

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 IV**

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AARON D. FORD  
Nevada Attorney General  
STEVE SHEVORSKI (Bar No. 8256)  
Chief Litigation Counsel  
Office of the Attorney General  
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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

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 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.

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

~~[(3)]~~ (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.

Sec. 8. (Deleted by amendment.)

Sec. 9. (Deleted by amendment.)

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

2. ~~[Section]~~ Sections 3 and 5 of this act ~~[becomes]~~ become effective on January 1, 2022.

Senator Scheible moved the adoption of the amendment.

Remarks by Senator Scheible.

Amendment No. 543 to Assembly Bill No. 286 provides that a firearm manufactured before 1969 is not subject to the provisions contained in section 5 of the bill. It clarifies that nothing in the bill prohibits the sale of an unfinished frame, receiver or firearm to an importer, manufacturer or dealer licensed under federal law before January 1, 2022. It adds Senator Scheible as a sponsor.

Amendment adopted.

Bill ordered reprinted, re-engrossed and to third reading.

Assembly Bill No. 301.

Bill read second time.

The following amendment was proposed by the Committee on Growth and Infrastructure:



ASSEMBLY BILL NO. 286—ASSEMBLYWOMAN JAUREGUI

MARCH 15, 2021

JOINT SPONSOR: SENATOR SCHEIBLE

Referred to Committee on Judiciary

SUMMARY—Prohibits certain acts relating to firearms.  
(BDR 15-21)

FISCAL NOTE: Effect on Local Government: Increases or Newly  
Provides for Term of Imprisonment in County or City  
Jail or Detention Facility.  
Effect on the State: Yes.

~

EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

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:**

1 Existing law establishes various unlawful acts relating to firearms. (Chapter  
2 202 of NRS) **Sections 3-5** of this bill create additional unlawful acts relating to  
3 firearms.

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

11 Similarly, **section 3.5** of this bill prohibits a person from selling, offering to sell  
12 or transferring an unfinished frame or receiver unless: (1) the person is a firearms  
13 importer or manufacturer and the recipient of the unfinished frame or receiver is a  
14 firearms importer or manufacturer; or (2) the unfinished frame or receiver is  
15 required to be, and has been, imprinted with a serial number. **Section 3.5** provides  
16 that a person who commits such an unlawful act: (1) for the first offense, is guilty



17 of a gross misdemeanor; and (2) for the second or any subsequent offense, is guilty  
18 of a category D felony.

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

27 Similarly, **section 5** of this bill prohibits a person from possessing, selling,  
28 offering to sell, transferring, purchasing, transporting or receiving a firearm that is  
29 not imprinted with a serial number issued by a firearms importer or manufacturer in  
30 accordance with federal law and any regulations adopted thereunder unless: (1) the  
31 person is a law enforcement agency or a firearms importer or manufacturer; or (2)  
32 the firearm is rendered permanently inoperable, was manufactured before 1969 or  
33 is an antique, collector's item, curio or relic. **Section 5** provides that a person who  
34 commits such an unlawful act: (1) for the first offense, is guilty of a gross  
35 misdemeanor; and (2) for the second or any subsequent offense, is guilty of a  
36 category D felony. **Section 5.5** of this bill provides that nothing in **sections 3-5**  
37 shall be deemed to prohibit the sale of an unfinished frame or receiver or firearm  
38 that is not imprinted with a serial number to a firearms importer or manufacturer or  
39 a licensed dealer before January 1, 2022.

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

---

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

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

4 **Sec. 2.** (Deleted by amendment.)

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

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

12 **2. A person who violates this section:**

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

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

- 19 (a) *The person is:*



- 1           (1) *A firearms importer or manufacturer; and*
- 2           (2) *The recipient of the unfinished frame or receiver is a*
- 3 *firearms importer or manufacturer; or*

4           (b) *The unfinished frame or receiver is required by federal law*  
5 *to be imprinted with a serial number issued by an importer or*  
6 *manufacturer and the unfinished frame or receiver has been*  
7 *imprinted with the serial number.*

8           2. *A person who violates this section:*

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

13           **Sec. 4. 1.** *A person shall not manufacture or cause to be*  
14 *manufactured or assemble or cause to be assembled a firearm that*  
15 *is not imprinted with a serial number issued by a firearms*  
16 *importer or manufacturer in accordance with federal law and any*  
17 *regulations adopted thereunder unless the firearm:*

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

23           2. *A person who violates this section:*

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

28           3. *As used in this section:*

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

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

37           (a) *The person is:*

- 38           (1) *A law enforcement agency; or*
- 39           (2) *A firearms importer or manufacturer; or*

40           (b) *The firearm:*

- 41           (1) *Has been rendered permanently inoperable;*
- 42           (2) *Was manufactured before 1969;*
- 43           (3) *Is an antique firearm; or*



1           (4) *Has been determined to be a collector's item pursuant*  
2 *to 26 U.S.C. Chapter 53 or a curio or relic pursuant to 18 U.S.C.*  
3 *Chapter 44.*

4           2. *A person who violates this section:*

5           (a) *For the first offense, is guilty of a gross misdemeanor; and*

6           (b) *For the second or any subsequent offense, is guilty of a*  
7 *category D felony and shall be punished as provided in*  
8 *NRS 193.130.*

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

11          **Sec. 5.5.** *Nothing in the provisions of sections 3 to 5,*  
12 *inclusive, of this act shall be deemed to prohibit the sale of an*  
13 *unfinished frame or receiver or firearm that is not imprinted with*  
14 *a serial number to a firearms importer or manufacturer or a*  
15 *licensed dealer before January 1, 2022. As used in this section,*  
16 *"licensed dealer" has the meaning ascribed to it in NRS 202.2546.*

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

18          202.253 As used in NRS 202.253 to 202.369, inclusive ~~†~~ ,  
19 *and sections 2 to 5.5, inclusive, of this act:*

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

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

26          ~~†~~ 3. *"Firearm" means any device designed to be used as a*  
27 *weapon from which a projectile may be expelled through the barrel*  
28 *by the force of any explosion or other form of combustion.*

29          ~~†~~ 4. *"Firearm capable of being concealed upon the person"*  
30 *applies to and includes all firearms having a barrel less than 12*  
31 *inches in length.*

32          ~~†~~ 5. *"Firearms importer or manufacturer" means a person*  
33 *licensed to import or manufacture firearms pursuant to 18 U.S.C.*  
34 *Chapter 44.*

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

38          ~~†~~ 7. *"Motor vehicle" means every vehicle that is self-*  
39 *propelled.*

40          ~~†~~ 8. *"Semiautomatic firearm" means any firearm that:*

41          (a) *Uses a portion of the energy of a firing cartridge to extract*  
42 *the fired cartridge case and chamber the next shell or round;*

43          (b) *Requires a separate function of the trigger to fire each*  
44 *cartridge; and*

45          (c) *Is not a machine gun.*



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

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

10       202.2548 The provisions of NRS 202.2547 do not apply to:

11       1. The sale or transfer of a firearm by or to any law  
12 enforcement agency and, to the extent he or she is acting within the  
13 course and scope of his or her employment and official duties, any  
14 peace officer, security guard entitled to carry a firearm under NAC  
15 648.345, member of the armed forces or federal official.

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

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

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

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

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

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

35       6. A temporary transfer of a firearm if:

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

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

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

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



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

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

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

10 (5) While in the presence of the transferor.

11 **Sec. 8.** (Deleted by amendment.)

12 **Sec. 9.** (Deleted by amendment.)

13 **Sec. 10.** 1. This section and sections 1, 2, 3.5, 4, 5.5 and 6 to  
14 9, inclusive, of this act become effective upon passage and approval.

15 2. Sections 3 and 5 of this act become effective on January 1,  
16 2022.



# NEVADA LEGISLATURE

81st Session, 2021

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## SENATE DAILY JOURNAL

---

THE ONE HUNDRED AND EIGHTH DAY

CARSON CITY (Wednesday), May 19, 2021

Senate called to order at 8:32 p.m.

President Marshall presiding.

Roll called.

All present.

Prayer by Senator Scott Hammond.

Our heavenly Father, we are so appreciative to be here this night to do the people's work and to review the important bills we have. We pray, Father, that as we consider the motions and the bills in front of us, we might remember our constituents, the people of this State and the importance of what we do. We are thankful for the ability we have to be here and to work together to find solutions to these important problems.

Bless us with alertness to keep focused on our responsibilities.

We pray in the Name of Jesus Christ.

AMEN.

Pledge of Allegiance to the Flag.

By previous order of the Senate, the reading of the Journal is dispensed with, and the President and Secretary are authorized to make the necessary corrections and additions.

### REPORTS OF COMMITTEE

*Madam President:*

Your Committee on Health and Human Services, to which was referred Assembly Bill No. 348, has had the same under consideration, and begs leave to report the same back with the recommendation: Do pass.

Also, your Committee on Health and Human Services, to which was referred Assembly Bill No. 326, has had the same under consideration, and begs leave to report the same back with the recommendation: Amend, and do pass as amended.

JULIA RATTI, *Chair*

*Madam President:*

Your Committee on Judiciary, to which were referred Assembly Bills Nos. 42, 104, 115, 202, 296, 342, 394, 396, has had the same under consideration, and begs leave to report the same back with the recommendation: Amend, and do pass as amended.

MELANIE SCHEIBLE, *Chair*

**APP 000726**

*Madam President:*

Your Committee on Legislative Operations and Elections, to which was referred Senate Concurrent Resolution No. 11, has had the same under consideration, and begs leave to report the same back with the recommendation: Be adopted.

JAMES OHRENSCHALL, *Chair*

*Madam President:*

Your Committee on Natural Resources, to which was referred Assembly Bill No. 148, has had the same under consideration, and begs leave to report the same back with the recommendation: Amend, and do pass as amended.

FABIAN DONATE, *Chair*

## MESSAGES FROM ASSEMBLY

ASSEMBLY CHAMBER, Carson City, May 18, 2021

*To the Honorable the Senate:*

I have the honor to inform your honorable body that the Assembly on this day passed Senate Joint Resolutions Nos. 6, 7, 11.

Also, I have the honor to inform your honorable body that the Assembly on this day adopted Senate Concurrent Resolutions Nos. 5, 8.

CAROL AIELLO-SALA

*Assistant Chief Clerk of the Assembly*

## WAIVERS AND EXEMPTIONS

### WAIVER OF JOINT STANDING RULE(S)

A Waiver requested by Senator Cannizzaro.

For: Senate Bill No. 367.

To Waive:

Subsection 1 of Joint Standing Rule No. 14.2 (dates for introduction of BDRs requested by individual legislators and committees).

Subsection 1 of Joint Standing Rule No. 14.3 (out of final committee of house of origin by 68th day).

Subsection 2 of Joint Standing Rule No. 14.3 (out of house of origin by 79th day).

Subsection 3 of Joint Standing Rule No. 14.3 (out of final committee of 2nd house by 103rd day).

Subsection 4 of Joint Standing Rule No. 14.3 (out of 2nd house by 110th day).

Has been granted effective: Tuesday, May 18, 2021.

NICOLE J. CANNIZZARO

*Senate Majority Leader*

JASON FRIERSON

*Speaker of the Assembly*

## MOTIONS, RESOLUTIONS AND NOTICES

Senator Cannizzaro moved that Assembly Joint Resolution No. 3 be taken from the Resolution File and placed on the Resolution File for the next legislative day.

Motion carried.

Senator Cannizzaro moved that Senate Bill No. 205 and Assembly Bills Nos. 55, 67, 222 be taken from the General File and placed on the Secretary's desk.

Motion carried.

Senator Cannizzaro moved that Assembly Bill Nos. 87, 88, 89, 91, 95, 97, 100, 101, 102, 103, 105, 107, 109, 111, 112, 113, 130, 136, 139, 140, 141, 143, 145, 146, 153, 166, 169, 177, 178, 181, 182, 184, 186, 187, 190, 194, 195, 197, 200, 205, 207, 210, 211, 212, 214, 215, 228, 231, 235, 236, 245, 249, 250, 253, 254, 258, 261, 277, 278, 284, 286, 290, 298, 301, 302, 304, 307, 316, 318, 320,



325, 327, 330, 333, 335, 336, 343, 344, 345, 356, 359, 360, 362, 366, 374, 378, 385, 388, 390, 391, 397, 398, 405, 409, 410, 412, 414, 419, 421, 430, 435, 436, 444, 452, be taken from the General File and placed on the General File for the next legislative day.

Motion carried.

Senator Cannizzaro moved that Assembly Bill No. 58 be taken from the Secretary's desk and placed on the General File.

Motion carried.

Senator Ratti moved that Senate Bill No. 70 be taken from the Secretary's desk and placed at on the General File.

Motion carried.

SECOND READING AND AMENDMENT

Senate Bill No. 449.

Bill read second time and ordered to third reading.

GENERAL FILE AND THIRD READING

Senate Bill No. 100.

Bill read third time.

Remarks by Senator Seevers Gansert.

Senate Bill No. 100 enacts Nevada's participation in the interstate Physical Therapy Licensure Compact. Participation in the interstate compact allows an individual, licensed as a physical therapist or physical therapist assistant in a state that is a member of the compact, to practice in other member states. Before providing services, the Compact requires a physical therapist or physical therapist assistant to meet certain requirements. These include, but are not limited to, holding a license in his or her home state and having no encumbrances on his or her license. They must be eligible to practice under the Compact having had no adverse actions taken against any license or authority to practice under the Compact within the previous 10 years. He or she who is seeking to practice under the Compact in another state must notify the Physical Therapy Compact Commission Compact and pay any applicable fees.

Roll call on Senate Bill No. 100:

YEAS—21.

NAYS—None.

Senate Bill No. 100 having received a two-thirds majority, Madam President declared it passed, as amended.

Bill ordered transmitted to the Assembly.

Senate Bill No. 278.

Bill read third time.

Remarks by Senator Settlemeyer.

Senate Bill No. 278 defines "wholesale sale" as a sale or transfer of cannabis by a cannabis cultivation facility to another cannabis establishment. The bill excludes from the definition of "wholesale sale" a transfer of cannabis by a cannabis cultivation facility to another cannabis cultivation facility when both cannabis cultivation facilities share identical ownership.

# NEVADA LEGISLATURE

Eightieth Session, 2019

## SENATE DAILY JOURNAL

THE ONE HUNDRED AND NINTH DAY

CARSON CITY (Thursday), May 20, 2021

Senate called to order at 1:34 p.m.

President pro Tempore Denis presiding.

Roll called.

All present.

Prayer by the Chaplain, Reverend JJ Tuttle.

God our Shepherd, You have entrusted us with the responsibility to tend Your sheep, to feed them and watch over them. May we be worthy of this mantle of awesome responsibility and lean wholeheartedly into this task. May nothing we do be done simply out of obligation. Having received Your tender mercies in our own lives, may we be eager to serve You and those whom You have commended to our care. And if we lose sight of Your claim on our lives and waver in our duties, call us to examine the multitude of instances where You have showered Your grace upon us. How then can we help but be so transformed that we would want nothing else but to give of ourselves from the depths of our souls.

May we be examples of what it means to serve You. May we live lives of kindness and humility, not lifting ourselves up but waiting with patience for the moment when, in the fullness of time, You reveal the purpose for all of our efforts and energies, in Your gracious plan. In the meantime, we cast ourselves, our anxieties, our best intentions and our most fervent hopes on You and hope of Your steadfast love for us.

In the strength of Your Name, we pray.

AMEN.

Pledge of Allegiance to the Flag.

By previous order of the Senate, the reading of the Journal is dispensed with, and the Chair of President pro Tempore and Secretary are authorized to make the necessary corrections and additions.

### REPORTS OF COMMITTEE

*Mr. President pro Tempore:*

Your Committee on Commerce and Labor, to which was referred Assembly Bill No. 45, has had the same under consideration, and begs leave to report the same back with the recommendation: Amend, and do pass as amended.

PAT SPEARMAN, *Chair*

### MESSAGES FROM ASSEMBLY

ASSEMBLY CHAMBER, Carson City, May 19, 2021

*To the Honorable the Senate:*

I have the honor to inform your honorable body that the Assembly on this day passed Senate Bills Nos. 2, 12, 14, 15, 16, 18, 28; Assembly Bills Nos. 441, 471, 479, 481.

**APP 000729**

SENATE IN SESSION

At 6:58 p.m.

President pro Tempore Denis presiding.

Quorum present.

MOTIONS, RESOLUTIONS AND NOTICES

Senator Cannizzaro moved that Assembly Bills Nos. 143, 251, 253, 254, 258, 261, 277, 278, 284, 286, 287, 290, 296, 298, 301, 302, 304, 307, 316, 318, 320, 325, 326, 327, 330, 333, 335, 336, 342, 343, 344, 345, 348, 356, 359, 360, 362, 366, 368, 374, 378, 385, 388, 390, 391, 394, 396, 397, 398, 399, 405, 409, 410, 412, 414, 419, 421, 430, 435, 436, 444, 452, 476, be taken from the General File and placed on the General File for the next legislative day.

Motion carried.

GENERAL FILE AND THIRD READING

Senate Bill No. 185.

Bill read third time.

Remarks by Senator Spearman.

Senate Bill No. 185 makes General Fund appropriations of \$250,000 in each fiscal year of the 2021-2023 biennium to the Department of Veterans Services to provide financial assistance and support for the Adopt a Vet Dental program.

Roll call on Senate Bill No. 185:

YEAS—19.

NAYS—None.

EXCUSED—Hardy, Pickard—2.

Senate Bill No. 185 having received a constitutional majority, Mr. President pro Tempore declared it passed.

Bill ordered transmitted to the Assembly.

Senate Bill No. 233.

Bill read third time.

Remarks by Senator Brooks.

Senate Bill No. 233 provides appropriations from the State General Fund of \$250,000 in Fiscal Year 2022 and \$250,000 to the Governor's Office of Finance in the Office of the Governor for allocation to the Nevada Health Service Corps for the purpose of obtaining matching federal money for purposes of funding certain medical and dental practitioners to practice in underserved areas of Nevada.

Roll call on Senate Bill No. 233:

YEAS—19.

NAYS—None.

EXCUSED—Hardy, Pickard—2.

Senate Bill No. 233 having received a constitutional majority, Mr. President pro Tempore declared it passed.

Bill ordered transmitted to the Assembly.

Senate Bill No. 442.

Bill read third time.

# NEVADA LEGISLATURE

81st Session, 2021

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## SENATE DAILY JOURNAL

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THE ONE HUNDRED AND TENTH DAY

CARSON CITY (Friday), May 21, 2021

Senate called to order at 3:01 p.m.

President Marshall presiding.

Roll called.

All present.

Prayer by Senator Dina Neal.

