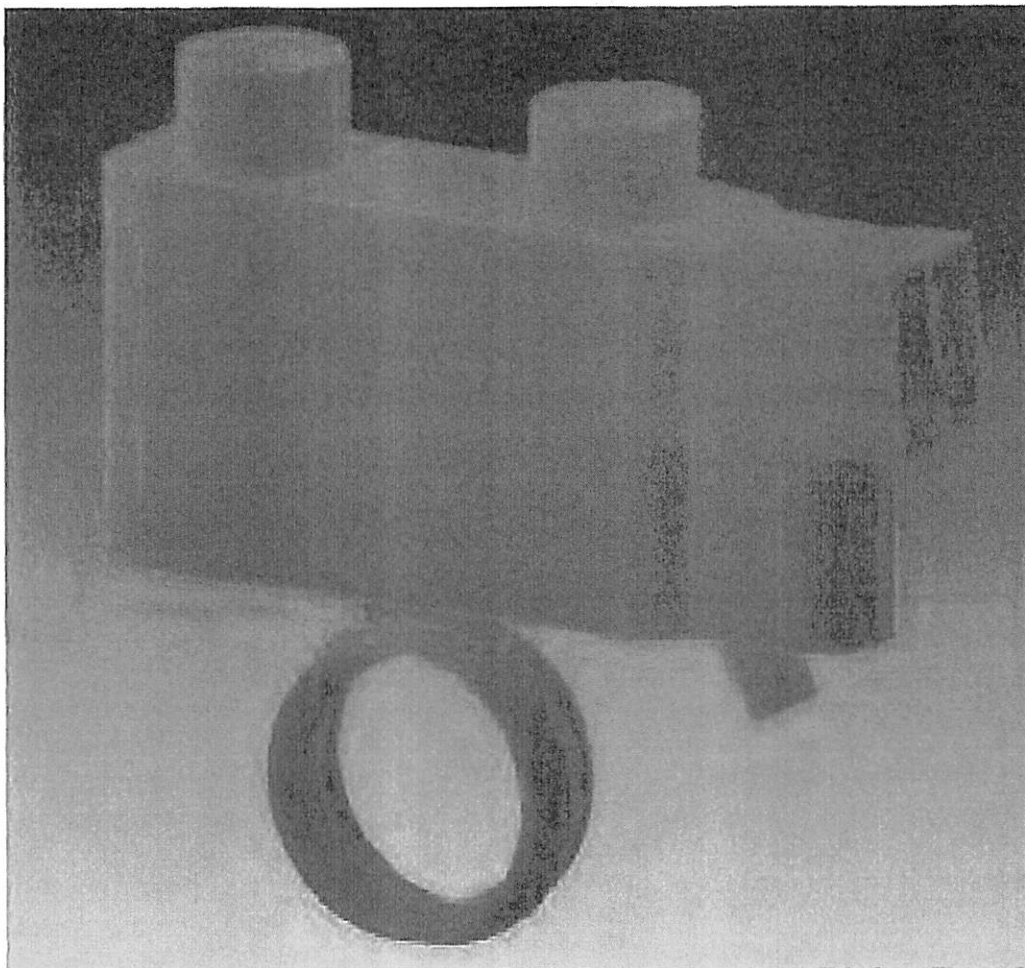
The initial submission from June 2014 was produced using a two process methodology and produced a blank with no indicators. This two stage process was designed to ensure the structural integrity of the final product. Specifically, this was an essential process designed to eliminate the possibility of warping, malformation, dimension variation and prevent diminished product integrity caused during the curing process. At the time of submission, without a final stabilization core, the overall dimensions, quality, and integrity of the final product would vary due to the thickness of the final blank and the inability of the center of the blanks to properly cure. The development of a core permitted the manufacturer to ensure the products' integrity through the proper staged curing of the inner and outer portion of the blank via the following process.

The first stage consisted of manufacturing an inner core. The core consists of features designed to ensure structural integrity of the product, including round features on the top and bottom of the core, which are present to hold the core in place in the injection mold during the second stage molding process. Once produced in a mold, the core is allowed to cure prior to proceeding to the second stage, ensuring that the final product consistently maintains the proper dimensions and shape. A depiction of the inner core is below:

DEF0247  
ATF0215  
**APP 000196**



Re: **In re: POLYMER 80, INC.**  
February 3, 2015  
Page 2



The second stage of Submission 1 consists of manufacturing a casing around the core to produce a unibody blank. Specifically, the core was inserted into the injection mold machine and over-molded, flooding the interior of the part to create a solid blank unit. Because the inner core is made out of the same material as the outer casing it becomes bonded with the casing due to the heat of the exterior molten material. The final product functions as one piece with a greater structural integrity than other methods available at the time of submission.

The final product resulted in a blank with no indicators present as a result, the round features not being on the edge of the fire control pocket, and no indicators on the top to even indicate that a core is utilized.