Father God, I ask for Your blessings and Your grace today on this deadline day. Bring peace to everyone in this building that surpasses all understanding. Reduce the level of conflict on the rise in the building today. Move in Your Holy Spirit and grace. Bless us and our families who are waiting for us to come home. Deliver us from all of our anxiety and encourage us to handle the issues out of your will, God. Bless the staff and the Assembly.

Guide us to a great and wonderful day.

AMEN.

Pledge of Allegiance to the Flag.

By previous order of the Senate, the reading of the Journal is dispensed with, and the President and Secretary are authorized to make the necessary corrections and additions.

### REPORTS OF COMMITTEE

*Madam President:*

Your Committee on Finance, to which were re-referred Senate Bills Nos. 27, 69, 76, 147, 211, 287, 297, has had the same under consideration, and begs leave to report the same back with the recommendation: Amend, and do pass as amended.

CHRIS BROOKS, *Chair*

*Madam President:*

Your Committee on Government Affairs, to which was referred Senate Bill No. 445, has had the same under consideration, and begs leave to report the same back with the recommendation: Amend, and do pass as amended.

MARILYN DONDERO LOOP, *Chair*

*Madam President:*

Your Committee on Health and Human Services, to which was re-referred Senate Bill No. 390, has had the same under consideration, and begs leave to report the same back with the recommendation: Amend, and do pass as amended.

JULIA RATTI, *Chair*

**APP 000731**

Roll call on Assembly Bill No. 278:

YEAS—20.

NAYS—Hansen.

Assembly Bill No. 278 having received a constitutional majority, Madam President declared it passed.

Bill ordered transmitted to the Assembly.

Assembly Bill No. 284.

Bill read third time.

Remarks by Senator Hansen.

Assembly Bill No. 284 establishes a procedure to contest the validity of liens on motor vehicles and for the return of a vehicle if a justice of the peace finds a lien invalid. After receiving notice of opposition to a lien, DMV is prohibited from transferring the vehicle's title until the matter has been adjudicated. A lien on a motor vehicle expires six months after it is filed with the DMV unless that period is tolled pending active litigation or a hearing conducted by the DMV. The provisions of this bill do not affect the rights of a secured party pursuant to statute and do not apply to a lien asserted by a to-car operator holding a certificate of public convenience and necessity.

Roll call on Assembly Bill No. 284:

YEAS—21.

NAYS—None.

Assembly Bill No. 284 having received a constitutional majority, Madam President declared it passed, as amended.

Bill ordered transmitted to the Assembly.

Assembly Bill No. 286.

Bill read third time.

Remarks by Senators Scheible, Hansen and Harris.

SENATOR SCHEIBLE:

Assembly Bill No. 286 places restrictions on the manufacture, possession, purchase, transfer, transportation or sale of firearms and unfinished frames or receivers without a serial number in accordance with federal law and provides penalties for violating those restrictions. Exceptions are provided for firearms manufactured prior to 1969, as well as for importers, manufacturers and law-enforcement agencies and for certain firearms that rendered inoperable or are antiques, collector's items, curios or relics. Nothing in the bill prohibits the sale of an unfinished frame, receiver or firearm without a serial number to a federally licensed importer, manufacturer or dealer before January 1, 2022.

SENATOR HANSEN:

I oppose Assembly Bill No. 286, the so-called, ghost-gun bill. During the hearing, I requested data on how many crimes are committed in Nevada with this type of weapon, and I have not received that to date. After talking with law enforcement, it appears it is almost nonexistent. Testimony in Committee also recognized that approximately 90 percent of the people convicted of gun crimes got the guns on the extensive black market that exists. The idea that serial numbers help reduce crime does not add up. Most of us are familiar with the term "felon in possession of a firearm" because almost every time they arrest a felon in Nevada, it seems like that is part of the charge. That gives you an idea of how common firearms that are not bought through regular dealers. Someone can simply grind off a serial number if, for some reason, the criminal wanted to do that.

In the last few years, the United States has seen a surge in gun sales, disproportionality purchased by women, people of color and the LGBTQ community, especially in areas where police protection has been compromised. These kits are inexpensive compared to handguns.

**APP 000732**

Handguns are about \$500, and these kits can go for \$300. For people who are financially limited, this is their opportunity for some level of self-protection. In the absence of any evidence these guns are used in crimes, we should err on the side of caution. This is a second-amendment issue we have in the Bill of Rights of individual liberty. I urge my colleagues to vote "no" on [Assembly Bill No. 286](#).

SENATOR HARRIS:

As a society, we have all agreed that no one should be able to own a gun without a background check. [Assembly Bill No. 286](#) brings us closer to that ideal.

Roll call on [Assembly Bill No. 286](#):

YEAS—12.

NAYS—Buck, Goicoechea, Hammond, Hansen, Hardy, Kieckhefer, Pickard, Seevers Gansert, Sattelmeyer—9.

[Assembly Bill No. 286](#) having received a constitutional majority, Madam President declared it passed, as amended.

Bill ordered transmitted to the Assembly.

Assembly Bill No. 287.

Bill read third time.

The following amendment was proposed by Senator Ratti:

Amendment No. 729.

SUMMARY—Revises provisions relating to childbirth. (BDR 40-799)

AN ACT relating to health care; revising certain terminology relating to pregnancy and birth; providing for the licensing and regulation of freestanding birthing centers; requiring a freestanding birthing center to perform certain screening, report certain information to the local health officer and make certain information available to the Chief Medical Officer; authorizing the Maternal Mortality Review Committee to access certain information; eliminating the licensing and regulation of obstetric centers; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law requires a midwife to perform certain duties relating to the registration of a birth and the care of a person who is pregnant or a newborn infant. (NRS 440.280, 440.340, 440.740, 440.770, 442.008, 442.030-442.110, 442.600-442.680) Sections 1.1 and 3 of this bill define the term "midwife" for those purposes to include a Certified Professional Midwife, a Certified Nurse-Midwife or any other type of midwife. Sections 1.3-2.9, 4-9.7, 29.5 and 33.5 of this bill replace the term "mother" and similar terms with references to a person who is pregnant, a person giving birth, a person who gave birth or a person who has given birth, as appropriate, for purposes relating to vital statistics, maternal and child health and medical facilities and related entities. Section 22 of this bill replaces the term "gender transition" with the term "gender-affirming surgery." Section 23 of this bill replaces a reference to lesbian, gay, bisexual, transgender and questioning persons with a reference to persons with various sexual orientations and gender identities and expressions.

Existing law: (1) defines the term "obstetric center" to mean a facility that is not part of a hospital and provides services for normal, uncomplicated births;

**APP 000733**

# NEVADA LEGISLATURE

Eighty-First Session, 2021

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## ASSEMBLY DAILY JOURNAL

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### THE ONE HUNDRED AND TENTH DAY

CARSON CITY (Friday), May 21, 2021

Assembly called to order at 1:52 p.m.

Mr. Speaker presiding.

Roll called.

All present except for Assemblywoman Black, who was absent.

Prayer by the Chaplain, Pastor Jake Musselman.

God, You are a good Father who longs to give good gifts to his children. Today, I pray for Your blessing over each legislator. They have chosen the responsibility of servanthood to this state. They have worked and will continue to work for life and liberty. Grant them character to faithfully execute their office. Bless them with strength and energy to complete this legislative session well. Protect them and their families from harm and sickness, and bless them with Your good gifts. Be glorified through them.

AMEN.

Pledge of allegiance to the Flag.

Assemblywoman Benitez-Thompson moved that further reading of the Journal be dispensed with and the Speaker and Chief Clerk be authorized to make the necessary corrections and additions.

Motion carried.

#### REPORTS OF COMMITTEES

*Mr. Speaker:*

Your Committee on Commerce and Labor, to which was referred Senate Bill No. 44, has had the same under consideration, and begs leave to report the same back with the recommendation: Amend, and do pass as amended.

Also, your Committee on Commerce and Labor, to which was referred Senate Bill No. 75, has had the same under consideration, and begs leave to report the same back with the recommendation: Amend, and do pass as amended.

Also, your Committee on Commerce and Labor, to which was referred Senate Bill No. 307, has had the same under consideration, and begs leave to report the same back with the recommendation: Amend, and do pass as amended.

SANDRA JAUREGUI, *Chair*

# Assembly Daily Journal

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## MESSAGES FROM THE SENATE

SENATE CHAMBER, Carson City, May 21, 2021

*To the Honorable the Assembly:*

I have the honor to inform your honorable body that the Senate amended, and on this day passed, as amended, Assembly Bill No. 45, Amendment No. 706; Assembly Bill No. 237, Amendment No. 658; Assembly Bill No. 251, Amendment No. 661; Assembly Bill No. 253, Amendment No. 647; Assembly Bill No. 277, Amendment No. 553; Assembly Bill No. 284, Amendment No. 496; Assembly Bill No. 286, Amendment No. 543; Assembly Bill No. 290, Amendment No. 623; Assembly Bill No. 296, Amendment No. 660; Assembly Bill No. 298, Amendment No. 622; Assembly Bill No. 301, Amendment No. 562; Assembly Bill No. 320, Amendment No. 561; Assembly Bill No. 326, Amendment No. 586, and respectfully requests your honorable body to concur in said amendments.

SHERRY RODRIGUEZ  
*Assistant Secretary of the Senate*

## MOTIONS, RESOLUTIONS AND NOTICES

### WAIVER OF JOINT STANDING RULES

A Waiver requested by: Senator Cannizzaro.

For: Senate Bill No. 254.

To Waive:

Subsection 1 of Joint Standing Rule No. 14.2 (dates for introduction of BDRs requested by individual legislators and committees).

Subsection 1 of Joint Standing Rule No. 14.3 (out of final committee of house of origin by 68th day).

Subsection 2 of Joint Standing Rule No. 14.3 (out of house of origin by 79th day).

Subsection 3 of Joint Standing Rule No. 14.3 (out of final committee of 2nd house by 103rd day).

Subsection 4 of Joint Standing Rule No. 14.3 (out of 2nd house by 110th day).

Has been granted effective: May 21, 2021.

SENATOR NICOLE J. CANNIZZARO  
*Senate Majority Leader*

ASSEMBLYMAN JASON FRIERSON  
*Speaker of the Assembly*

A Waiver requested by: Speaker Frierson.

For: Senate Bill No. 395.

To Waive:

Subsection 1 of Joint Standing Rule No. 14.2 (dates for introduction of BDRs requested by individual legislators and committees).

Subsection 1 of Joint Standing Rule No. 14.3 (out of final committee of house of origin by 68th day).

Subsection 2 of Joint Standing Rule No. 14.3 (out of house of origin by 79th day).

Subsection 3 of Joint Standing Rule No. 14.3 (out of final committee of 2nd house by 103rd day).

Subsection 4 of Joint Standing Rule No. 14.3 (out of 2nd house by 110th day).

Has been granted effective: May 21, 2021.

SENATOR NICOLE J. CANNIZZARO  
*Senate Majority Leader*

ASSEMBLYMAN JASON FRIERSON  
*Speaker of the Assembly*

Assemblywoman Benitez-Thompson moved that Senate Bills Nos. 249, 307, and 391 be taken from the General File and placed on the Chief Clerk's desk.

Motion carried.



**MINUTES OF THE JOINT MEETING OF THE  
SENATE COMMITTEE ON JUDICIARY  
AND THE  
ASSEMBLY COMMITTEE ON JUDICIARY**

**Eighty-first Session  
May 22, 2021**

The joint meeting of the Senate Committee on Judiciary and the Assembly Committee on Judiciary was called to order by Chair Melanie Scheible at 9:11 a.m. on Saturday, May 22, 2021, Online and in Room 4100 of the Legislative Building, Carson City, Nevada. [Exhibit A](#) is the Agenda. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

**SENATE COMMITTEE MEMBERS PRESENT:**

Senator Melanie Scheible, Chair  
Senator Nicole J. Cannizzaro, Vice Chair  
Senator James Ohrenschall  
Senator Dallas Harris  
Senator James A. Settelmeyer  
Senator Ira Hansen  
Senator Keith F. Pickard

**ASSEMBLY COMMITTEE MEMBERS PRESENT:**

Assemblyman Steve Yeager, Chair  
Assemblywoman Rochelle T. Nguyen, Vice Chair  
Assemblywoman Shannon Bilbray-Axelrod  
Assemblywoman Lesley E. Cohen  
Assemblywoman Cecelia González  
Assemblywoman Elaine Marzola  
Assemblyman C.H. Miller  
Assemblyman David Orentlicher  
Assemblywoman Shondra Summers-Armstrong  
Assemblywoman Alexis Hansen  
Assemblywoman Melissa Hardy  
Assemblywoman Heidi Kasama  
Assemblywoman Lisa Krasner  
Assemblyman P.K. O'Neill  
Assemblyman Jim Wheeler

Senate Committee on Judiciary  
Assembly Committee on Judiciary  
May 22, 2021  
Page 2

**GUEST LEGISLATORS PRESENT:**

Senator Fabian Donate, Senatorial District No. 10  
Assemblywoman Sandra Jaregui, Assembly District No. 41

**STAFF MEMBERS PRESENT:**

Patrick Guinan, Senate Policy Analyst  
Diane C. Thornton, Assembly Policy Analyst  
Nicolas Anthony, Senate Counsel  
Bradley A. Wilkinson, Assembly Counsel  
Pam King, Committee Secretary

**OTHERS PRESENT:**

Ayesha Molino, MGM Resorts International  
Nida Alvi, Everytown for Gun Safety  
Jim Sullivan, Culinary Workers Union Local 226  
Troyce Krumme, Las Vegas Metro Police Managers and Supervisors Association  
John Abel, Police Officer, Las Vegas Police Protective Association  
Athar Haseebullah, American Civil Liberties Union of Nevada  
Dan Reid, National Rifle Association  
John Piro, Chief Deputy Public Defender, Clark County Public Defender's Office  
Randi Thompson, Nevada Firearms Coalition  
Bruce Thompson  
Bill Bowen  
Patrick Horgan  
Diante  
Kendra Bertschy, Deputy Public Defender, Washoe County Public Defender's  
Office  
Christine Saunders, Progressive Leadership Alliance of Nevada  
Janine Hansen, State Chairman, Independent American Party of Nevada  
Bob Russo  
Jim Degraffenreid, National Committeeman for the Nevada Republican Party  
Theresa Degraffenreid  
James Carr  
Mike Hawkins  
Joel Friedman

Senate Committee on Judiciary  
Assembly Committee on Judiciary  
May 22, 2021  
Page 3

Lynn Chapman, Nevada Families for Freedom  
Jaimee Shepler  
Adrian Lowry  
Jim Hoffman, Nevada Attorneys for Criminal Justice  
Matthew Wilkie  
Leslie Turner  
Chuck Callaway, Las Vegas Metropolitan Police Department  
Michael Farringham, Washoe Shooting Sports Foundation  
Cyrus Hojjaty

CHAIR SCHEIBLE:

We are hearing Senate Bill (S.B.) 452 with an amendment, which the presenters will cover.

**SENATE BILL 452**: Prohibits the possession of a firearm on a covered premises in certain circumstances. (BDR 15-1154)

SENATOR NICOLE J. CANNIZZARO (Senatorial District No. 6):

I will provide a brief introduction of the bill and then turn to my co-presenters Ayesha Molino with MGM Resorts and Assemblywoman Sandra Jauregui to explain more of the background and details of the bill.

Senator Fabian Donate is here to walk through his proposed amendment.

By way of background information, over the last year, our State has been deeply impacted as a result of the Covid-19 pandemic, and the hospitality industry has been hit especially hard. As we begin to turn the corner and start to make our comeback, we must ensure our resorts are safe for everyone. Our Resort Corridor will thrive when our locals come back to enjoy a night out, when out-of-state and international visitors are here in record numbers for vacations, and hospitality workers have a safe environment to provide a world-class experience that we are so famous for.

During the pandemic, we have learned to be ready to adapt to changing circumstances. In the last year, we have worked to allow the hospitality industry to function safely in the face of a public health crisis by mandating masks, instituting social distancing and deploying vaccine units on properties across Nevada.

Senate Committee on Judiciary  
Assembly Committee on Judiciary  
May 22, 2021  
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I have studied the proposed amendment, [Exhibit B](#), and the language still does not take away that danger of potential armed confrontation between law enforcement officers and citizens. We live in a time of trying to limit a police officer's use of deadly force against all people. This bill goes in the opposite direction.

To answer your question, Assemblyman Wheeler, if someone says no and the police are called, they are going to come with lights and sirens. If police are told armed people in the casino are not listening to requests to leave and there is probable cause, officers will respond, potentially take them out in the middle of the casino at gunpoint and take them into custody. I do not think any of us want that.

ATHAR HASEEBULLAH (American Civil Liberties Union of Nevada):

We stand in firm opposition of S.B. 452. This simply is not a bad bill that has good intentions, this is a potentially deadly bill with good intentions. No amendment to this bill—no matter how well intended—can fix its potential outcomes. This bill is inherently unredeemable and a pretense for dangerous and racist stop-and-frisk policies that have plagued our Country and our State over the course of time.

To illustrate that point, did any of you think that the American Civil Liberties Union (ACLU), Progressive Leadership Alliance of Nevada, police unions, National Rifle Association and other groups would come together this last week of Session on this type of bill? This is half-baked at best. This bill, as currently drafted, largely reflects language from a previously dead amendment to Assembly Bill (A.B.) 286 brought back in this new form the last week of Session.

[ASSEMBLY BILL 286 \(3rd Reprint\)](#): Prohibits certain acts relating to firearms.  
(BDR 15-21)

I am a person of color first and foremost before I am Executive Director of the ACLU and before I am an attorney. I am a gun violence survivor. I have been shot at. I also have been detained by police five times in three jurisdictions. None of those were friendly. There were no practices related to de-escalation, and you heard no testimony from a single law enforcement agency that spoke of its de-escalation tactics.

Senate Committee on Judiciary  
Assembly Committee on Judiciary  
May 22, 2021  
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This bill would provide private security for a private business like MGM Resorts. If MGM Resorts wants to engage in hiring armed security, they can do so. The last I checked, they were not strapped for cash.

We stand with our friends and members of the Culinary Workers Union. We have represented them in First Amendment cases. Suppose an off-duty officer suspects the form of a bulge or an outline of a firearm in a person's pocket on the casino floor, and they are racially profiled as Black and Brown individuals, in that case, we will represent those individuals afterward when they are accosted and searched unlawfully because a new crime has been committed.

I am encouraging both Judiciary Committees to take a better look at this and perhaps turn it into a study that has been done over and over to assess the proper way of implementing such a policy to prevent gun violence.