**Submission 2 (One Stage Production):**

Re: **In re: POLYMER 80, INC.**  
February 3, 2015  
Page 3

The second submission is produced in one single stage. Specifically, the injection mold is a single shot, NO-CORE production method. There's never a core or "biscuit" used in the production of Submission 2. At the moment the injection mold is closed, a single shot of molten material instantly fills the entire mold under pressure, which gives the unit its strength and retained shape. The material utilized is a proprietary blend to achieve the unusual thickness of this unit without the need for inserts.

The final product results in a blank with no indicators.

Thank you for taking the time to address this issue. We look forward to hearing from you. Please let us know if you have any further questions or concerns. **When complete, please return the submitted parts via Fed-Ex using account number: 321690653.**

Sincerely,

**DAVIS & ASSOCIATES**

s/ *Jason Davis*

JASON DAVIS

From: (949) 310-0817  
Jason Davis  
Davis & Associates  
41593 Winchester Rd.,  
Suite 200  
Temecula, CA 92591

Origin ID: HMTA



Ship Date: 03FEB15  
ActWgt: 0.3 LB  
CAD: 104951464/NET3610

Delivery Address Bar Code



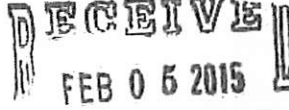
SHIP TO: (949) 310-0817

BILL SENDER

**Michael Curtis**  
**BATFE: Firearms Technology Branch**  
**244 NEEDY RD**

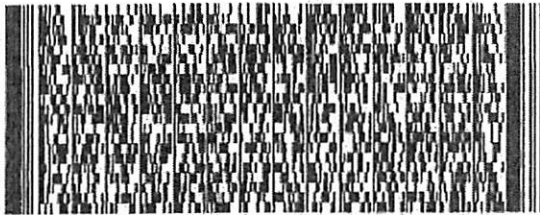
**MARTINSBURG, WV 25405**

Ref# Polymer 80 - G-150  
Invoice #  
PO #  
Dept #



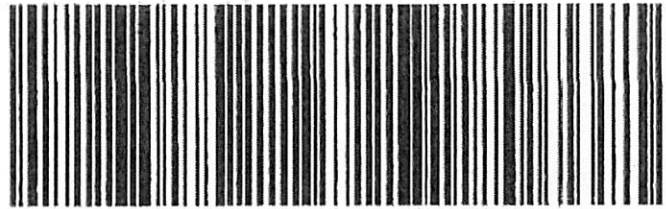
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EVAL. 303-738-WJS

The Law Offices of

**DAVIS & ASSOCIATES**

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Direct (866) 545-GUNS/Fax (888) 624-GUNS Jason@CalGunLawyers.com  
www.CalGunLawyers.com

May 28, 2015

Earl Griffith  
Bureau of Alcohol, Tobacco, Firearms, and Explosives  
Firearms Technology Branch  
244 Needy Road  
Martinsburg, West Virginia 25405 USA  
VIA FED-EX

RECEIVED  
JUN 03 2015

BY.....F.T.B.

Re: IN RE: POLYMER 80, INC. WARRHOGG BLANK

Dear Mr. Griffith:

I write regarding my client, POLYMER 80, INC. (P80) and their intent to manufacture receiver blanks. Specifically, we are asking for clarification as to whether the enclosed WarrHogg polymer .308 blank lower is a "firearm" and/or "firearm receiver" as defined in 18 U.S.C. §921(a)(3) or a merely a casting.

We have enclosed an exemplar WarrHogg for your review and examination. The following features are included on the AR-15 casting:

- Magazine well;
- Magazine catch;
- Receiver extension/buffer tube;
- Pistol-grip area;
- Pistol-grip screw hole;
- Pistol-grip upper receiver tension hole;
- Pistol-grip tension screw hole;
- Bolt catch;
- Front pivot-pin takedown hole;
- Rear-pivot pin takedown hole.

POLYMER  
AR-10 RECEIVER

ONE OF TWO

The submitted WarrHogg .308 blank lower receiver blank is a solid core unibody design made out of a single casting without any core strengthening inserts. Moreover, it is void of any indicators that designate or provide guidance in the completion of the firearm. This submitted item incorporates a solid fire control cavity area, and was cast in a homogenous manner using a "single shot of molten material."

DEF0256  
ATF0353  
APP 000200

Re: **IN RE: POLYMER 80, INC. WARRHOGG BLANK**

May 28, 2015

Page 2

We believe that the enclosed item is not a firearm or a firearm receiver. Nevertheless, in an abundance of caution, we request clarification from the Bureau of Alcohol, Tobacco, Firearms, and Explosives – Firearms Technology Branch.

#### DEFINITION OF FIREARM

Title I of the Gun Control Act, 18 U.S.C. §§ 921 *et seq.*, primarily regulates conventional firearms (i.e., rifles, pistols, and shotguns). Title II of the Gun Control Act, also known as the National Firearms Act, 26 U.S.C. §§ 5801 *et seq.*, stringently regulates machine guns, short barreled shotguns, and other narrow classes of firearms. “Firearm” is defined in § 921(a)(3) as:

(B) Any weapon (including a starter gun) which will or is designed to or may readily be converted expel a projectile by the action of an explosive; (B) the frame or receiver of any such weapon; (C) any firearm muffler or firearm silencer; or (D) any destructive device. Such term does not include an antique firearm.

As noted, the term “firearm” means a “weapon . . . which will or is designed to or may readily be converted to expel a projectile,” and also “the *frame or receiver* of any such weapon.” (18 U.S.C. §921(a)(3).) Both the “designed” definition and the “may readily be converted” definition apply to a weapon that expels a projectile, not to a frame or receiver. A frame or receiver is not a “weapon,” will not and is not designed to expel a projectile, and may not readily be converted to expel a projectile.

The issue therefore becomes whether the raw material “casting,” with the specified features, may constitute a “frame or receiver.”

ATF’s regulatory definition, 27 C.F.R. §478.11, provides: “*Firearm frame or receiver.* That part of a firearm which provides housing for the hammer, bolt or breechblock, and firing mechanism, and which is usually threaded at its forward portion to receive the barrel. (The same definition appears in 27 C.F.R. §479.11.) “Breechblock” is defined as the locking and cartridge head supporting mechanism of a firearm that does not operate in line with the axis of the bore.” (*Glossary of the Association of Firearms and Toolmark Examiners* (2<sup>nd</sup> Ed. 1985, 21).)

Assuming that a lower receiver is deemed a “frame or receiver” for licensing purposes, the statute refers to “the frame or receiver of any such weapon,” not raw material which would require further milling, drilling, and other fabrication to be usable as a frame or receiver. Referring to ATF’s definition in §478.11, an unfinished piece of metal is not a “part” that “provides housing” (in the present tense) for the hammer, bolt, or breechblock, and other components of the firing mechanism, unless and until it is machined to accept these components. The definition does not include raw materials that “would provide housing” for such components “. . . if further machined.” Nor may it be said that such piece of metal “is . . . threaded at its forward portion” so that a barrel may be installed.

Re: **IN RE: POLYMER 80, INC. WARRHOGG BLANK**

May 28, 2015

Page 3

In ordinary nomenclature, the frame or receiver is a finished part which is capable of being assembled with other parts to put together a firearm.” (*Receiver*. The basic unit of a firearm which houses the firing and breech mechanism and to which the barrel and stock are assembled. *Glossary of the Association of Firearm and Toolmark Examiners* (2<sup>nd</sup> ed. 1985), 111.) Raw material requires further fabrication. The Gun Control Act recognizes the distinction between “Assembly and “fabrication.” (Compare 18 U.S.C. §921(a)(29) (defining “handgun” in part as “any combination of parts from which a firearm described in subparagraph (A) can be assembled”) with §921(a)(24) (referring to “any combination of parts, designed or redesigned, and intended for use in *assembling or fabricating* a firearm silencer or firearm muffler” (emphasis added).) The term “assemble” means “to fit or join together (the parts of something, such as a machine): to assemble the parts of a kit.” (*Assemble*. *Dictionary.com. Collins English Dictionary - Complete & Unabridged 10th Edition*. HarperCollins Publishers. <http://dictionary.reference.com/browse/assemble> (accessed: January 23, 2013).) The term “fabricate” is broader, as it also synonymous with manufacture: “to make, build, or construct.” (*Fabricate*. *Dictionary.com. Collins English Dictionary - Complete & Unabridged 10th Edition*. HarperCollins Publishers. [http://dictionary.reference.com/ browse/fabricate](http://dictionary.reference.com/browse/fabricate) (accessed: January 23, 2013).) Thus, drilling, milling, and other machining would constitute fabrication, but assembly more narrowly means putting together parts already fabricated.

Moreover, “Congress did not distinguish between *receivers integrated into an operable weapon and receivers sitting in a box, awaiting installation.*” (*F.J. Vollmer Co., Inc. v. Higgins*, 23 F.3d 448, 450 (D.C. Cir. 1994)(Emphasis added.) The absence of a single hole and the presence of a piece of extra metal may mean that an item is not a frame or receiver.” (*Id.* at 452 (“In the case of the modified HK receiver, the critical features were the lack of the attachment block and the presence of a hole”; “welding the attachment block back onto the magazine and filling the hole it had drilled” removed the item from being a machinegun receiver.”))