DAN REID (National Rifle Association):

We are in strong opposition of S.B. 452. We are proud to stand with this broad coalition of groups as the ACLU just testified so eloquently about many of the issues.

Questions from the Committee outlined many of the problems of this bill. There is a lot of uncertainty for people of how to comply, why this is truly necessary and why MGM Resorts cannot take care of their security on their own without creating this new crime that would result in at least suspension or revocation with CCW for someone who may have accidentally parked in the wrong parking lot or not been aware of the signage when going onto the casino floor.

This bill is unnecessary and could implicate a lot of good people, as well as residential unit owners or lessees on that property. Residential owners are specifically covered in the original bill that is broader, but the amendment narrows that down further. It would specifically be to the owner, whereas a family member, significant other, a child, or so forth, who may be residing there probably will not fit into that definition and be stripped of the ability to carry a firearm in and out.

Senate Committee on Judiciary  
Assembly Committee on Judiciary  
May 22, 2021  
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Half of this bill does talk of law-abiding, conceal-carry permit holders who may accidentally carry a handgun into a casino, not the criminal who ignores gun control laws.

The lack of clarity on the procedures the public must follow could be an unnecessary source of conflict and justifies the bill's opposition.

JIM DEGRAFFENREID (National Committeeman for the Nevada Republican Party):  
I testified against this bill when it was A.B. 286 and considered by the Committee but rejected. This language was all taken out of the bill. We object to taking valuable legislative time to review issues already done. The bill did not settle in this Session.

It is telling that the ACLU, PLAN, law enforcement and the National Rifle Association are all united in opposition. I second all of the excellent testimony given earlier, particularly by the ACLU.

This bill is supported by outside groups funded with millions of dollars from Michael Bloomberg. It is not supported by Nevadans. If you check the website, you will find the original bill has 3,342 opponents against the bill and only 524 Nevadans in favor.

If MGM Resorts wants this bill, it may be that a municipal ordinance would be more appropriate rather than infringing on the rights of all Nevadans Statewide. We urge these Committees to please oppose S.B. 452 and get on with more important work.

THERESA DEGRAFFENREID:

I am speaking for myself as a Nevadan. I have worked in security at a major casino in Nevada. I have never had any problems with people who I have approached and asked to comply with my request to leave the premises to secure their weapons in their automobiles.

Because of our protocol and rules on the property not to have a firearm, the first time I explained the weapon needed to be taken off the property, the owner was angered by it but complied, took the firearm to wherever and came back afterward.

Senate Committee on Judiciary  
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Since this was brought so late in the Session, we are not able to examine this; we are not able to quell the fears. Mr. Haseebullah from the ACLU mentioned it is unusual that groups aligned against this bill would ever come together on the same side. That is testimony enough this has not been well thought through. There are other alternatives short of what I believe to be constitutionally impermissible language. I will be a no on this bill as well.

SENATOR OHRENSCHALL:

The amendments proposed do address some of the concerns I had and, hopefully, those of Assembly members and Senators who had questions.

I am cognizant of the concerns brought up by the ACLU and PLAN. I am going to vote to support the measure and reserve my right.

SENATOR HARRIS:

Most people know that I was not a fan of this bill as originally introduced. It has come a long way, and I echo my colleague's comments and the Majority Leader listening to folks' concerns with this amendment and the new proposed amendment in the work session. I feel comfortable voting on that measure as well as the commitments from the Culinary Workers Union and others to be on the lookout for any bias that may manifest itself.

This is a much better solution to a very real problem of gun violence on the Las Vegas Strip.

CHAIR SCHEIBLE:

I will also be supporting this measure out of Committee because it accomplishes the goals set out by the sponsor of this bill and the sponsor of A.B. 286.

Assemblywoman Jauregui was here testifying in support of the bill, so this represents the proper functioning of our system when unable to address all of the concerns when A.B. 286 was in the Assembly.

This was removed from that bill, but the bill in front of you today, S.B. 452, is different from the provisions originally in A.B. 286. This allows certain premises that opt-in to prohibit guns on their property the same way that we treat a school, library or a public building which makes sense because the tourism economy is the lifeblood of our Nevada economy. We should be paying

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special attention to the resorts, casinos and hotels and all of the places that people come from all over the world to see and be sure they can be safe while there. We should allow those facilities to have this increased and improved amount of safety on their properties.

This hearing was largely focused on issues not relevant to the bill. It was clear to me that we have moved away from the legal understanding of the Fourth Amendment and search-and-seizure law because none of that is changed by this bill. This does not change the amount of reasonable suspicion or probable cause that an officer has to have in order to stop someone. In some cases, this will increase the level of scrutiny where you have police officers interacting with people on a casino floor instead of civilian security guards. This bill does not fundamentally change the right that anyone has to carry a firearm just like they would on a school property or anywhere else it is prohibited.

It is an important public safety measure that the new bill or the amended version of the bill reflects those necessary changes, and I am happy to support it out of Committee.

Seeing no further discussion, we will go to a roll call vote. I would accept a motion to amend and do pass with both the amendments provided at the hearing and the additional conceptual amendments reflected in the work session document.

SENATOR HARRIS MOVED TO AMEND AND DO PASS AS AMENDED  
S.B. 452.

SENATOR OHRENSCHALL SECONDED THE MOTION.

SENATE: THE MOTION CARRIED. (SENATORS HANSEN, PICKARD AND  
SETTELMAYER VOTED NO.)

\* \* \* \* \*

MR. HOJJATY:

Violence, in general, is a concern because the presence of loneliness is out of control due to the pandemic. Loneliness can lead to violence. It is interesting to



# NEVADA LEGISLATURE

Eighty-First Session, 2021

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## ASSEMBLY DAILY JOURNAL

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### THE ONE HUNDRED AND FOURTEENTH DAY

CARSON CITY (Tuesday), May 25, 2021

Assembly called to order at 12:59 p.m.

Mr. Speaker presiding.

Roll called.

All present.

Prayer by the Chaplain, Pastor Bruce Henderson.

Lord, as I walked into this room yesterday, several people mentioned how very busy and hectic everything is right now. I thought a moment of quiet might be helpful. Father, please hear us in our stillness.

I pray in the Name of the One who said, Peace I leave with you. My peace I give to you.

AMEN.

Pledge of allegiance to the Flag.

Assemblywoman Benitez-Thompson moved that further reading of the Journal be dispensed with and the Speaker and Chief Clerk be authorized to make the necessary corrections and additions.

Motion carried.

#### REPORTS OF COMMITTEES

*Mr. Speaker:*

Your Committee on Natural Resources, to which were referred Senate Bills Nos. 34, 438, 443, has had the same under consideration, and begs leave to report the same back with the recommendation: Do pass.

Also, your Committee on Natural Resources, to which was referred Senate Concurrent Resolution No. 9, has had the same under consideration, and begs leave to report the same back with the recommendation: Be adopted.

HOWARD WATTS, *Chair*

*Mr. Speaker:*

Your Committee on Ways and Means, to which was referred Assembly Bill No. 484, has had the same under consideration, and begs leave to report the same back with the recommendation: Do pass.

Also, your Committee on Ways and Means, to which was referred Assembly Bill No. 487, has had the same under consideration, and begs leave to report the same back with the recommendation: Do pass.

MAGGIE CARLTON, *Chair*

**APP 000744**

(1) To lease real property which, on the date on which the agreement is signed, does not include any existing buildings or improvements that may be occupied on the land; and

(2) That is entered into for a period of not less than 10 years, excluding any options to renew that may be included in any such lease.

(b) “Ground lessee” means a person who enters into a ground lease as a lessee with the county as record owner of the real property as the lessor.

**Sec. 17.** 1. This section ~~becomes~~ **and section 7.2 of this act become** effective upon passage and approval.

2. Sections 1, 1.5 and 3 of this act become effective:

(a) Upon passage and approval for the purpose of adopting any regulations and performing any other preparatory administrative tasks that are necessary to carry out the provisions of sections 1, 1.5 and 3; and

(b) On January 1, 2022, for all other purposes.

3. Sections 2 ~~and~~ **4 to 7, inclusive, and 7.4** to 16, inclusive, of this act become effective on January 1, 2022.

Assemblyman Yeager moved that the Assembly concur in the Senate Amendment No. 658 to Assembly Bill No. 237.

Remarks by Assemblyman Yeager.

Motion carried by a constitutional majority.

Bill ordered to enrollment.

Assembly Bill No. 286.

The following Senate amendment was read:

Amendment No. 543.

ASSEMBLYWOMAN JAUREGUI

**JOINT SPONSOR: SENATOR SCHEIBLE**

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 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.

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*

~~4.3~~ (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 ~~1-1~~, *and sections 2 to ~~5-1~~ 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.*

~~2-1~~ 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.*

~~3-1~~ 4. *"Firearm capable of being concealed upon the person" applies to and includes all firearms having a barrel less than 12 inches in length.*

~~4-1~~ 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.*

~~5-1~~ 7. *"Motor vehicle" means every vehicle that is self-propelled.*

~~6-1~~ 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.

**Sec. 8.** (Deleted by amendment.)

**Sec. 9.** (Deleted by amendment.)

**Sec. 10.** 1. This section and sections 1 ~~to~~ 2, 3.5, 4 ~~inclusive~~ , 5.5 and 6 to 9, inclusive, of this act become effective upon passage and approval.

2. ~~Section~~ **Sections 3 and 5** of this act ~~becomes~~ **become** effective on January 1, 2022.

Assemblyman Yeager moved that the Assembly concur in the Senate Amendment No. 543 to Assembly Bill No. 286.

Remarks by Assemblyman Yeager.

Motion carried by a constitutional majority.

Bill ordered to enrollment.

Assembly Bill No. 394.

The following Senate amendment was read:

Amendment No. 662.

AN ACT relating to civil actions; providing that behavioral health specialists performing mobile crisis intervention services are immune from civil liability under certain circumstances; and providing other matters properly relating thereto.

**Legislative Counsel's Digest:**

Existing law provides certain persons with immunity from civil liability for certain acts or omissions under certain circumstances. (Chapter 41 of NRS) This bill provides that a behavioral health specialist performing mobile crisis intervention services by telephone or audio-video communication, whether for compensation or gratuitously, is immune from any civil liability in the performance of mobile crisis intervention services if: (1) the acts or omissions of the person are in good faith; and (2) the acts or omissions of the person do not constitute gross negligence or willful, wanton or intentional misconduct.

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

**Section 1.** Chapter 41 of NRS is hereby amended by adding thereto a new section to read as follows:

*1. A behavioral health specialist performing mobile crisis intervention services by telephone or audio-video communication, whether for compensation or gratuitously, is immune from any civil liability in the performance of mobile crisis intervention services if:*

*(a) The acts or omissions of the person are in good faith; and*

*(b) The acts or omissions of the person do not constitute gross negligence or willful, wanton or intentional misconduct.*

*2. As used in this section:*

*(a) "Audio-video communication" means communication by which a person is able to see, hear and communicate with another person in real time using electronic means.*

*(b) "Behavioral health specialist" means a ~~physician~~ psychiatrist who is ~~certified by the Board of Medical Examiners,~~ licensed pursuant to chapter 630 or 633 of NRS, a psychologist, a physician assistant or an advanced practice registered nurse who is certified to practice as a behavioral health specialist, or a person who is licensed as a clinical social worker, clinical professional counselor or marriage and family therapist.*

# NEVADA LEGISLATURE

81st Session, 2021

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## SENATE DAILY JOURNAL

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THE ONE HUNDRED FIFTEENTH DAY

CARSON CITY (Wednesday), May 26, 2021

Senate called to order at 2:56 p.m.

President Marshall presiding.

Roll called.

All present.

Prayer by the Chaplain, Reverend Nick Emery.

Father God, we thank You for all that has happened this day and what will happen for the remainder of this day. Thank You for each of these leaders. Scripture says, "If my people, which are called by name, shall humble themselves, and pray, and seek my face . . . ." Lord, we do that now. We ask Your favor to be poured out upon this gathering today. Give to our leaders Your wisdom, strength and unity as they conduct the business of our State, Nevada. Bless every single conversation that will transpire.

I pray over them now from Your Holy Word, Colossians 4:5-6, which says, "Conduct yourselves with wisdom toward outsiders, making the most of the opportunity. Your speech must always be with grace, as though seasoned with salt, so that you will know how you should respond to each person."

Father God, help our leaders see what makes each person they work with unique and special as well as the community they serve and the value that is there. Give them opportunities to learn from those whom are different and the boldness to move forward toward lasting change.

May You, Lord, richly bless this gathering of servant leaders.

May You bless this day, we pray, in Your Name.

AMEN.

Pledge of Allegiance to the Flag.

By previous order of the Senate, the reading of the Journal is dispensed with, and the President and Secretary are authorized to make the necessary corrections and additions.

### REPORTS OF COMMITTEE

*Madam President:*

Your Committee on Finance, to which was referred Senate Bill No. 457, has had the same under consideration, and begs leave to report the same back with the recommendation: Amend, and do pass as amended.

CHRIS BROOKS, *Chair*



MESSAGES FROM ASSEMBLY

ASSEMBLY CHAMBER, Carson City, May 25, 2021

To the Honorable the Senate:

I have the honor to inform your honorable body that the Assembly on this day adopted Senate Concurrent Resolutions Nos. 9, 14.

Also, I have the honor to inform your honorable body that the Assembly on this day concurred in the Senate Amendment No. 512 to Assembly Bill No. 19; Senate Amendments Nos. 655, 714 to Assembly Bill No. 42; Senate Amendment No. 616 to Assembly Bill No. 57; Senate Amendment No. 651 to Assembly Bill No. 71; Senate Amendment No. 642 to Assembly Bill No. 84; Senate Amendment No. 575 to Assembly Bill No. 85; Senate Amendment No. 539 to Assembly Bill No. 88; Senate Amendment No. 656 to Assembly Bill No. 104; Senate Amendment No. 540 to Assembly Bill No. 105; Senate Amendment No. 589 to Assembly Bill No. 115; Senate Amendment No. 641 to Assembly Bill No. 158; Senate Amendment No. 522 to Assembly Bill No. 177; Senate Amendment No. 520 to Assembly Bill No. 181; Senate Amendment No. 556 to Assembly Bill No. 200; Senate Amendment No. 659 to Assembly Bill No. 202; Senate Amendment No. 626 to Assembly Bill No. 207; Senate Amendment No. 498 to Assembly Bill No. 214; Senate Amendments Nos. 625, 733 to Assembly Bill No. 222; Senate Amendment No. 658 to Assembly Bill No. 237; Senate Amendment No. 624 to Assembly Bill No. 250; Senate Amendment No. 553 to Assembly Bill No. 277; Senate Amendment No. 543 to Assembly Bill No. 286; Senate Amendments Nos. 587, 729 to Assembly Bill No. 287; Senate Amendment No. 623 to Assembly Bill No. 290; Senate Amendment No. 622 to Assembly Bill No. 298; Senate Amendment No. 555 to Assembly Bill No. 327; Senate Amendment No. 584 to Assembly Bill No. 345; Senate Amendment No. 662 to Assembly Bill No. 394; Senate Amendment No. 722 to Assembly Bill No. 400; Senate Amendment No. 619 to Assembly Bill No. 436.

CAROL AIELLO-SALA

Assistant Chief Clerk of the Assembly

COMMUNICATIONS

CONGRESS OF THE UNITED STATES  
HOUSE OF REPRESENTATIVES  
WASHINGTON, D.C. 20515

May 26, 2021

THE HONORABLE NICOLE CANNIZZARO, *Senate Majority Leader*, State of Nevada Senate  
Legislative Building, 401 South Carson Street, Carson City, Nevada 89701-4747

THE HONORABLE JASON FRIERSON, *Speaker of the Nevada Assembly*  
Legislative Building, 401 South Carson Street, Carson City, Nevada 89701-4747

DEAR MAJORITY LEADER CANNIZZARO AND SPEAKER FRIERSON:

I respectfully request the opportunity to address the distinguished members of the Nevada Legislature on Thursday, May 27, 2021. As the Representative for Nevada's Fourth Congressional District, I look forward to sharing both information from the halls of Congress, as well as information regarding the communities that affect Nevada's future.

I am honored and grateful for this opportunity. Thank you in advance for your consideration.

Sincerely,

STEVEN HORSFORD  
*Member of Congress*

MOTIONS, RESOLUTIONS AND NOTICES

Senator Scheible moved that the action whereby the Senate did not concur with Assembly Amendment No. 618 to Senate Bill No. 21 be rescinded.

Motion carried.

Senator Scheible moved to concur with Assembly Amendment No. 618 to Senate Bill No. 21.

UNFINISHED BUSINESS  
SIGNING OF BILLS AND RESOLUTIONS

There being no objections, the President and Secretary signed Senate Bills Nos. 4, 44, 49, 67, 75, 77, 95, 103, 109, 150, 166, 173, 177, 179, 186, 188, 190, 196, 203, 209, 215, 217, 222, 229, 237, 245, 248, 249, 260, 269, 275, 283, 288, 293, 294, 307, 320, 327, 329, 332, 344, 352, 354, 358, 359, 360, 383, 387, 391, 396, 404, 406; Senate Resolutions Nos. 5, 6; Assembly Bills Nos. 19, 42, 57, 71, 84, 85, 88, 104, 105, 115, 158, 177, 181, 200, 202, 207, 214, 222, 237, 250, 277, 286, 287, 290, 298, 327, 345, 394, 400, 436.

Senator Cannizzaro moved that the Senate adjourn until Thursday, May 27, 2021, at 11:00 a.m.

Motion carried.

Senate adjourned at 8:07 p.m.

Approved:

KATE MARSHALL  
*President of the Senate*

Attest: CLAIRE J. CLIFT  
*Secretary of the Senate*

# NEVADA LEGISLATURE

Eighty-First Session, 2021

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## ASSEMBLY DAILY JOURNAL

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### THE ONE HUNDRED AND FIFTEENTH DAY

CARSON CITY (Wednesday), May 26, 2021

Assembly called to order at 1:43 p.m.

Mr. Speaker presiding.

Roll called.

All present.

Prayer by the Chaplain, Pastor Bruce Henderson.

Our Father in Heaven, I come to You to thank You for the blessing of spring. There is new life, brightness, joy, and hope blooming all around us. I pray that these same traits can be part of our gathering here and the work that we are endeavoring to do for the people and the well-being of our state.

We pray in the Name of the One who wants to bloom in our hearts.

AMEN.

Pledge of allegiance to the Flag.

Assemblywoman Benitez-Thompson moved that further reading of the Journal be dispensed with and the Speaker and Chief Clerk be authorized to make the necessary corrections and additions.

Motion carried.

#### REPORTS OF COMMITTEES

*Mr. Speaker:*

Your Committee on Education, to which was referred Senate Bill No. 210, has had the same under consideration, and begs leave to report the same back with the recommendation: Do pass.

SHANNON BILBRAY-AXELROD, *Chair*

*Mr. Speaker:*

Your Committee on Judiciary, to which was referred Senate Bill No. 22, has had the same under consideration, and begs leave to report the same back with the recommendation: Do pass.

STEVE YEAGER, *Chair*

*Mr. Speaker:*

Your Committee on Legislative Operations and Elections, to which was referred Assembly Bill No. 432, has had the same under consideration, and begs leave to report the same back with the recommendation: Amend, and do pass as amended.

# Assembly Daily Journal

— 415 —

## UNFINISHED BUSINESS

### SIGNING OF BILLS AND RESOLUTIONS

There being no objections, the Speaker and Chief Clerk signed Assembly Bills Nos. 19, 42, 57, 71, 84, 85, 88, 104, 105, 115, 158, 177, 181, 200, 202, 207, 214, 222, 237, 250, 277, 286, 287, 290, 298, 327, 345, 394, 400, 436; Assembly Resolution No. 7; Senate Bills Nos. 4, 44, 49, 67, 75, 77, 95, 103, 109, 150, 166, 173, 177, 179, 186, 188, 190, 196, 203, 209, 215, 217, 222, 229, 237, 245, 248, 249, 260, 269, 275, 283, 288, 293, 294, 307, 320, 327, 329, 332, 344, 352, 354, 358, 359, 360, 383, 387, 391, 396, 404, 406.

### REMARKS FROM THE FLOOR

Assemblywoman Benitez-Thompson moved that the Assembly adjourn until Thursday, May 27, 2021, at 11 a.m.

Motion carried.

Assembly adjourned at 10:55 p.m.

Approved:

JASON FRIERSON  
*Speaker of the Assembly*

Attest: SUSAN FURLONG  
*Chief Clerk of the Assembly*

Assembly Bill No. 286—Assemblywoman Jauregui

Joint Sponsor: Senator Scheible

## CHAPTER 496

[Approved: June 7, 2021]

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 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 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.

~~{ }~~ 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.

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

~~{ }~~ 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.

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

~~{ }~~ 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.



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

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  
9 POLYMER80, INC.,

10 Plaintiff,

11 vs.

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

19 Defendants.

---

20 **MEMORANDUM OF POINTS AND AUTHORITIES OF POLYMER80, INC.**  
21 **IN OPPOSITION TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT**  
22 **AND IN FURTHER SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT**

23 Plaintiff Polymer80, Inc. ("Polymer80" or "Company"), by and through undersigned  
24 counsel, Greenspoon Marder LLP and Simons Hall Johnston PC, respectfully submits,  
25 pursuant to Rule 56 of the Nevada Rules of Civil Procedure, this Memorandum of Points  
26 and Authorities in opposition to the motion for summary judgment ("DMSJ") of defendants  
27 Nevada Governor Stephen Sisolak, Nevada Attorney General Aaron Ford, Director of the  
28 Nevada Department of Public Safety George Togliatti, and Administrator of the Records,  
Communications, and Compliance Division of the Nevada Department of Public Safety  
Mindy McKay, and in further support of the Company's competing motion ("Motion") for the

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same relief. For all of the reasons set forth below and in the remainder of the record of this matter, the Court should deny the DMSJ in its entirety and grant the Company's Motion.

**I. INTRODUCTION**

The DMSJ's stance can be deconstructed and reduced to the proposition that Polymer80 knows, or must know, what the palpably nebulous language of AB 286 means. As demonstrated below as well as in the Motion, the controlling question relating to vagueness under Nevada law is not, and has never been, what one entity does or does not know, but, in part, whether or not a Nevadan of ordinary intelligence can decipher and understand the express terms of the challenged legislation and conduct his or her affairs in accordance therewith. This, AB 286 does not allow an ordinary Nevadan to do. Nor does AB 286 contain any specific standards to prevent arbitrary and discriminatory enforcement in further violation of due process under Nevada law.

Indeed, defendants' "knowledge" argument can do, and does, nothing to confront the second and separate prong of the vagueness test – whether the language of the statute permits or even fails to prevent arbitrary and discriminatory enforcement. Any knowledge by Polymer80 could do nothing to prevent the arbitrary and discriminatory application of AB 286 to the citizens of Nevada by its enforcers and any eventual finders of fact.

Undeterred, defendants also seek to turn against the Company its own alleged use of certain of the amorphous terms employed in AB 286. That use is utterly immaterial in the premises, since Nevada law mandates an objective not a subjective test for the interpretation of a criminal enactment. Revealingly, defendants proffer next to nothing to undercut, distinguish, or contradict the legion of Nevada Supreme Court Due Process "vagueness" decisions that the Company has cited, and which this Court has embraced in granting Polymer80 preliminary injunctive relief. On the other hand, the Nevada authorities upon which defendants rely are demonstrably either inapposite, meaningless, or supportive of Polymer80's position. Further, defendants' eleventh hour resort to certain terms in the federal realm is of no moment, because: (i) the pertinent portions of AB 286, on their face,

1 do *not* refer to or incorporate federal definitions and principles; (ii) federal law has long  
2 implemented a well-known and detailed administrative program and process through the  
3 Bureau of Alcohol, Tobacco, Firearms & Explosives (“ATF”) in the absence of any such  
4 agency within Nevada State government; and (iii) were the federal definitions and  
5 decisions, in actuality, incorporated into AB 286, they would legalize and/or immunize the  
6 Company’s products -- hardly the avowed intention of the new legislation.

7  
8 And, in a final and desperate effort to salvage AB 286, defendants invent a *scienter*  
9 requirement nowhere to be found in the statute, which, even if it were there, would not  
10 preclude a vagueness finding given AB 286’s separate, highly uncertain, and dubious  
11 “machining test.” In the end, it just cannot be reasonable or lawful for the onus to lie solely  
12 on an individual Nevadan of ordinary intelligence and knowledge to determine whether or  
13 not an extremely murky enactment makes his or her conduct criminal. Due Process entitles  
14 that Nevadan to much more statutory guidance than AB 286 provides.

15 All in all, defendants’ posture upon both the DMSJ and the Company’s Motion is  
16 muddled, inconsistent, and ultimately unavailing. On the one hand, defendants have  
17 vigorously argued that this action raises only a “pure question of law.” However and out of  
18 the other side of their collective mouth, defendants maintain that Polymer80’s knowledge  
19 or understanding of the meaning of the terms within and application of AB 286 is not only  
20 relevant to the Court’s decision-making but militates in their favor. Sophistry is too kind a  
21 word for defendants’ contradictory advocacy. In plain English, they cannot have it both  
22 ways. Nonetheless, we leave it to this Court to fairly adjudicate the issues before it. And,  
23 we confidently assert based upon the governing Nevada law and the record evidence  
24 before the Court that, either way, defendants cannot prevail, and the DMSJ is meritless.  
25 Accordingly, the Court should not hesitate to grant the Company’s Motion and award  
26 Polymer80 both the declaratory and permanent injunctive relief that it is seeking.

1                   **II.     STATEMENT OF UNDISPUTED FACTS AND PROCEDURAL HISTORY**

2                   Polymer80 incorporates herein the Statement Of Undisputed Facts And Procedural  
3 History set forth in its Motion.

4                   **III.     ARGUMENT**

5                   **A.     Polymer80 Has Demonstrated That AB 286 Is Unconstitutionally**  
6                   **Vague Under Controlling Supreme Court Of Nevada Precedent.**

7                   Polymer 80 has established that AB 286, is, at bottom, unconstitutionally vague and  
8 void under Article 1, Section 8(2), of the Nevada Constitution, which states that “[n]o person  
9 shall be deprived of life, liberty, or property, without due process of law.” Consequently,  
10 enforcement of that new enactment should be permanently enjoined.

11                   As the Motion explicates, in drafting and passing AB 286, the Nevada legislature  
12 failed to define necessary terms, including those most material to an “[u]nfinished frame or  
13 receiver.” Nowhere does AB 286 or other Nevada law define “blank,” “casting,” “machined  
14 body,” “additional machining,” “frame,” “receiver,” or “lower receiver.” Although AB 286  
15 Section 6(9) purports to define an *unfinished* “frame” or “receiver,” that statute, as with  
16 Nevada law as a whole, does not define *anywhere* what the end product -- a *finished*  
17 “frame,” “*finished* receiver,” or “*finished* lower receiver” -- is. Motion at 5. Nor does AB 286  
18 clarify “blank,” “casting,” or “machined body,” the threshold terms used to delineate what  
19 an *unfinished* “frame” or “receiver” is. *Id.*

20                   Compounding this inherent and overarching vagueness and ambiguity, AB 286  
21 Section 6(9) further advances a murky ineffable test for determining when an entirely  
22 undefined “blank,” “casting,” or “machined body” has reached a sufficient stage of  
23 completion to be deemed an “[u]nfinished frame or receiver,” such that it “has been formed  
24 or machined to the point at which most of the major machining operations have been  
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1 completed.” *Id.* Moreover, neither AB 286 nor Nevada law more generally propound any  
2 standards or guidelines for assessing when “most of the major machining operations have  
3 been completed.” *Id.* at 5-6.

4 At the outset, it bears noting that defendants do not contest the settled two-part test  
5 under Nevada law as to whether or not a statute is unconstitutionally vague and therefore  
6 violative of Due Process; that is, that the statute must: (i) fail to provide notice sufficient to  
7 enable persons of ordinary intelligence to understand what conduct is prohibited; or (ii) lack  
8 specific standards, thereby encouraging, authorizing, or even failing to prevent arbitrary  
9 and discriminatory enforcement. Motion at 21-27; DMSJ at 6-7. Further, defendants  
10 acknowledge that “[t]he test, even under the higher standard applicable to criminal laws, is  
11 whether vagueness so permeates the text that it would be void in most circumstances.”  
12 DMSJ at 7, citing *Flamingo Paradise Gaming, LLC v. Chanos*, 125 Nev. 502, 513, 217 P.3d  
13 546, 554 (2009) (“*Flamingo*”). See also Motion at 24.

14 Yet, defendants then proceed to completely ignore the import of the heightened  
15 facial challenge standard to which they cite. Again, the operative test, in sum, looks to  
16 whether a criminal law is decipherable by Nevadans of ordinary knowledge and intelligence  
17 or whether the inscrutable terms of the law permit or even fail to prevent arbitrary and  
18 discriminatory enforcement, under the heightened rubric of “whether vagueness so  
19 permeates the text that it would be void in most circumstances.” “The first prong is  
20 concerned with guiding those who may be subject to potentially vague statutes, while the  
21 second – and more important – prong is concerned with guiding the enforcers of statutes.”  
22 *Silvar v. Eighth Judicial Dist. Court ex rel. County of Clark*, 122 Nev. 289, 293, 129 P.3d  
23 682, 685 (2006) (finding prostitution ordinance unconstitutionally vague under both prongs)  
24 (cited by defendants). Nevertheless, defendants’ core argument is that Polymer80’s  
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1 purported knowledge is somehow all that matters. In this respect, defendants' central  
2 position is that the Company knows or should know what products AB 286 covers. This  
3 compartmentalization of the requisite vagueness analysis solely with respect to  
4 Polymer80's purported awareness fails for numerous reasons.

5  
6 **1. Polymer80's Purported Subjective Knowledge Is Immaterial Under The Company's Facial Challenge.**

7 First and again, any alleged knowledge on Polymer80's part is utterly irrelevant, as a  
8 matter of law, given that AB 286, as a criminal statute, is subject to facial challenge under  
9 the heightened -- and more difficult for defendants -- standard of whether or not "vagueness  
10 permeates the text" and so is unconstitutionally indefinite as to *the public at large*. Motion  
11 at 24. As set forth above, defendants essentially concede this point.

12  
13 Even so, defendants inexplicably see fit to cite to *Sheriff of Washoe Cty. v. Martin*,  
14 99 Nev. 336, 340, 662 P.2d 634, 637 (1983) ("*Washoe*"), which, in turn, relies upon *Village*  
15 *of Hoffman Estates v. Flipside Hoffman Estates, Inc.*, 455 U.S. 489, 495, 102 S. Ct. 1186,  
16 1191 (1982) ("*Hoffman*"), as support for the contention that "[n]o authority permits a  
17 vagueness challenge by a plaintiff 'who has engaged in conduct that is clearly proscribed  
18 [to] complain of the vagueness of the law as applied to the conduct of others.'" DMSJ at 1-  
19 2, 7. Defendants do so without citing to the previous statement in both *Washoe* and  
20 *Hoffman* that provides the basis and context for that which they do cite -- "[i]f an enactment  
21 does not implicate constitutionally protected conduct, the court may strike it down as vague  
22 on its face only if it is impermissibly vague in all its applications." *Washoe*, 99 Nev. at 340,  
23 662 P.2d at 637; *Hoffman*, 455 U.S. at 494-95, 102 S. Ct. at 1191 (same). This omission  
24 is important, as defendants further neglect to inform this Court that the Supreme Court of  
25 Nevada, in *Flamingo* no less, held that a **criminal statute**, whether or not "constitutionally  
26 protected conduct" is at issue, must be deemed facially invalid where "vagueness so  
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1 permeates the text that the statute cannot meet [the two-part vagueness test] in most  
2 applications”, and limited *Hoffman*’s dictate that a statute be impermissibly vague in all of  
3 its applications only to cases involving **civil statutes**. See *Flamingo*, 125 Nev. at 512-13,  
4 217 P.3d at 553-54. And, the *Flamingo* Court further held that it is only “[i]n making this  
5 [latter] showing [in the **civil** context], [that] ‘[a] complainant who engages in some conduct  
6 that is clearly proscribed cannot complain of the vagueness of the law as applied to the  
7 conduct of others.’” *Id.*, 125 Nev. at 512, 217 P.3d at 553 (citing *Hoffman*, 455 U.S. at 495,  
8 102 S. Ct. at 1191). In short, the “clearly proscribed” admonition defendants point to has  
9 no bearing in the case of a facial challenge to a **criminal statute** under Nevada law.

11 In sum, as defendants themselves acknowledge, the current law in Nevada as  
12 applied to **criminal statutes** merely necessitates that “vagueness so permeate[] the text  
13 that the statute cannot meet these requirements in most applications; and thus, this  
14 standard provides for the possibility that some applications of the law would not be void,  
15 but the statute would still be invalid if void in most circumstances.” *Flamingo*, 125 Nev. at  
16 513, 217 P.3d at 554. See also DMSJ at 7; Motion at 24. Indeed, this Court has already  
17 ruled that said heightened facial challenge standard is fully applicable to the criminal statute  
18 at issue in this action. Motion at 7, 9. In short, any knowledge allegedly imputed to  
19 Polymer80 is and must be inconsequential in regard to the Company’s facial attack that AB  
20 286’s vagueness “permeates the text,” and that the statute as a whole is unduly and  
21 unlawfully uncertain, when evaluated in most situations and from the standpoint of a  
22 Nevadan of ordinary knowledge and intelligence.

25 Moreover, defendants’ reliance on *Washoe* is factually and legally misplaced. First,  
26 *Washoe* involved a post-enforcement challenge premised on the statute’s application to  
27 the specific conduct of the defendant. *Washoe*, 99 Nev. at 338-342, 662 P.2d at 636-638.

1 And there, the Supreme Court of Nevada found that the gambling statute at issue was not  
2 unconstitutionally vague by its use of the term "cheat," and that the intentional act of  
3 "crimping" or bending cards at a blackjack table was, unsurprisingly, cheating in violation  
4 of the statute. Here, as this Court has already ruled, the terms and tests set forth in AB  
5 286 are impermissibly vague, such that conduct cannot be deemed "clearly proscribed"  
6 thereunder. Instead, Polymer80 and Nevadans more generally are left to surmise what AB  
7 286 "proscribes." And the mere fact, as defendants maintain, that AB 286 targets  
8 Polymer80 does not alter this conclusion or shed any light on what AB 286 actually does  
9 or does not proscribe.

11 Further, any use of certain of the terms at issue by Polymer80 can in no way save  
12 AB 286 from its dispositive vagueness. It is unassailable that a party's *subjective*  
13 understanding of the same or similar terms used in a statute cannot inform or provide an  
14 *objective* definition wholly lacking in the statute itself. Put another way, neither Polymer80  
15 nor Nevada residents can or should be put in a position of guessing whether their subjective  
16 understandings of crucial terms comport with the intended meanings of the undefined  
17 verbiage in this criminal law. Indeed, neither should the law's enforcers or finders of fact.  
18 This is the nub of AB 286's Nevada Constitutional malady. Absent objective and discernable  
19 definitions, that enactment cannot give adequate notice of the conduct forbidden and, as a  
20 result, all but ensures that this wrongheaded legislation will be administered in discriminatory  
21 and arbitrary fashion. In this regard, the *Flamingo* Supreme Court found criminal penalties  
22 in the Nevada Clean Indoor Air Act void for vagueness, since the Act failed "to define several  
23 terms included in the statute that do not have a plain meaning, ... includ[ing] 'smoking  
24 paraphernalia' and 'large room.'" *Id.*, 125 Nev. at 514, 217 P.3d at 554. And so, defendants'  
25 contention that any subjective understanding on Polymer80's part can somehow clarify or  
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nail down wholly undefined terms/tests in a criminal statute is untenable and should be rejected.

To avoid grappling with AB 286's inherent vagueness under controlling law, defendants primarily focus on the testimony of Daniel Lee McCalmon, Polymer80's Executive Vice President and Corporate Representative, in rejiggering their "knowledge" argument. However, Mr. McCalmon has unequivocally testified that neither he nor Polymer80 have any understanding of the terms/tests at issue as they are used in AB 286. Motion at 13-14, Exs. H, I. Further, contrary to defendants' mischaracterization of his testimony, he never stated that "Polymer80 knows their common meaning ... ." DMSJ at 2, 7. Moreover, the portions of Mr. McCalmon's testimony defendants highlight do not undercut these assertions. *See id.* at 4-6. First, he generally testified as to the use of certain terms by ATF and others in the industry under federal law, not Polymer80's use, and not under Nevada law or, certainly, AB 286. *Id.*, Ex. D. at 59-68. Moreover, Polymer80's understanding of "unfinished frames" and "unfinished receivers" as parts "[i]ncapable of accepting additional components to be completed into a functioning firearm" does nothing in the way of defining those terms under AB 286. *Id.* at 5. And, Mr. McCalmon never testified that "Polymer80's understanding is that the terms are meant to have the same definition under Nevada law." *Id.* at 5-6. He simply asserted that Polymer80 had no reason to understand that those terms mean something different under AB 286, which is totally consistent with his testimony that Polymer80 does not know what those terms mean under AB 286 as a threshold matter. *Id.*, Ex. D. at 58-59. As to the term "80 percent," Mr. McCalmon additionally testified that the Company does not have an independent understanding of what that term means and explained that the term is derived from Polymer80's interactions with ATF and a creature of the federal regime. *Id.*, Ex. D at 59-61.