#### ANALOGOUS DETERMINATIONS

In an analogous situation, ATF has defined a receiver in terms of whether it was “capable of accepting all parts” necessary for firing. Like the term “firearm,” the term “machinegun” is also defined to include the “frame or receiver of any such weapon.” (26 U.S.C. §5845(b). The same definition is incorporated by reference in 18 U.S.C. §921(a)(3).) The Chief of the ATF Firearms Technology Branch wrote in 1978 concerning a semiautomatic receiver which was milled out to accept a full automatic sear, but the automatic sear hole was not drilled. He opined: “in such a condition, the receiver is not capable of accepting all parts normally necessary for full automatic fire. Therefore, such a receiver is not a machinegun. . . . As soon as the receiver is capable of accepting all parts necessary for full automatic fire, it would be subject to all the provisions of the NFA.” (Nick Voinovich, Chief, ATF Firearms Technology Branch, Feb. 13, 1978, T:T:F:CHB, 7540. Similar opinions were rendered by the Chief, ATF Firearms Technology Branch, Aug. 3 1977 (reference number deleted); and C. Michael Hoffman, Assistant Director (Technical and Scientific Services), May 5, 1978, T:T:F:CHB, 15497).)

Re: **IN RE: POLYMER 80, INC. WARRHOOG BLANK**

May 28, 2015

Page 4

That being said, the ATF has taken differing opinions as to what extent raw material must be machined in order to be deemed a firearm.

In a 2002 determination, ATF stated the following about an unfinished lower receiver for an AR 15 that "by performing minor work with hand tools, this receiver can be assembled into a complete rifle." (Curtis H.A. Bartlett, Chief, Firearms Technology Branch, Oct. 22, 2002, 903050:RV.) The letter continues:

The minor work includes:

1. Drilling the holes for the takedown/assembly pins;
2. Drilling the holes for the trigger and hammer pins;
3. Drilling the holes for the magazine catch; and
4. Drill and tap the holes for the pistol grip screw.

Our evaluation reveals that the submitted receiver can be readily converted to expel a projectile by the action of an explosive," and is, therefore, a firearm . . . .

The above assumes that the "can be readily converted" clause refers to a frame or receiver, when actually that clause refers to a *weapon* that can be so converted. A frame or receiver cannot, by itself, be converted to a weapon that expels a projectile. That would require the presence of all the other firearm parts, and even then the above machine work would be required, together with assembly.

By contrast, and more recently, ATF determined the following "unfinished AR15 lower" not to be sufficiently machined to constitute a frame or receiver:

The FTB examination of your submission confirmed that machining operations have been performed for the following:

- Magazine well;
- Magazine catch;
- Receiver extension / buffer tube;
- Pistol grip;
- Bolt catch;
- Trigger guard;
- Pivot pin and take down holes (drilled).

The FTB examination found that this item, in its current condition, has not reached a point in manufacturing to be classified as a "firearm" per the GCA definition, Section 921(a)(3).

(John R. Spencer, Chief, Firearms Technology Branch, November 19, 2012, 903050:MRC 3311/2012-1034.) (See also: 903050:MCP 3311/302035 (opining that a nearly identical polymer receiver blank is not a firearm regulated by the GCA); 903050:AG 3311/2011-703; 903050:KB 3311/300863; 903050:KB3311/300862) The ATF has also opined that similar AR15 style receiver

Re: **IN RE: POLYMER 80, INC. WARRHOGG BLANK**

May 28, 2015

Page 5

manufactured by Polymer 80, Inc.'s from a single casting was not a firearm receiver or a firearm.  
(See 907010:AG 3311/302663.)

Thus, it is clear that the WarrHogg .308 blank lower receiver casting does not provide housing for the "hammer, bolt or breechblock, and firing mechanism." In this regard, the operations performed on the exemplar casting are more akin to the later examination than the former. As such, it is our belief that the exemplar casting does not constitute a "receiver" or a "firearm." But, again, we request your clarification on this point: 1) Is it the opinion of the Bureau of Alcohol, Tobacco, Firearms, and Explosives that the enclosed WarrHogg blank lower receiver is a firearm or firearm receiver.

Thank you for taking the time to address this issue. We look forward to hearing from you. Please let us know if you have any further questions or concerns. **When complete, please return the submitted parts to 41593 Winchester Rd., Suite 200, Temecula, CA 92590 via Fed-Ex using account number: 321690653.**

Sincerely,

**DAVIS & ASSOCIATES**

*s/ Jason Davis*

**JASON DAVIS**





EVAL 303-738-WJS

The Law Offices of  
**DAVIS & ASSOCIATES**

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May 28, 2015

Earl Griffith  
Bureau of Alcohol, Tobacco, Firearms, and Explosives  
Firearms Technology Branch  
244 Needy Road  
Martinsburg, West Virginia 25405 USA  
VIA FED-EX

RECEIVED  
JUN 03 2015  
BY..... F.T.B.

POLYMER  
PISTOL FRAME

Re: IN RE: POLYMER 80, INC. GC BLANK

TWO of TWO

Dear Mr. Griffith:

I write regarding my client, POLYMER 80, INC. (P80) and their intent to manufacture pistol frame blanks. Specifically, we are asking for clarification as to whether the enclosed GC polymer 9mm ("GC9") blank is a "firearm," "firearm frame," or "firearm receiver" as defined in 18 U.S.C. §921(a)(3) or a merely a casting.