1 Finally, the fact that certain skilled machinists with the necessary resources may be able to  
2 complete a firearm in thirty (30) minutes does not mean that "most of the major machining  
3 operations have been completed" as to Polymer80's products, where, as Mr. McCalmon  
4 further testified, it takes other individuals without the requisite skillset and/or resources "three  
5 to four hours." *Id.* at 5.

6  
7 **2. Any Use Of Terms In The Federal Arena Is Wholly Irrelevant.**

8 In addition, even if Polymer80's subjective understanding of certain of the terms at  
9 issue were relevant (and it is not), the use thereof in the federal arena would mean nothing.  
10 Neither Polymer80's use of terms in communications with ATF in the context of federal law,  
11 nor ATF's use of those terms, can possibly equate to the Company having an  
12 understanding of their meaning within AB 286. This reality, in large part, stems from the  
13 pervasive disconnect between the federal firearms regime and AB 286.

14  
15 First, Sections 3, 3.5, and 6(9) of AB 286 do not reference federal terms and  
16 definitions. Indeed, this failure to reference, much less incorporate, federal terms and  
17 definitions is dispositive here. *See Gallegos v. State*, 123 Nev. 289, 163 P.3d 456 (2007)  
18 ("*Gallegos*"). To be sure, *Gallegos* deserves a closer look. There, the Nevada Supreme  
19 Court declared a State statute unconstitutionally vague for failing to define the term "fugitive  
20 from justice," where (as in analogous circumstances here) there was no common meaning  
21 of that salient term, and notwithstanding the fact that the State enactment mirrored a federal  
22 provision containing arguably relevant definitions. Upon this background, the Supreme  
23 Court stated as follows:

24  
25 The definitions found in the statutes and in the federal cases  
26 differ significantly. Our Legislature made no effort to tie NRS  
27 202.360(1)(b) to either of those definitions. Furthermore, the  
28 fact that the Legislature modeled NRS 202.360(1)(b) after a  
federal statute and excluded from its provisions the definition  
contained in the federal statute indicates to us that the

1 Legislature intended another meaning – a meaning that it  
2 failed to define.

3 *Id.*, 123 Nev. at 295, 163 P.3d at 460.

4 In this case, defendants apparently want to criminalize conduct that existing federal  
5 law does not. Thus, defendants' effort here to belatedly reference the use of terms under  
6 federal law should meet with the same fate as the similar attempt in *Gallegos* did.  
7 Otherwise put, AB 286 endeavors to criminalize that which federal law allows, making it  
8 completely incongruous for defendants to rely upon the use of terms in the federal realm to  
9 attempt to eliminate or obfuscate that State statute's vagueness. Notably, federal law does  
10 not define "unfinished frame or receiver" and resultingly does not provide any insight into  
11 what AB 286 criminalizes, even if the Court were to seek some form of clarification from  
12 federal terms and definitions.

14 Further, defendants conveniently disregard what their own submissions have  
15 demonstrated -- that parties in federal matters can, and regularly do, submit products to  
16 ATF for its review and consideration of whether or not those products are subject to  
17 regulation. As letters from Polymer80's counsel to ATF, copies of which are annexed to  
18 the DMSJ illustrate, the Company has done just that on numerous occasions. DMSJ, Exs.  
19 E-G. This sort of detailed agency review is totally lacking under AB 286 and in Nevada  
20 more generally and neatly reveals why any resort to the federal realm fails here.

22 Moreover, defendants could have fully incorporated federal definitions and tests into  
23 AB 286. They did not -- and for good reason -- because products of the type sold by the  
24 Company are **not** deemed regulated firearms under federal law and are **not** subject to  
25 serialization. Tellingly, ATF, after engaging in the above-referenced review of several of  
26 the Company's products, decided that they were and are *not* frames/receivers and/or  
27 firearms subject to federal regulation and/or serialization. Copies of the ATF Classification  
28

1 Letters to Polymer80, dated February 23, 2015, November 2, 2015, and January 18, 2017,  
2 are annexed as Exhibits A through C. To be sure, a critical and driving force behind certain  
3 of these ATF determinations was that “[c]omplete removal of material from the fire-control  
4 cavity area” had not occurred and the part “incorporate[d] a solid fire control cavity area . .  
5 . . cast in a homogenous manner” and, hence, had not reached the requisite state of  
6 completion. *Id.*, Exs. A & B.

8 Once more, a critical divergence between the federal regime and AB 286 emerges  
9 here. The machining test for defining an “[u]nfinished frame or receiver” under AB 286  
10 Section 6(9) is 180 degrees to the contrary and speaks to a part “which has been formed  
11 or machined to the point at which most of the major machining operations have been  
12 completed to turn the blank, casting or machined body into a frame or lower receiver of a  
13 firearm **even if the fire-control cavity area of the blank, casting or machined body is**  
14 **still completely solid and unmachined.**” (emphasis supplied).

16 Beyond all of this, Polymer80’s products do not satisfy the threshold definition of a  
17 finished frame/receiver under federal law, since they could never house, no matter their  
18 state of completion, the requisite components to be deemed such. Since 1968, ATF has  
19 defined both “frame” and “receiver” as “[t]hat part of a firearm which provides housing for  
20 the hammer, bolt or breechblock, and firing mechanism, and which is usually threaded at  
21 its forward portion to receive the barrel.” 27 C.F.R. § 478.11. In sum and as a fundamental  
22 matter, to satisfy this over fifty (50) year-old standard and be adjudged a “frame” or  
23 “receiver” subject to regulation under the federal Gun Control Act, the object in question  
24 must “hous[e]”: (i) the hammer or striker; (ii) the bolt or breechblock; (iii) the firing  
25 mechanism; and (iv) a method of attachment for the barrel. And, it has been repeatedly  
26 recognized that products of the sort sold by the Company could never be deemed a frame  
27  
28

1 or receiver owing to the fact that they indisputably do not house all of those four  
2 components. See *United States v. Rowald*, 429 F. Supp. 3d 469, 471-76 (N.D. Ohio 2019)  
3 (dismissing Indictment, where finished part failed to house all the requisite components and  
4 was therefore not a “frame” or “receiver” under federal law); *United States v. Jimenez*, 191  
5 F. Supp. 3d 1038, 1039-46 (N.D. Cal. 2016) (same).  
6

7 Because defendants seek to criminalize products not so treated under federal law,  
8 they could not incorporate federal definitions and tests and achieve that end. Their half-  
9 hearted attempt now to interject terms employed in that disparate federal regime is vacuous  
10 and should be rejected. Indeed, this Court has already rejected defendants’ appeal to the  
11 federal realm. See DMSJ, Ex. C at 3 (“The Court also finds that Nevada Legislature only  
12 adopted limited definitions from Federal Law when it adopted AB 286. The Nevada  
13 Legislature presumably did so purposely, creating additional ambiguity in AB 286. Thus,  
14 this Court declines the Defendants’ invitation to fill holes in AB 286 by looking to Federal  
15 Law when the Nevada Legislature only incorporated Federal Law into AB 286 in specific  
16 limited instances.”). As numerous statements by Nevada lawmakers and officials and  
17 admissions by defendants themselves attest, AB 286’s intention and goal are to specifically  
18 target Polymer80 and drive it out of business. Motion at 15-16. Hence, the Nevada  
19 legislature enacted a hopelessly vague statute that might well be employed to ban products  
20 designated as wholly lawful under federal law. That statute must be adjudged  
21 unconstitutional for failing to provide adequate notice of the conduct/products barred and  
22 presaging and all but guaranteeing discriminatory and arbitrary enforcement.  
23  
24

25 **3. The Precedent Upon Which Defendants**  
26 **Rely Supports Polymer80’s Position.**

27 The cases defendants proffer do not counsel for a different result. In *Nelson v. State*,  
28 123 Nev. 534, 170 P.3d 517 (2007), the Supreme Court of Nevada determined that a

1 statute was not unconstitutionally vague, given that the term “endangers” enjoys a  
2 commonly accepted, well understood meaning. *Id.*, 123 Nev. at 541-42 & n.8, 170 P.3d at  
3 522-23 & n.8. Similarly, in *Cornella v. Just. Ct.*, 132 Nev. 587, 377 P.3d 97 (2016), the  
4 same Court ruled that the terms “an act or omission” and “simple negligence” had readily  
5 ascertainable meanings. *Id.*, 132 Nev. at 591-95, 377 P.3d at 100-03. Likewise, in *State*  
6 *v. Castaneda*, 126 Nev. 478, 245 P.3d 550 (2010), this State’s highest Court found that the  
7 conduct prohibited was not unconstitutionally vague, when weighed in light of established  
8 common law. *Id.*, 126 Nev. at 483-91, 245 P.3d at 553-559. Finally and to the same effect,  
9 the Supreme Court, in *Ford v. State*, 127 Nev. 608, 262 P.3d 1123 (2011) (“*Ford*”),  
10 concluded that “the words ‘[i]nduces, persuades, encourages, inveigles, entices or  
11 compels’ all carry ordinary dictionary definitions.” *Id.*, 127 Nev. at 622, 262 P.3d at 1132.

12  
13  
14 Unlike in those cases, the opaque AB 286 terms “blank,” “casting,” “machined body,”  
15 “additional machining,” “frame,” “receiver,” and “lower receiver” enjoy no such commonly  
16 accepted, well understood, or readily ascertainable meanings. As such, defendants  
17 struggle to rescue AB 286 by arguing that the terms “most” and “major” used in its  
18 machining test have ordinary meanings. DMSJ at 8. Defendants cannot responsibly  
19 extricate these terms from the statute and construe them in isolation. The ambiguity  
20 inherent to AB 286 devolves from the use of these terms in the context of the phrase “has  
21 been formed or machined to the point at which **most** of the **major** machining operations  
22 have been completed.” As this Court has recognized, AB 286 purports to establish a  
23 continuum for determining when a part turns into an “unfinished frame or receiver” but  
24 advances no standards or guidelines for determining when that critical point is reached.  
25 Motion at 9, 10. The terms “most” and “major,” far from lending any clarity, only exacerbate  
26 the uncertainty native to AB 286’s “machining test.”  
27  
28

1                   **4.     Polymer80’s Understanding That AB 286 Targets It**  
2                   **Does Not Arise From Any Supposed Clarity in AB 286.**

3                   Defendants further attempt to meet Polymer80’s vagueness challenge by positing  
4                   that “Polymer80 cannot gripe about being the target of AB 286 and then complain it does  
5                   not know what AB 286 means.” DMSJ at 7. *See also* DMSJ at 1, 4. First and once again,  
6                   the Company’s subjective understanding is irrelevant under the State’s heightened onus  
7                   as to the facial challenge brought here, which asks whether or not “vagueness permeates  
8                   the text” and accordingly is unconstitutionally indefinite as to *the public at large*. Moreover  
9                   and as explicated above, Polymer80’s understanding that it is the target of AB 286 does  
10                  not flow from the enactment’s clarity but instead from numerous pronouncements by  
11                  Nevada officials and defendants to just that effect. Motion at 15-16.

13                   **5.     Defendants’ *Scienter* Arguments Are Unavailing.**

14                   **(a)   AB 286 Does Not Contain A *Scienter* Requirement.**

15                  Defendants argue that AB 286 houses a *scienter* requirement, which saves it from a  
16                  vagueness challenge. Defendants are mistaken for a host of reasons. “*Scienter*” means  
17                  “[a] degree of knowledge that makes a person legally responsible for the consequences of  
18                  his or her act of omission.” Black’s Law Dictionary, *Scienter* (11 ed. 2019). Section 6(9) of  
19                  AB 286 speaks to an **item** “intended to be turned into the frame or lower receiver of a firearm  
20                  with additional machining ... .” The “intended to” language here attempts to define and  
21                  qualify what an “unfinished frame or receiver” is and in no way illuminates the state of mind  
22                  of a prospective defendant in possessing, selling, or transferring an unfinished frame or  
23                  receiver. Section 6(9)’s definition requires no knowledge by a defendant but purports to  
24                  criminalize an **item** “intended to be turned into the frame or lower receiver of a firearm with  
25                  additional machining,” whether or not that defendant intended that the **item** be turned into  
26                  the frame or lower receiver of a firearm. The supposedly contrary authority upon which  
27                  the frame or lower receiver of a firearm. The supposedly contrary authority upon which  
28

1 defendants rely is inapposite, because the Courts in those cases found an intent element  
2 by reference to similar laws and legislative history. See *Ford*, 127 Nev. at 615-618, 262  
3 P.3d at 1127-1130; *City of Las Vegas v. Eighth Judicial Dist. Court ex rel. County of Clark*,  
4 122 Nev. 1041, 1049-1051, 146 P.3d 245-247 (2006). Defendants cannot and do not allude  
5 to any similar basis for their bereft *scienter* contentions here.  
6

7 In brief, it cannot seriously be doubted that AB 286 seeks to criminalize the  
8 possession and/or transfer of an “unfinished frame or receiver,” even in a situation where  
9 an individual gifts such an “unfinished frame or receiver” to someone else. Sale,  
10 possession, and transfer of the prohibited item are all criminalized irrespective of a  
11 defendant’s intent. In other words, nothing in AB 286 or elsewhere in Nevada law requires  
12 specific intent for a prosecution under the new enactment.  
13

14 **(b) In Any Event, A *Scienter* Requirement**  
15 **Would Not Salvage AB 286.**

16 Even if AB 286 did impose a *scienter* requirement, that would hardly inoculate the bill  
17 from being found to be void for vagueness. As this Court articulated at the July 14, 2021  
18 hearing upon Polymer80’s motion for a preliminary injunction and in its ensuing July 16, 2021  
19 Order, Section 6(9)’s definition fails to provide a workable, discernible standard or guideline for  
20 determining where on the “continuum” of completion “most” of the “major machining operations  
21 have been completed” such that a “blank, casting, or machined body” becomes an unfinished  
22 frame or receiver and subjects a Nevadan to criminal prosecution. Motion at 9, 10. This  
23 ambiguity tends ineluctably to arbitrary and discriminatory enforcement. Put another way  
24 and contrary to defendants’ protestations to the contrary, Section 6(9) “would allow the  
25 police, prosecutors, and juries to ‘pursue their personal predilections.’” *Silvar*, 122 Nev. at  
26 293, 129 P.3d at 685 (citation omitted). See also, *Giaccio v. State of Pennsylvania*, 382  
27 U.S. 399, 402–03, 86 S. Ct. 518, 520-21 (1966) (“[I]t is established that a law [also] fails to  
28



1 meet the requirements of the Due Process Clause if it is so vague and standardless that it  
2 leaves . . . judges and jurors free to decide, without any legally fixed standards, what is  
3 prohibited and what is not in each particular case.”); *Connally v. Gen. Constr. Co.*, 269 U.S.  
4 385, 393, 46 S. Ct. 126, 128 (1926) (“The dividing line between what is lawful and unlawful  
5 cannot be left to conjecture.”); *Id.* (“The citizen cannot be held to answer charges based  
6 upon penal statutes whose mandates are so uncertain that they will reasonably admit of  
7 different constructions” by the fact finder); *United States v. L. Cohen Grocery Co.*, 255 U.S.  
8 81, 89, 41 S. Ct. 298, 300 (1921) (when a law fails to provide an ascertainable standard of  
9 guilt “[i]t leaves open . . . the widest conceivable inquiry, the scope of which no one can . .  
10 . foreshadow or adequately guard against.”). A *scienter* requirement that would, at bottom,  
11 still allow defendants -- and defendants alone -- to separately determine under AB 286’s  
12 “machining test” where along the “continuum” an object becomes criminally vulnerable,  
13 would certainly not cure or diminish that demonstrable defect.<sup>1</sup>

14 **B. The Breadth And Scope Of That Which These**  
15 **Defendants Fail To Address Is Telling And Dispositive.**

16 The entire DMSJ is focused on maintaining that AB 286 is not unconstitutionally  
17 vague as applied to Polymer80. Apart from the fact that this argument entirely misses the  
18 mark because Polymer80 properly lodges a facial, as opposed to an as applied, challenge,  
19 it is noteworthy that defendants have conceded many other issues at this juncture. They  
20 do *not* contend that Polymer80 lacks standing, *nor* that its claims are unripe. Moreover,  
21 apart from addressing -- however misguidedly -- the merits of the Company’s constitutional  
22  
23  
24

25 <sup>1</sup> Defendants go so far as to claim that “the requirement of proof beyond a reasonable doubt” ameliorates the  
26 vagueness inherent in this machining test. DMSJ at 9, quoting *United States v. Williams*, 553 U.S. 285, 306,  
27 128 S. Ct. 1830, 1846 (2008) (“*Williams*”). Yet, in *Williams*, the Supreme Court was commenting on  
28 hypothetical “close cases.” *Williams*, 553 U.S. at 305-306, 128 S. Ct. at 1846. That contention here, given AB  
286’s pervasive ambiguity, only emphasizes just how flimsy defendants’ position is, insofar as they refer to a  
jury’s decision after a full trial as a mechanism to rectify AB 286’s inherent and overarching vagueness as to  
the citizens of Nevada generally.

1 vagueness objection, defendants ignore -- and thereby concede -- all of the other factors  
2 pertinent to the issuance of declaratory and injunctive relief, including irreparable harm, a  
3 balancing of the equities/hardships, and the public interest. As a result, because their  
4 attempt to establish that AB 286 is constitutionally sound is fatally defective, the DMSJ  
5 should be denied, and Polymer80's competing dispositive Motion should be granted.

6  
7 **IV. CONCLUSION**

8 Based upon all of the foregoing, Polymer80 respectfully requests that this Court deny  
9 the DMSJ in its entirety, grant the Company's Motion, issue summary judgment in favor of  
10 Polymer80 on both of its claims for declaratory and permanent injunctive relief, and award  
11 it such further relief as may be deemed just and proper.

12  
13 Dated this 18th day of November, 2021 SIMONS HALL JOHNSTON PC

14 By:   
15 Brad M. Johnston, Esq.  
16 Nevada Bar No. 8515  
17 22 State Route 208  
18 Yerington, Nevada 89447  
19 Telephone: 775-463-9500  
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21 -and-

22 James J. McGuire  
23 (*Pro Hac Vice*)  
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CERTIFICATE OF SERVICE

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

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

DATED this 18th day of November, 2021.

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

# **Exhibit A**

# **Exhibit A**



U.S. Department of Justice

Bureau of Alcohol, Tobacco,  
Firearms and Explosives

*Martinsburg, WV*  
25405  
www.atf.gov

907010:AG  
3311/302663

FEB 23 2005

Jason Davis, Esq.  
The Law Offices of Davis & Associates  
41593 Winchester Rd, Suite 200  
Temecula, California 92591

Dear Mr. Davis,

This is in reference to your submitted item, an AR-15 pattern receiver casting, along with supporting correspondence recently received by the Firearms Technology Industry Services Branch (FTISB), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF). You have submitted this item (see photo, last page) on behalf of your client, POLYMER 80, INC. (P80) for classification under the Gun Control Act of 1968 (GCA).

As you are aware, FTISB has previously determined that an AR-15 type receiver casting which is completely solid in the area of the trigger/hammer (fire-control) recess might not be classified as a firearm. Such a receiver casting could incorporate all other features of a functional firearm receiver, including pivot-pin and takedown-pin hole(s) and clearance for the takedown-pin lug, but must be completely solid in the fire-control recess area. We have determined that in order to be considered "completely solid in the fire-control recess area," the takedown-pin lug clearance area must be no longer than .800 inch, measured from immediately forward of the front of the buffer-retainer hole. In addition, ATF has held that "indexing" of the fire-control area, to include molding a polymer receiver in stages instead of as a single (homogenous) piece, is sufficient to require classification as a firearm receiver.

Our examination of the submitted item confirmed that the receiver casting has been cast from black polymer, and includes several features of a complete AR-15 type receiver, including a takedown pin hole and clearance for the takedown-pin lug. Our examination confirmed that the takedown-pin lug clearance area is less than .800 inch, measured from immediately forward of the front of the buffer-retainer hole. The sample has been cast entirely from a single type of polymer, to include the fire control recess area.

APP 000780

The submitted item was cut into several pieces in order to observe the internal configuration. This operation revealed that the submitted item incorporates a solid fire control cavity area, and was cast in a homogenous manner.

Your current correspondence, as well as supplemental information you provided in a letter dated February 3, 2015, confirmed that the submitted item was cast using "a single shot of molten material."

Based on our examination of the submitted item and your description of the manufacturing process used to produce it, we have determined that this item is NOT a firearm receiver, or a firearm.

We thank you for your inquiry and trust the foregoing has been responsive to your request.

Sincerely yours,



Michael R. Curtis

Acting Chief, Firearms Technology Industry Services Branch

Attachment

# **Exhibit B**

# **Exhibit B**



U.S. Department of Justice

Bureau of Alcohol, Tobacco,  
Firearms and Explosives

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Martinsburg, WV 25405

www.atf.gov

907010:WJS

3311/303738

NOV 02 2015

Mr. Jason Davis  
The Law Offices of Davis & Associates  
41593 Winchester Road, Suite 200  
Temecula, California 92590

Mr. Davis:

This is in reference to your correspondence, with enclosed samples, to the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), Firearms Technology Industry Services Branch (FTISB). In your letter, you asked for a classification of an AR10-type item identified by you as a "WARRHOGG BLANK" as well as a Glock-type "GC9 Blank" on behalf of your client, Polymer 80, Incorporated (see enclosed photos). Specifically, you wish to know if these items would be classified as a "firearm" under the Gun Control Act of 1968 (GCA).

You state the submitted **WARRHOGG BLANK** incorporates the following design features:

- *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.*

As a part of your correspondence, you describe design features and the manufacturing process of the submitted "WARRHOGG Blank" to include the following statements:

APP 000783



Mr. Jason Davis

- *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."*

For your reference in this matter, the amended Gun Control Act of 1968 (GCA), 18 U.S.C. § 921(a)(3), defines the term "firearm" to include any weapon (including a starter gun) which will or is designed to or may be readily converted to expel a projectile by the action of an explosive...[and] ...the frame or receiver of any such weapon...

Also, 27 CFR § 478.11 defines "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.*

Also, the AECA, 27 CFR § 447.11, defines "defense articles" as—

*...Any item designated in § 447.21 or § 447.22. This includes models, mockups, and other such items which reveal technical data directly relating to § 447.21 or § 447.22.*

The USMIL § 447.22, FORGINGS, CASTINGS, and MACHINED BODIES states:

*Articles on the U.S. Munitions Import List include articles in a partially completed state (such as forgings, castings, extrusions, and machined bodies) which have reached a stage in manufacture where they are clearly identifiable as defense articles. If the end-item is an article on the U.S. Munitions Import List, (including components, accessories, attachments and parts) then the particular forging, casting, extrusion, machined body, etc., is considered a defense article subject to the controls of this part, except for such items as are in normal commercial use.*

During the examination of your sample, FTISB personnel found that the following machining operations or design features present or completed:

1. Front and rear pivot/take down pin holes.
2. Front and rear pivot/ take down detent retainer holes.
3. Front and rear pivot/take down lug clearance areas.
4. Selector-retainer hole.
5. Magazine-release and catch slots.
6. Trigger-guard formed.
7. Rear of receiver present and threaded to accept buffer tube.
8. Buffer-retainer hole.
9. Pistol-grip mounting area faced off and drilled, but not threaded.
10. Magazine well.
11. Receiver end-plate recess.

Mr. Jason Davis

Machining operations or design features not yet present or completed:

1. Complete removal of material from the fire-control cavity area.
2. Machining or indexing of selector-lever hole.
3. Machining or indexing of trigger slot.
4. Machining or indexing of trigger-pin hole.
5. Machining or indexing of hammer-pin hole.

As a part of this evaluation, FTISB personnel noted the following markings:

Left Side

- 308
- POLYMER80

FTISB has determined that an AR-10 type receiver blank could have all other machining operations performed, including front receiver pivot-pin and rear take down pin hole and clearance for the front receiver lug and rear take down pin lug clearance area (not to exceed 1.60 inches), but must be completely solid and un-machined in the fire-control recess area. The rear take down pin lug clearance area must be no longer than 1.60 inches, measured from immediately forward of the front of the buffer-retainer hole.

The FTISB examination of your submitted item, found that the most forward portion of the rear take down pin lug clearance area measures approximately 1.32 inches in length, less the maximum allowable 1.60 inch threshold. As a result, the submitted item is not sufficiently complete to be classified as the frame or receiver of a firearm; and thus, is not a "firearm" as defined in the GCA. Consequently, the aforementioned item is therefore not subject to GCA provisions and implementing regulations.

To reiterate the conclusion of FTISB's evaluation, our Branch has determined that the submitted Polymer 80, Incorporated AR10-type receiver blank incorporating the aforementioned design features is not classified as the frame or receiver of a weapon designed to expel a projectile by the action of an explosive; and thus, it is not a "firearm" as defined in (GCA), 18 U.S.C. § 921(a)(3)(B).

As a part of your correspondence, you describe design features and the manufacturing process of the submitted "CG or CG9" to include the following statement:

- *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.*

Mr. Jason Davis

Please note, while not indicated in the accompanying correspondence, the submitted CG or CG9 appears to have been made utilizing additive manufacturing or 3-D printing technology and not "made out of a single casting."

During the examination of your sample "CG or CG9," FTISB personnel found that the following machining operations or design features present or completed:

1. Slide lock lever location indexed.
2. Upper portion of slide lock spring recess.
3. Trigger slot.
4. Capable of accepting Glock 17 trigger mechanism housing.
5. Capable of accepting Glock 17 trigger bar.
6. Capable of accepting Glock 17 locking block.
7. Magazine well.
8. Magazine catch.
9. Accessory rail.
10. Slide-stop lever recess.
11. Magazine catch spring recess.

Machining operations or design features not yet present or completed:

1. Trigger-pin hole machined or indexed.
2. Locking block-pin hole machined or indexed.
3. Devoid of front or rear frame rails.
4. Barrel seat machined or formed.

As a result, the submitted "CG or CG9" is not sufficiently complete to be classified as the frame or receiver of a firearm; and thus, is not a "firearm" as defined in the GCA. Consequently, the aforementioned item is therefore not subject to GCA provisions and implementing regulations.

To reiterate the conclusion of FTISB's evaluation, our Branch has determined that the submitted Polymer 80, Incorporated Glock-type receiver blank incorporating the aforementioned design features is not classified as the frame or receiver of a weapon designed to expel a projectile by the action of an explosive, thus it is not a "firearm" as defined in (GCA), 18 U.S.C. § 921(a)(3)(B).

Please be aware, while not classified as a "firearm"; the submitted items are each classified as a "defense article" as defined in 27 CFR § 447.11. The U.S. Department of State (USDS) regulates all exports from, and particular imports into, the United States. Firearms, parts, and accessories for firearms are all grouped as "defense articles" by the USDS and overseen by their Directorate of Defense Trade Controls. Information regarding import/export of defense articles can be found on their web site at [www.pmdtcc.state.gov](http://www.pmdtcc.state.gov).

In conclusion, correspondence from our Branch is dependent upon the particular facts, designs, characteristics or scenarios presented. Please be aware that although other cases (submissions to our Branch) may appear to present identical issues, this correspondence pertains to a particular

Mr. Jason Davis

issue or item. We caution applying this guidance in this correspondence to other cases, because complex legal or technical issues may exist that differentiate this scenario or finding from others that only appear to be the same.

Also, this determination is relevant to the items as submitted. If the design, dimensions, configuration, method of operation, or utilized materials or processes such as changing from additive manufacturing to injection molding, this classification would be subject to review and require a submission to FTISB of an exemplar utilizing the new manufacturing process.

We thank you for your inquiry and trust the foregoing has been responsive to your evaluation request. Please do not hesitate to contact us if additional information is needed.