We have enclosed an exemplar GC9 for your review and examination. The submitted GC9 blank is a solid core unibody design made out of a single casting without any core strengthening inserts. Moreover, it is void of any indicators that designate or provide guidance in the completion of the firearm.

We believe that the enclosed item is not a firearm or a firearm receiver. Nevertheless, in an abundance of caution, we request clarification from the Bureau of Alcohol, Tobacco, Firearms, and Explosives – Firearms Technology Branch.

**DEFINITION OF FIREARM**

Title I of the Gun Control Act, 18 U.S.C. §§ 921 *et seq.*, primarily regulates conventional firearms (i.e., rifles, pistols, and shotguns). Title II of the Gun Control Act, also known as the National Firearms Act, 26 U.S.C. §§ 5801 *et seq.*, stringently regulates machine guns, short barreled shotguns, and other narrow classes of firearms. "Firearm" is defined in § 921(a)(3) as:

- (B) Any weapon (including a starter gun) which will or is designed to or may readily be converted expel a projectile by the action of an explosive;
  - (B) the frame or receiver of any such weapon;
  - (C) any firearm muffler or firearm silencer; or
  - (D) any destructive device.
- Such term does not include an antique firearm.

DEF0261  
ATF0358  
APP 000205

Re: **IN RE: POLYMER 80, INC. GC BLANK**

May 28, 2015

Page 2

As noted, the term “firearm” means a “weapon . . . which will or is designed to or may readily be converted to expel a projectile,” and also “the *frame or receiver* of any such weapon.” (18 U.S.C. §921(a)(3).) Both the “designed” definition and the “may readily be converted” definition apply to a weapon that expels a projectile, not to a frame or receiver. A frame or receiver is not a “weapon,” will not and is not designed to expel a projectile, and may not readily be converted to expel a projectile.

The issue therefore becomes whether the raw material “casting,” with the specified features, may constitute a “frame or receiver.”

ATF’s regulatory definition, 27 C.F.R. §478.11, provides: “*Firearm frame or receiver*. That part of a firearm which provides housing for the hammer, bolt or breechblock, and firing mechanism, and which is usually threaded at its forward portion to receive the barrel. (The same definition appears in 27 C.F.R. §479.11.) “Breechblock” is defined as the locking and cartridge head supporting mechanism of a firearm that does not operate in line with the axis of the bore.” (*Glossary of the Association of Firearms and Toolmark Examiners* (2<sup>nd</sup> Ed. 1985, 21).)

The statute refers to “the frame or receiver of any such weapon,” not raw material which would require further milling, drilling, and other fabrication to be usable as a frame or receiver. Referring to ATF’s definition in §478.11, an unfinished piece is not a “part” that “provides housing” (in the present tense) for the hammer, bolt, or breechblock, and other components of the firing mechanism, unless and until it is machined to accept these components. The definition does not include raw materials that “would provide housing” for such components “. . . if further machined.”

In ordinary nomenclature, the frame or receiver is a finished part which is capable of being assembled with other parts to put together a firearm.” (*Receiver*. The basic unit of a firearm which houses the firing and breech mechanism and to which the barrel and stock are assembled. *Glossary of the Association of Firearm and Toolmark Examiners* (2<sup>nd</sup> ed. 1985), 111.) Raw material requires further fabrication. The Gun Control Act recognizes the distinction between “Assembly and “fabrication.” (Compare 18 U.S.C. §921(a)(29) (defining “handgun” in part as “any combination of parts from which a firearm described in subparagraph (A) can be *assembled*”) with §921(a)(24) (referring to “any combination of parts, designed or redesigned, and intended for use in *assembling or fabricating* a firearm silencer or firearm muffler” (emphasis added).) The term “assemble” means “to fit or join together (the parts of something, such as a machine): to assemble the parts of a kit.” (Assemble. *Dictionary.com. Collins English Dictionary - Complete & Unabridged 10th Edition*. HarperCollins Publishers. <http://dictionary.reference.com/browse/assemble> (accessed: January 23, 2013).) The term “fabricate” is broader, as it also synonymous with manufacture: “to make, build, or construct.” (Fabricate. *Dictionary.com. Collins English Dictionary - Complete & Unabridged 10th Edition*. HarperCollins Publishers. [http://dictionary.reference.com/ browse/fabricate](http://dictionary.reference.com/browse/fabricate) (accessed: January 23, 2013).) Thus, drilling, milling, and other machining would constitute fabrication, but assembly more narrowly means putting together parts already fabricated.

Re: **IN RE: POLYMER 80, INC. GC BLANK**

May 28, 2015

Page 3

Moreover, "Congress did not distinguish between *receivers integrated into an operable weapon and receivers sitting in a box, awaiting installation.*" (*F.J. Vollmer Co., Inc. v. Higgins*, 23 F.3d 448, 450 (D.C. Cir. 1994)(Emphasis added.) The absence of a single hole and the presence of a piece of extra metal may mean that an item is not a frame or receiver." (*Id.* at 452 ("In the case of the modified HK receiver, the critical features were the lack of the attachment block and the presence of a hole"; "welding the attachment block back onto the magazine and filling the hole it had drilled" removed the item from being a machinegun receiver.).)

### ANALOGOUS DETERMINATIONS

In an analogous situation, ATF has defined a frame or receiver in terms of whether it was "capable of accepting all parts" necessary for firing. Like the term "firearm," the term "machinegun" is also defined to include the "frame or receiver of any such weapon." (26 U.S.C. §5845(b). The same definition is incorporated by reference in 18 U.S.C. §921(a)(3).) The Chief of the ATF Firearms Technology Branch wrote in 1978 concerning a semiautomatic receiver which was milled out to accept a full automatic sear, but the automatic sear hole was not drilled. He opined: "in such a condition, the receiver is not capable of accepting all parts normally necessary for full automatic fire. Therefore, such a receiver is not a machinegun. . . . As soon as the receiver is capable of accepting all parts necessary for full automatic fire, it would be subject to all the provisions of the NFA." (Nick Voinovich, Chief, ATF Firearms Technology Branch, Feb. 13, 1978, T:T:F:CHB, 7540. Similar opinions were rendered by the Chief, ATF Firearms Technology Branch, Aug. 3 1977 (reference number deleted); and C. Michael Hoffman, Assistant Director (Technical and Scientific Services), May 5, 1978, T:T:F:CHB, 1549?).)

That being said, the ATF expressed its opinions as to what extent raw material must be machined in order to be deemed a firearm. Specifically, in your letter dated June 12, 2014 (90350:WJS 331/302036) you stated as following in response to a submission from Tactical Machining, LLC:

In general, to be classified as firearms, pistol forgings or castings must incorporate the following critical features:

Slide rails or similar slide-assembly attachment features.  
Hammer pin hole.  
Sear pin hole.

That letter was responding to two submissions (Sample A and Sample B). Those samples were described as having the following completed:

1. Plunger-tube holes have been drilled.
2. Slide-stop pin hole drilled.
3. Slide-stop engagement area machined.
4. Ejector pin hole drilled.
5. Safety-lock hole drilled.

Re: **IN RE: POLYMER 80, INC. GC BLANK**

May 28, 2015

Page 4

6. Magazine-catch area machined.
7. Grip-screw bushing holes drilled.
8. Trigger slot machined.
9. Magazine well machined.
10. Main spring housing area machined.
11. Main spring pin hole machined.
12. Sear-spring slot machined.

The critical machining operations not yet implemented in SAMPLE A and B were as follows:

1. Slide rails cut.
2. Sear pin hole drilled.
3. Hammer pin hole drilled.
4. Barrel seat machined.

The FTB determined that neither Sample A nor B meet the definition of "firearm" presented in GCA, 18 U.S.C. Section 921(a)(3).)

Similarly, the critical machining operations not yet implanted in the GC9 are as follows:

1. Drill the locking left block pin hole.
2. Drill the locking right block pin hole.
3. Drill the left trigger pin hole.
4. Drill the right trigger pin hole.
5. Drill the trigger left housing pin hole.
6. Drill the right trigger housing pin hole.
7. Cut the left rail slots in the rear to allow slide installation.
8. Cut the right rail slots in the rear to allow slide installation.
9. Machine the side walls that block slide installation.
10. Machine the cross wall that blocks barrel and recoil spring installation.

Thus, it is clear that the GC9 blank lower does not provide housing for the "hammer, bolt or breechblock, and firing mechanism" as required by law. Moreover, like the 1911 submission that was deemed not a "firearm" by the FTB, the GC9 is missing critical operations necessary to complete the product. In this regard, the operations performed on the exemplar casting are akin to the 1911 submission deemed not a "firearm" by the FTB. As such, it is our belief that the exemplar casting does not constitute a "receiver" or a "firearm." But, again, we request your clarification on this point: 1) Is it the opinion of the Bureau of Alcohol, Tobacco, Firearms, and Explosives that the enclosed GC9 blank is a firearm or firearm frame or receiver.

Thank you for taking the time to address this issue. We look forward to hearing from you. Please let us know if you have any further questions or concerns. **When complete, please return the**

Re: **IN RE: POLYMER 80, INC. GC BLANK**

May 28, 2015

Page 5

submitted parts to 41593 Winchester Rd., Suite 200, Temecula, CA 92590 via Fed-Ex using account number: 321690653.

Sincerely,

**DAVIS & ASSOCIATES**

*s/ Jason Davis*

JASON DAVI1.

# EXHIBIT G

EJ



The Law Offices of  
**DAVIS & ASSOCIATES**

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Direct (866) 545-GUNS/Fax (888) 624-GUNS Jason@CalGunLawyers.com  
www.CalGunLawyers.com

October 3, 2016

EVAL.  
305-402

RECEIVED  
OCT 06 2016  
FATD  
BY.....