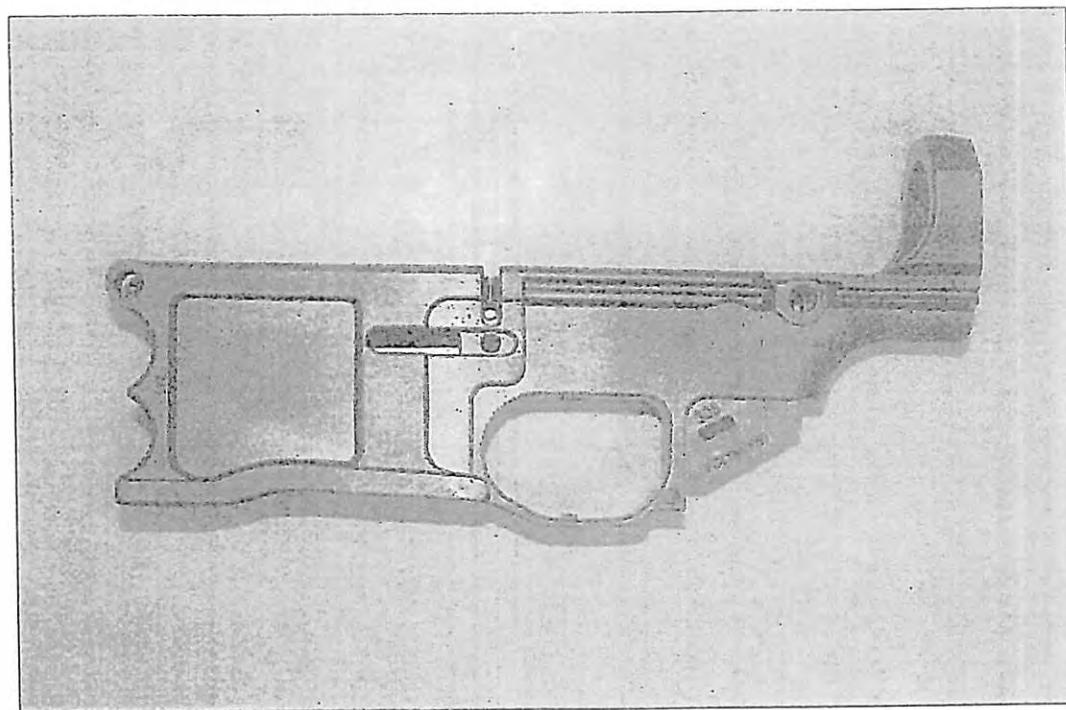
Sincerely yours,  
*MC*

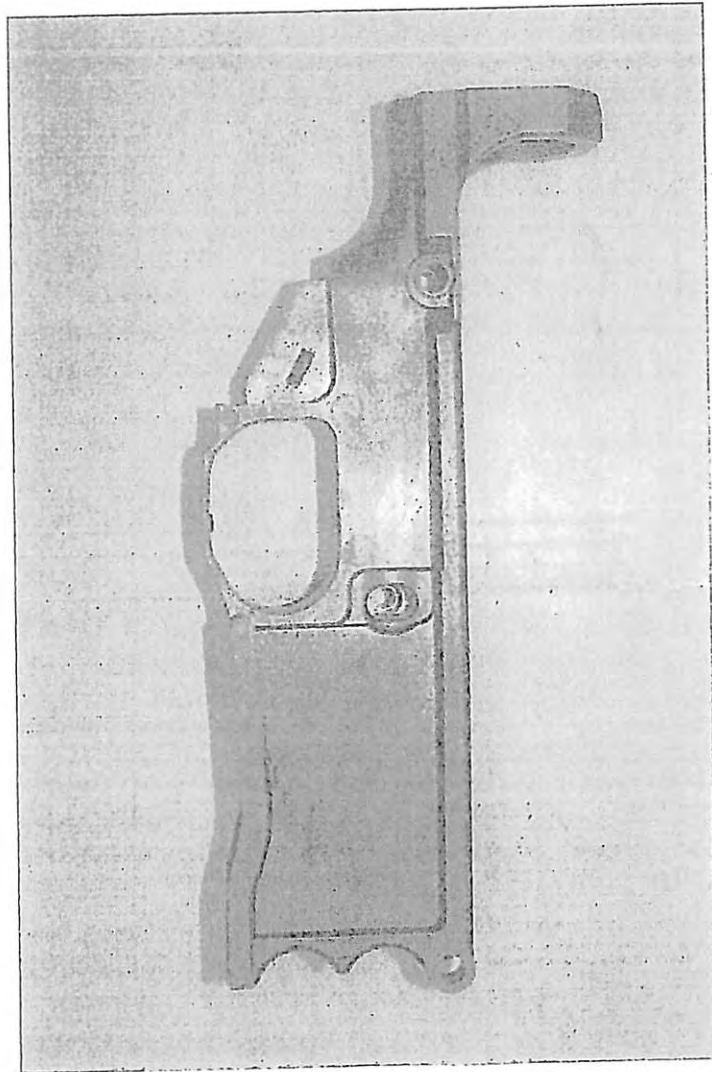


Michael R. Curtis  
Chief, Firearms Technology Industry Services Branch

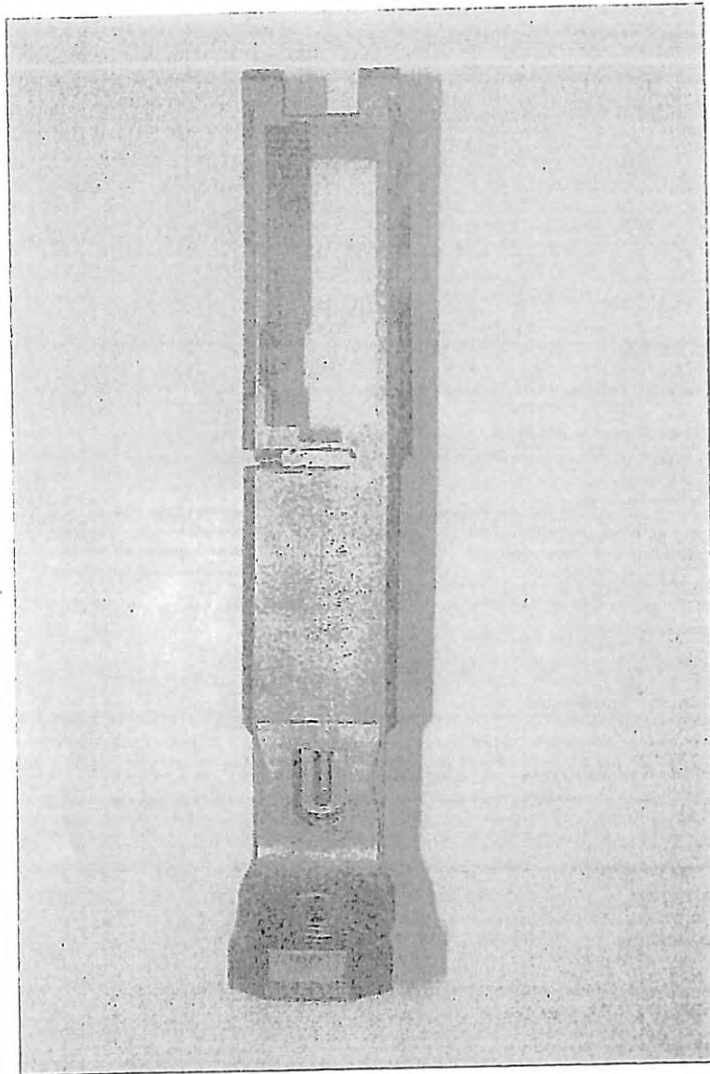
Enclosures

# Polymer 80, Inc. WARRHOGG Receiver Blank

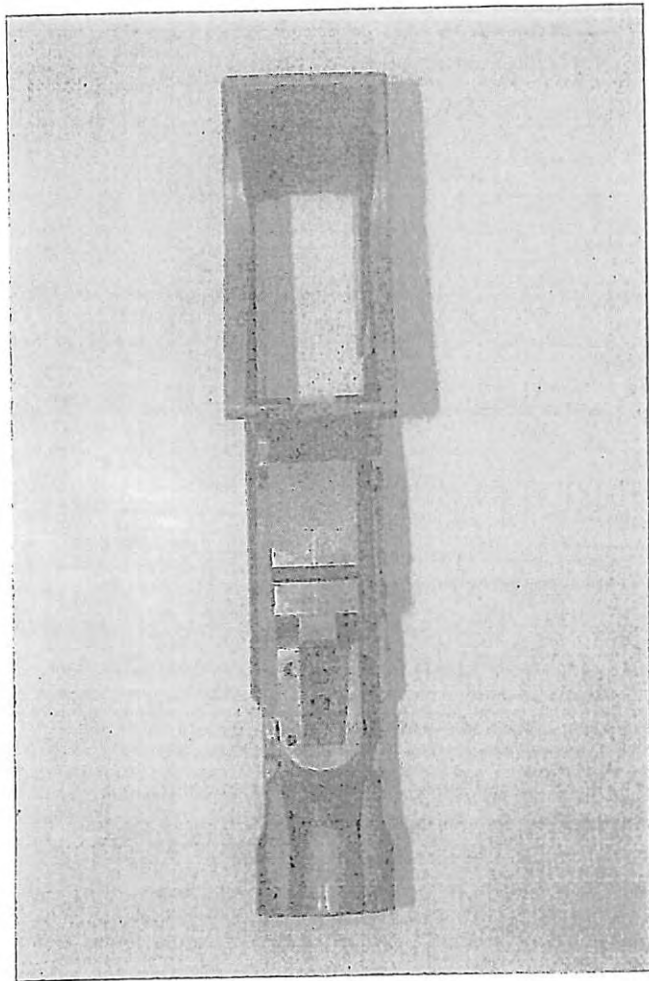




APP 000789

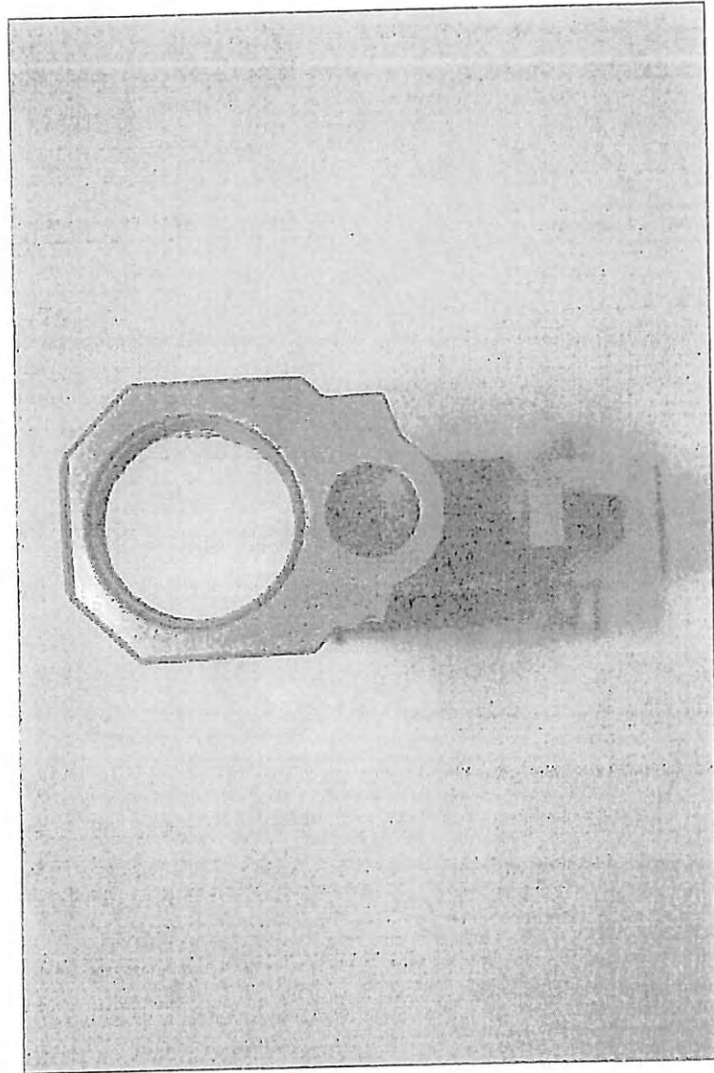


APP 000790



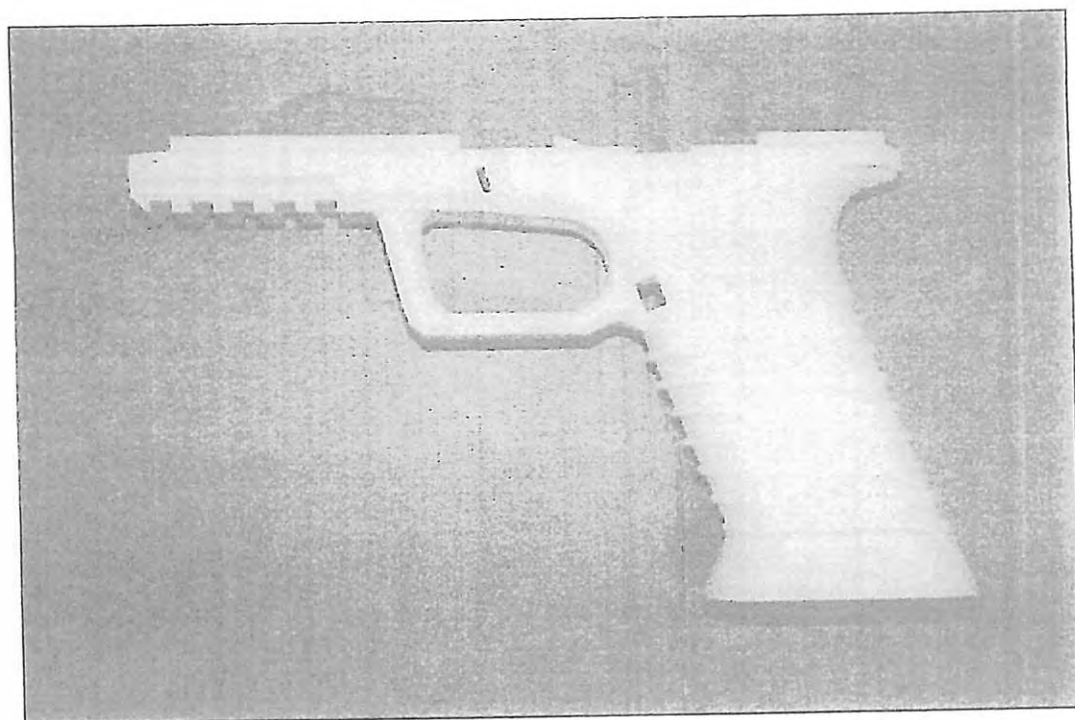
APP 000791

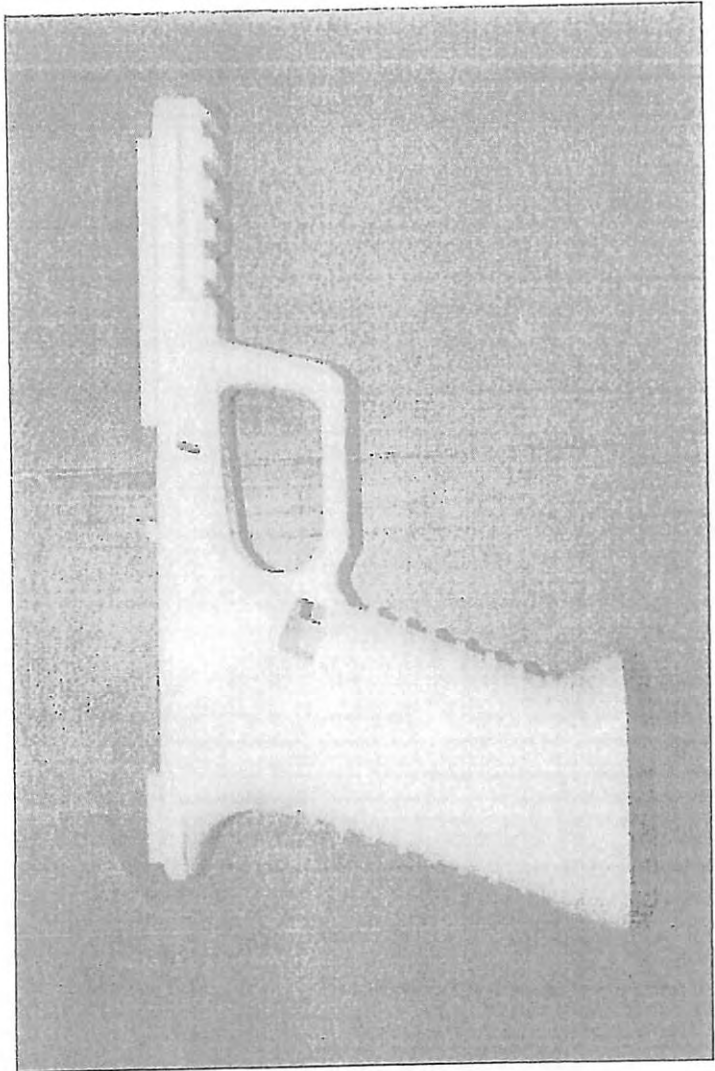




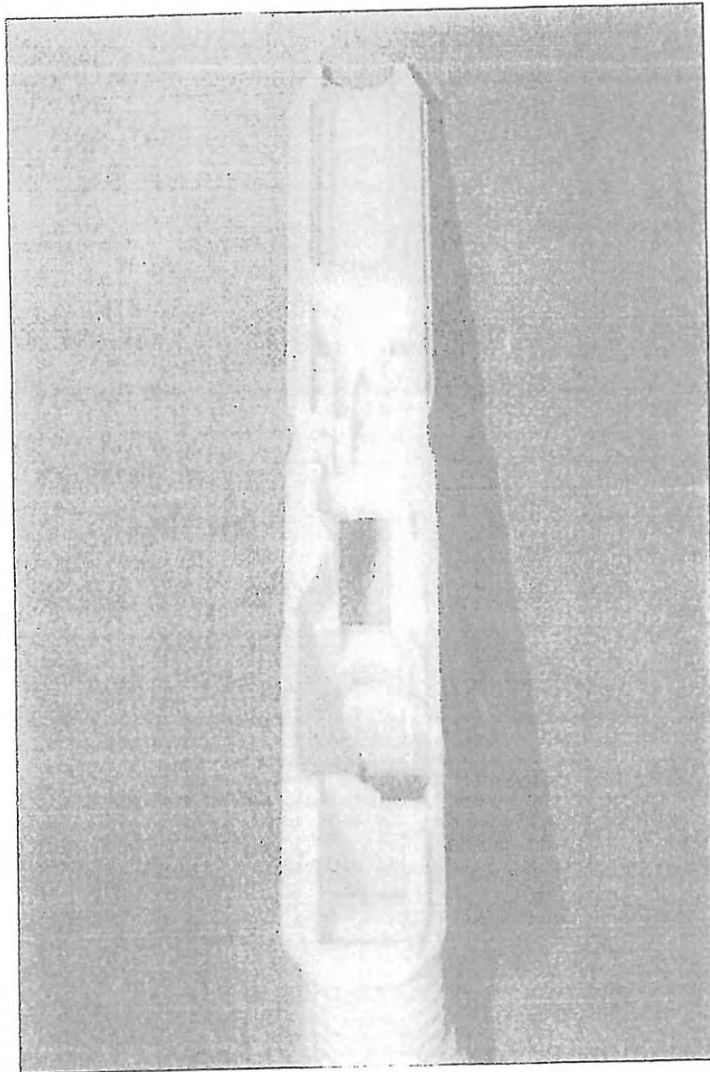
APP 000792

Polymer 80, Inc; GC or CG9 Receiver Blank

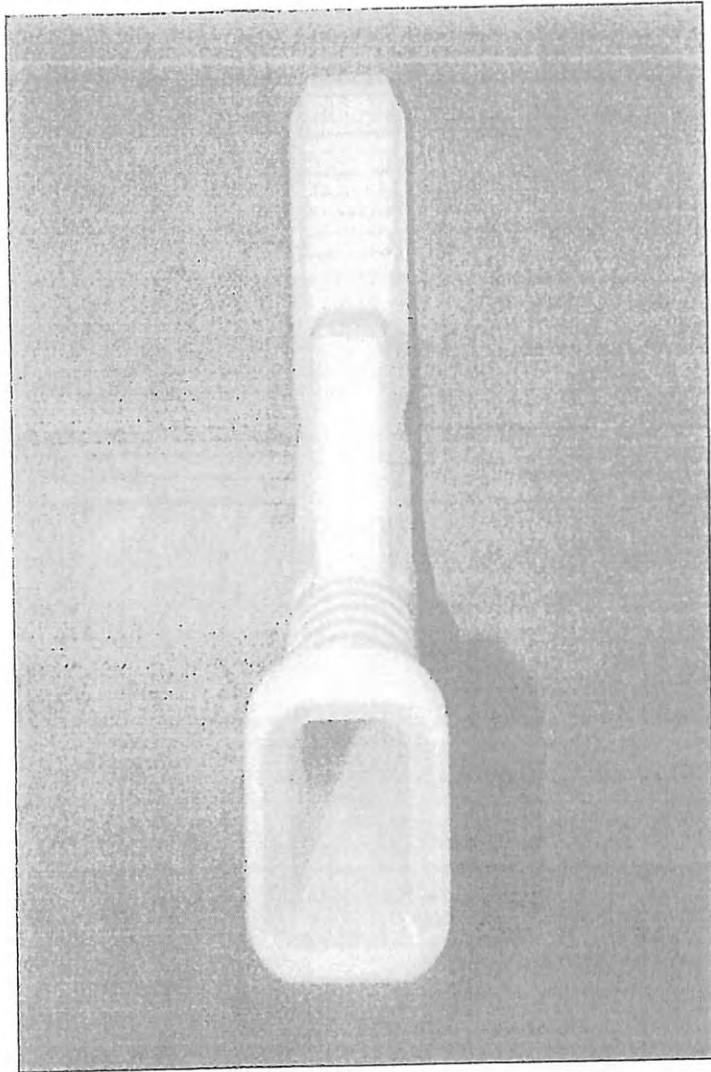




APP 000794

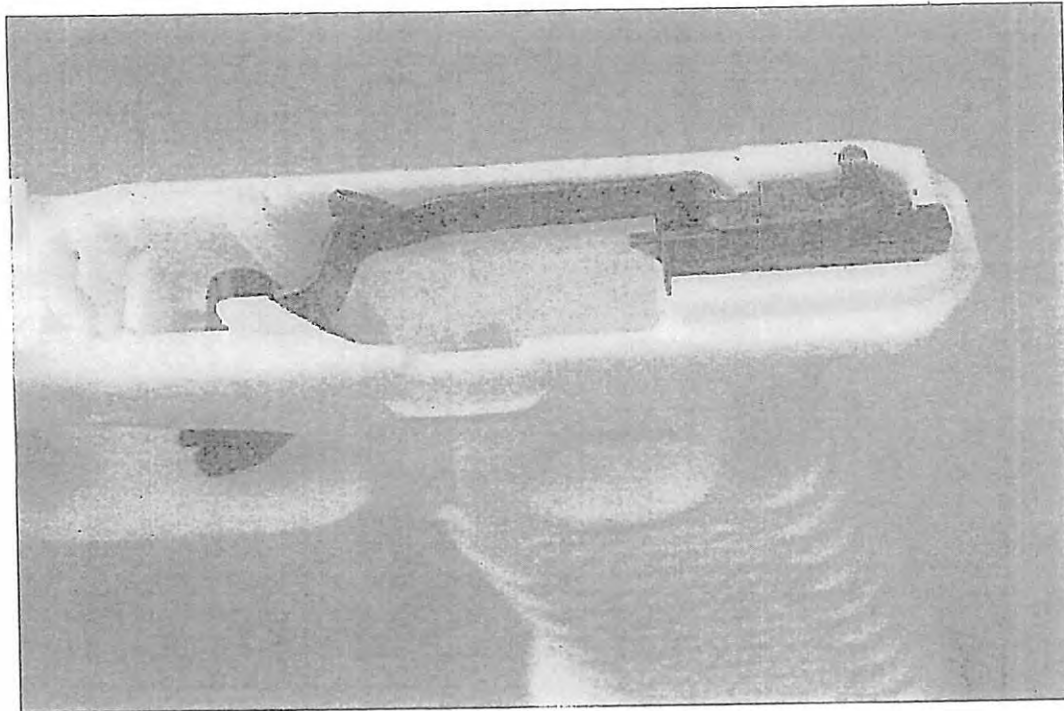


APP 000795

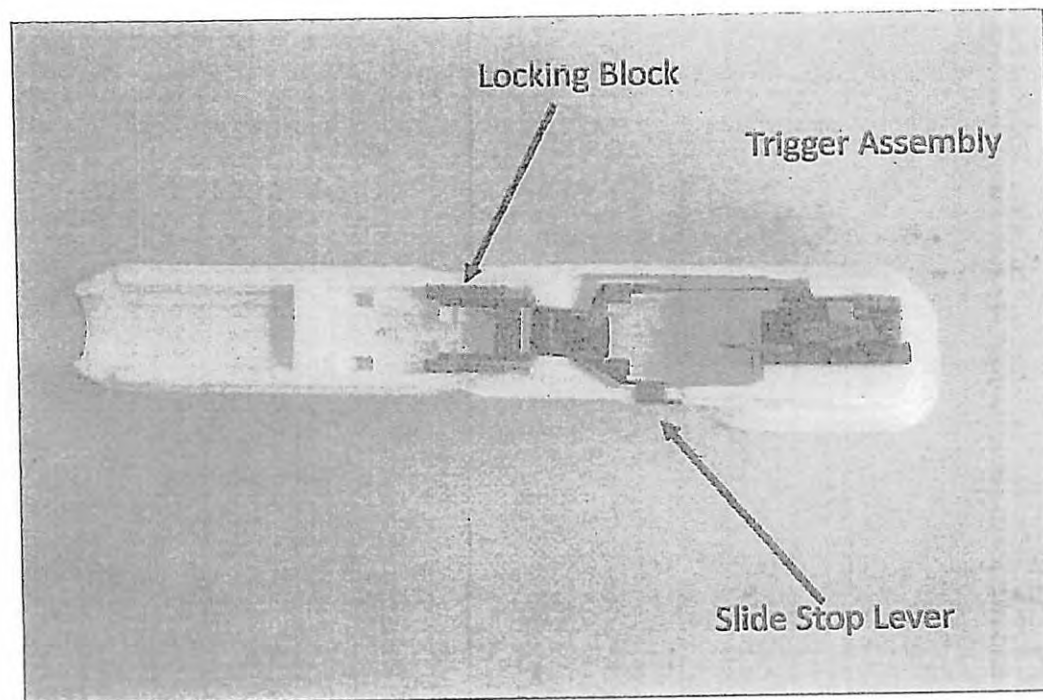


APP 000796

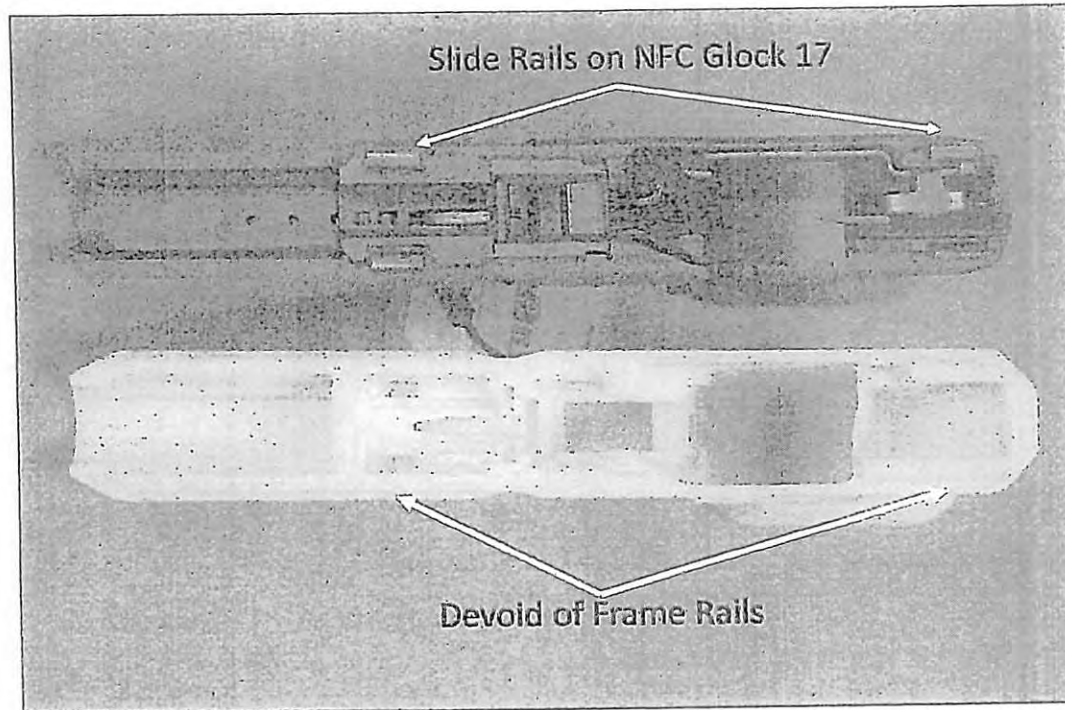
Capable of Accepting Glock 17 Trigger Mechanism and Trigger Bar Assemblies