Earl Griffith  
Bureau of Alcohol, Tobacco, Firearms, and Explosives  
Firearms Technology Branch  
244 Needy Road  
Martinsburg, West Virginia 25405 USA  
VIA FED-EX

ONE  
PISTOL  
Receiver

Re: IN RE: POLYMER 80, INC. PF940C BLANK

Dear Mr. Griffith:

I write regarding my client, POLYMER 80, INC. (P80) and their intent to manufacture pistol frame blanks. Specifically, we are asking for clarification as to whether the enclosed PF940C polymer 9mm ("PF940C") blank is a "firearm," "firearm frame," or "firearm receiver" as defined in 18 U.S.C. §921(a)(3) or a merely a casting.

We have enclosed an exemplar PF940C for your review and examination. The submitted PF940C blank is a solid core unibody design made out of a single casting without any core strengthening inserts. Moreover, it is void of any indicators that designate or provide guidance in the completion of the firearm.

We believe that the enclosed item is not a firearm or a firearm receiver. Nevertheless, in an abundance of caution, we request clarification from the Bureau of Alcohol, Tobacco, Firearms, and Explosives – Firearms Technology Branch.

**DEFINITION OF FIREARM**

Title I of the Gun Control Act, 18 U.S.C. §§ 921 *et seq.*, primarily regulates conventional firearms (i.e., rifles, pistols, and shotguns). Title II of the Gun Control Act, also known as the National Firearms Act, 26 U.S.C. §§ 5801 *et seq.*, stringently regulates machine guns, short barreled shotguns, and other narrow classes of firearms. "Firearm" is defined in § 921(a)(3) as:

(B) Any weapon (including a starter gun) which will or is designed to or may readily be converted expel a projectile by the action of an explosive; (B) the frame or receiver of any such weapon; (C) any firearm muffler or firearm silencer; or (D) any destructive device. Such term does not include an antique firearm.

Re: IN RE: POLYMER 80, INC. PF940C BLANK

October 3, 2016

Page 2

As noted, the term "firearm" means a "weapon . . . which will or is designed to or may readily be converted to expel a projectile," and also "the *frame or receiver* of any such weapon." (18 U.S.C. §921(a)(3).) Both the "designed" definition and the "may readily be converted" definition apply to a weapon that expels a projectile, not to a frame or receiver. A frame or receiver is not a "weapon," will not and is not designed to expel a projectile, and may not readily be converted to expel a projectile.

The issue therefore becomes whether the raw material "casting," with the specified features, may constitute a "frame or receiver."

ATF's regulatory definition, 27 C.F.R. §478.11, provides: "*Firearm frame or receiver*. That part of a firearm which provides housing for the hammer, bolt or breechblock, and firing mechanism, and which is usually threaded at its forward portion to receive the barrel. (The same definition appears in 27 C.F.R. §479.11.) "*Breechblock*" is defined as the locking and cartridge head supporting mechanism of a firearm that does not operate in line with the axis of the bore." (*Glossary of the Association of Firearms and Toolmark Examiners* (2<sup>nd</sup> Ed. 1985, 21).)

The statute refers to "the frame or receiver of any such weapon," not raw material which would require further milling, drilling, and other fabrication to be usable as a frame or receiver. Referring to ATF's definition in §478.11, an unfinished piece is not a "part" that "provides housing" (in the present tense) for the hammer, bolt, or breechblock, and other components of the firing mechanism, unless and until it is machined to accept these components. The definition does not include raw materials that "would provide housing" for such components ". . . if further machined."

In ordinary nomenclature, the frame or receiver is a finished part which is capable of being assembled with other parts to put together a firearm." (*Receiver*. The basic unit of a firearm which houses the firing and breech mechanism and to which the barrel and stock are assembled. *Glossary of the Association of Firearm and Toolmark Examiners* (2<sup>nd</sup> ed. 1985), 111.) Raw material requires further fabrication. The Gun Control Act recognizes the distinction between "Assembly and "fabrication." (Compare 18 U.S.C. §921(a)(29) (defining "handgun" in part as "any combination of parts from which a firearm described in subparagraph (A) can be *assembled*") with §921(a)(24) (referring to "any combination of parts, designed or redesigned, and intended for use in *assembling or fabricating* a firearm silencer or firearm muffler" (emphasis added).) The term "assemble" means "to fit or join together (the parts of something, such as a machine): to assemble the parts of a kit." (*Assemble*. *Dictionary.com*. *Collins English Dictionary - Complete & Unabridged 10th Edition*. HarperCollins Publishers. <http://dictionary.reference.com/browse/assemble> (accessed: January 23, 2013).) The term "fabricate" is broader, as it also synonymous with manufacture: "to make, build, or construct." (*Fabricate*. *Dictionary.com*. *Collins English Dictionary - Complete & Unabridged 10th Edition*. HarperCollins Publishers. <http://dictionary.reference.com/browse/fabricate> (accessed: January 23, 2013).) Thus, drilling, milling, and other machining would constitute fabrication, but assembly more narrowly means putting together parts already fabricated.



Re: **IN RE: POLYMER 80, INC. PF940C BLANK**

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Moreover, "Congress did not distinguish between *receivers integrated into an operable weapon and receivers sitting in a box, awaiting installation.*" (*F.J. Vollmer Co., Inc. v. Higgins*, 23 F.3d 448, 450 (D.C. Cir. 1994)(Emphasis added.) The absence of a single hole and the presence of a piece of extra metal may mean that an item is not a frame or receiver." (*Id.* at 452 ("In the case of the modified HK receiver, the critical features were the lack of the attachment block and the presence of a hole"; "welding the attachment block back onto the magazine and filling the hole it had drilled" removed the item from being a machinegun receiver.))

### **ANALOGOUS DETERMINATIONS**

In an analogous situation, ATF has defined a frame or receiver in terms of whether it was "capable of accepting all parts" necessary for firing. Like the term "firearm," the term "machinegun" is also defined to include the "frame or receiver of any such weapon." (26 U.S.C. §5845(b). The same definition is incorporated by reference in 18 U.S.C. §921(a)(3).) The Chief of the ATF Firearms Technology Branch wrote in 1978 concerning a semiautomatic receiver which was milled out to accept a full automatic sear, but the automatic sear hole was not drilled. He opined: "in such a condition, the receiver is not capable of accepting all parts normally necessary for full automatic fire. Therefore, such a receiver is not a machinegun. . . . As soon as the receiver is capable of accepting all parts necessary for full automatic fire, it would be subject to all the provisions of the NFA." (Nick Voinovich, Chief, ATF Firearms Technology Branch, Feb. 13, 1978, T:T:F:CHB, 7540. Similar opinions were rendered by the Chief, ATF Firearms Technology Branch, Aug. 3 1977 (reference number deleted); and C. Michael Hoffman, Assistant Director (Technical and Scientific Services), May 5, 1978, T:T:F:CHB, 15497.)

That being said, the ATF expressed its opinions as to what extent raw material must be machined in order to be deemed a firearm. Specifically, in your letter dated June 12, 2014 (90350:WJS 331/302036) you stated as following in response to a submission from Tactical Machining, LLC:

In general, to be classified as firearms, pistol forgings or castings must incorporate the following critical features:

Slide rails or similar slide-assembly attachment features.  
Hammer pin hole.  
Sear pin hole.

That letter was responding to two submissions (Sample A and Sample B). Those samples were described as having the following completed:

1. Plunger-tube holes have been drilled.
2. Slide-stop pin hole drilled.
3. Slide-stop engagement area machined.
4. Ejector pin hole drilled.
5. Safety-lock hole drilled.

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6. Magazine-catch area machined.
7. Grip-screw bushing holes drilled.
8. Trigger slot machined.
9. Magazine well machined.
10. Main spring housing area machined.
11. Main spring pin hole machined.
12. Sear-spring slot machined.

The critical machining operations not yet implemented in SAMPLE A and B were as follows:

1. Slide rails cut.
2. Sear pin hole drilled.
3. Hammer pin hole drilled.
4. Barrel seat machined.

The FTB determined that neither Sample A nor B meet the definition of "firearm" presented in GCA, 18 U.S.C. Section 921(a)(3).)

Similarly, the critical machining operations not yet implanted in the PF940C are as follows:

1. Drill the locking left block pin hole.
2. Drill the locking right block pin hole.
3. Drill the left trigger pin hole.
4. Drill the right trigger pin hole.
5. Drill the trigger left housing pin hole.
6. Drill the right trigger housing pin hole.
7. Cut the left rail slots in the rear to allow slide installation.
8. Cut the right rail slots in the rear to allow slide installation.
9. Machine the side walls that block slide installation.
10. Machine the cross wall that blocks barrel and recoil spring installation.

Thus, it is clear that the PF940C blank lower does not provide housing for the "hammer, bolt or breechblock, and firing mechanism" as required by law. Moreover, like the 1911 submission that was deemed not a "firearm" by the FTB, the PF940C is missing critical operations necessary to complete the product. In this regard, the operations performed on the exemplar casting are akin to the 1911 submission deemed not a "firearm" by the FTB. As such, it is our belief that the exemplar casting does not constitute a "receiver" or a "firearm." But, again, we request your clarification on this point: 1) Is it the opinion of the Bureau of Alcohol, Tobacco, Firearms, and Explosives that the enclosed PF940C blank is a firearm or firearm frame or receiver.

Thank you for taking the time to address this issue. We look forward to hearing from you. Please let us know if you have any further questions or concerns. When complete, please return the

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submitted parts to 42690 Rio Nedo, Suite F, Temecula, CA 92590 via Fed-Ex using account number: 321690653.

Sincerely,

**DAVIS & ASSOCIATES**

s/ *Jason Davis*

**JASON DAVIS.**