Capable of Accepting Glock 17 Locking Block,  
Trigger Assembly and Slide Stop Lever

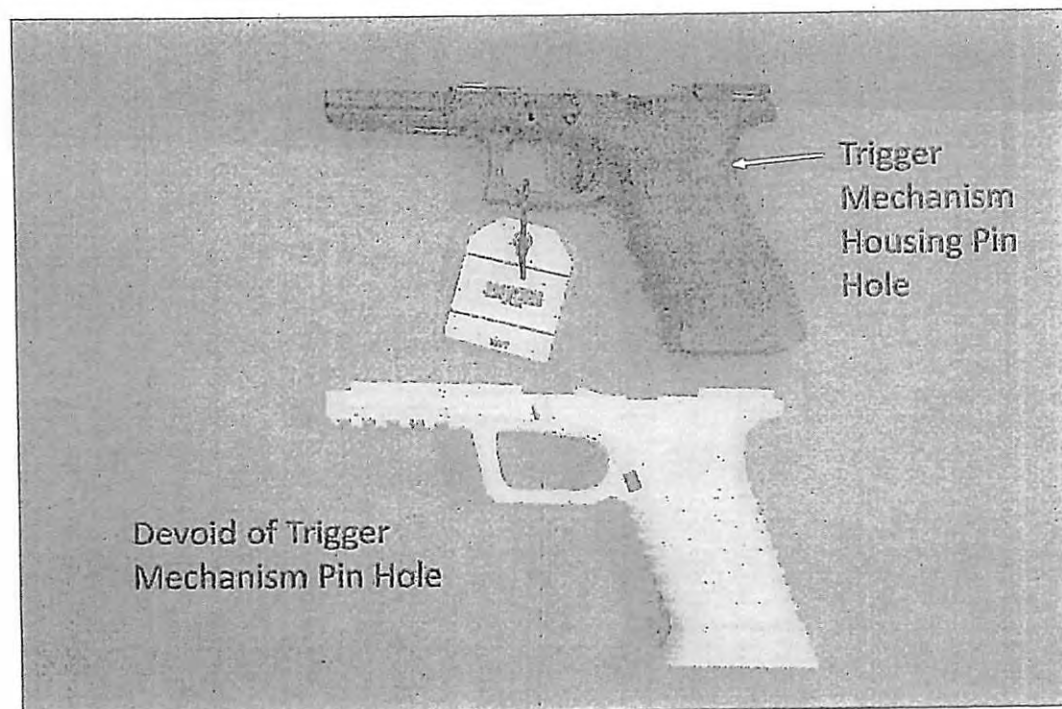


# Internal Frame Comparison to NFC Glock 17

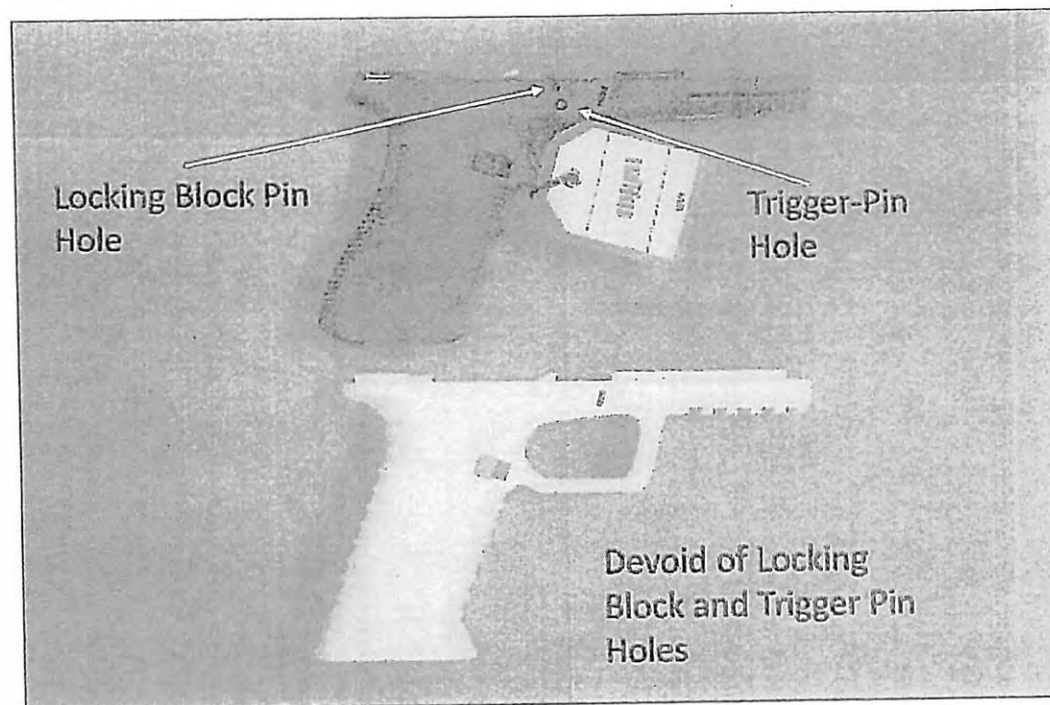




# Frame Comparison to NFC Glock 17



# Frame Comparison to NFC Glock 17



# **Exhibit C**

# **Exhibit C**



U.S. Department of Justice

Bureau of Alcohol, Tobacco,  
Firearms and Explosives

Martinsburg, WV 25405

www.atf.gov

JAN 18 2017

907010:WJS  
3311/305402

Mr. Jason Davis  
The Law Offices of Davis & Associates  
27201 Puerta Real, Suite 300  
Temecula, California 92691

Mr. Davis:

This is in reference to your correspondence, with enclosed samples, to the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), Firearms Technology Industry Services Branch (FTISB). In your letter, you asked for a classification of two Glock-type "PF940C Blank" on behalf of your client, Polymer 80 Incorporated (see enclosed photos). Specifically, you wish to know if each of these items would be classified as a "firearm" under the Gun Control Act of 1968 (GCA).

You state the submitted PF940C has critical machining operations not yet "implanted" as follows:

- *Drilling of the locking left and right block pin holes.*
- *Drilling of the left and right trigger pin holes.*
- *Drilling of the left and right trigger housing pin holes.*
- *Cutting of the left and right rail slots to allow for slide installation.*
- *Machining of the side walls that block slide installation.*
- *Machining of the cross walls that block barrel and recoil spring installation.*

As a part of your correspondence, you describe design features and the manufacturing process of the submitted "PF940C" to include the following statement:

- *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.*

APP 000803

For your reference in this matter, the amended Gun Control Act of 1968 (GCA), 18 U.S.C. § 921(a)(3), defines the term "firearm" to include any weapon (including a starter gun) which will or is designed to or may be readily converted to expel a projectile by the action of an explosive...[and] ...the frame or receiver of any such weapon...

Also, 27 CFR Section 478.11 defines "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.*

Also, the AECA, 27 CFR Section 447.11, defines "defense articles" as—

*...Any item designated in § 447.21 or § 447.22. This includes models, mockups, and other such items which reveal technical data directly relating to § 447.21 or § 447.22.*

The USMIL, Section 447.22, **FORGINGS, CASTINGS, and MACHINED BODIES** states:

*Articles on the U.S. Munitions Import List include articles in a partially completed state (such as forgings, castings, extrusions, and machined bodies) which have reached a stage in manufacture where they are clearly identifiable as defense articles. If the end-item is an article on the U.S. Munitions Import List, (including components, accessories, attachments and parts) then the particular forging, casting, extrusion, machined body, etc., is considered a defense article subject to the controls of this part, except for such items as are in normal commercial use.*

During the examination of your sample "PF940C", FTISB personnel found that the following machining operations or design features present or completed:

1. Trigger slot.
2. Capable of accepting Glock 17 trigger mechanism housing.
3. Capable of accepting Glock 17 trigger bar.
4. Magazine well.
5. Magazine catch.
6. Accessory rail.
7. Slide-stop lever recess.
8. Magazine catch spring recess.

Machining operations or design features not yet present or completed:

1. Trigger-pin hole machined or indexed.
2. Trigger mechanism housing pin machined or indexed.
3. Locking block-pin hole machined or indexed.
4. Devoid of front or rear frame rails.
5. Barrel seat machined or formed.
6. Incapable of accepting Glock locking-block.

Note: *The dust cover, top of the barrel seat area and locking-block recess area became damaged during this evaluation.*

As a result of this FTISB evaluation, the submitted "PF940C" is not sufficiently complete to be classified as the frame or receiver of a firearm and thus is not a "firearm" as defined in the GCA. Consequently, the aforementioned items are therefore not subject to GCA provisions and implementing regulations.

To reiterate the conclusion of FTISB's evaluation, our Branch has determined that the submitted Polymer 80, Incorporated Glock-type receiver blanks incorporating the aforementioned design features are not classified as the frame or receiver of a weapon designed to expel a projectile by the action of an explosive, thus each of these items are not a "firearm" as defined in GCA, 18 U.S.C. § 921(a)(3)(B).

Please be aware, while not classified as a "firearm"; the submitted items are each classified as a "defense article" as defined in 27 CFR Section 447.11. The U.S. Department of State (USDS) regulates all exports from, and particular imports into, the United States. Firearms, parts, and accessories for firearms are all grouped as "defense articles" by the USDS and overseen by their Directorate of Defense Trade Controls. Information regarding import/export of defense articles can be found on their web site at [www.pmddtc.state.gov](http://www.pmddtc.state.gov).

Correspondence from our Branch is dependent upon the particular facts, designs, characteristics or scenarios presented. Please be aware that although other cases (submissions to our Branch) may appear to present identical issues, this correspondence pertains to a particular issue or item. We caution applying this guidance in this correspondence to other cases, because complex legal or technical issues may exist that differentiate this scenario or finding from others that only appear to be the same.

Please be aware, this determination is relevant to the item as submitted. If the design, dimensions, configuration, method of operation, processes or utilized materials, this classification would be subject to review and would require a submission to FTISB of a complete functioning exemplar.

We thank you for your inquiry and trust the foregoing has been responsive to your evaluation request.

Sincerely yours,

#11

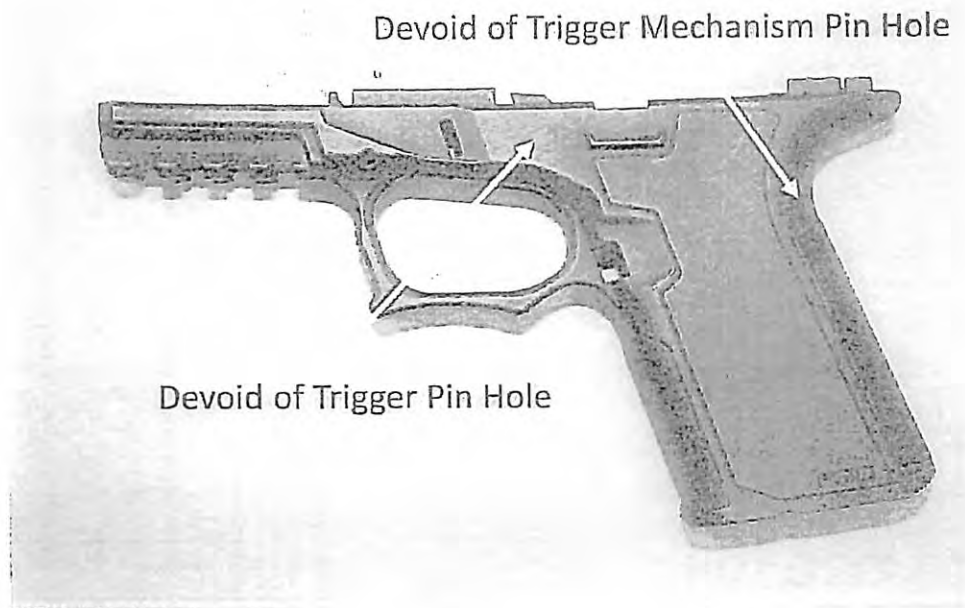


Michael R. Curtis

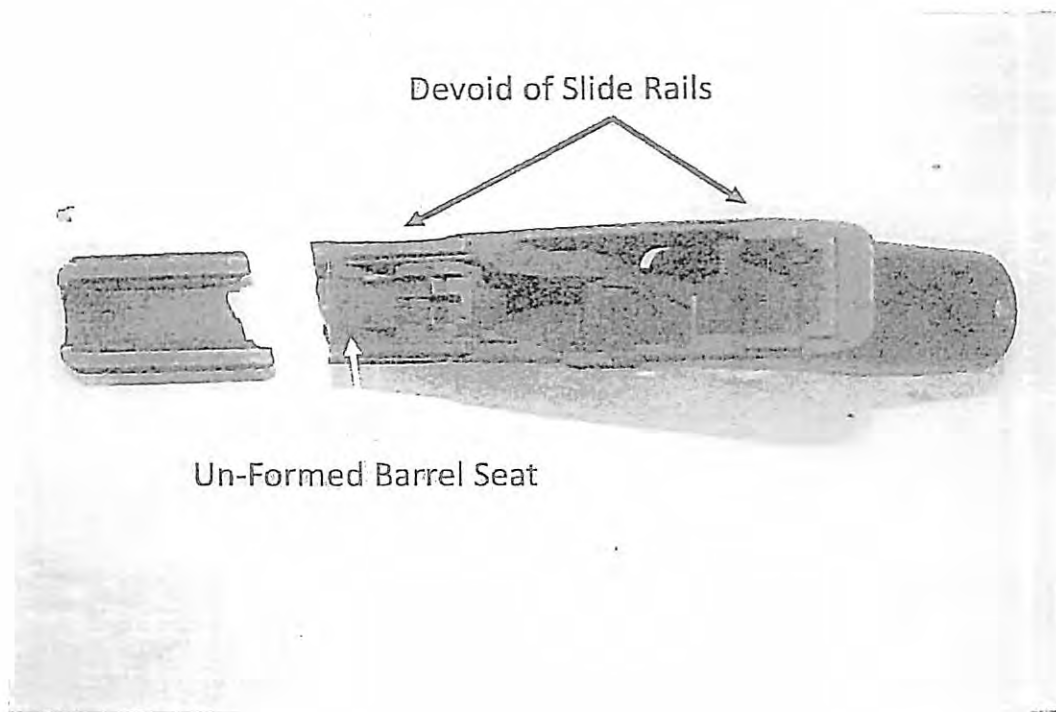
Chief, Firearms Technology Industry Services Branch

Enclosure

# PF940C Blank, Submitted 10/6/16

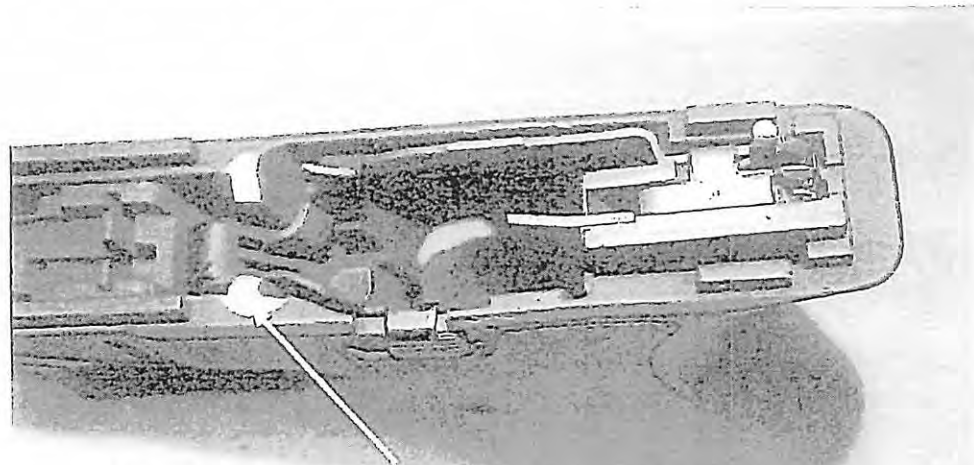


# PF940C Blank, Dust Cover Area Damaged



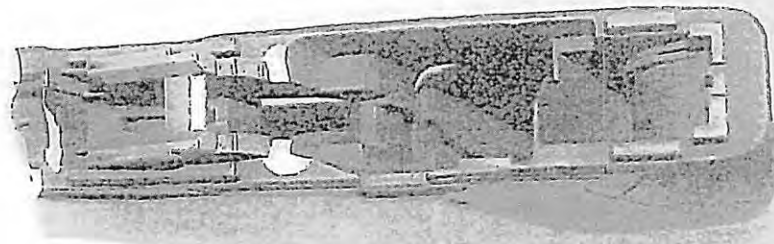


# PF940C Blank, With Trigger Mechanism Housing and Slide Stop Lever



Damage to Locking Block Recess Area

# PF940C Blank, Incapable of Accepting Glock Locking Block



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  
of any individual.

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

7  
8 POLYMER80, INC.

9 Plaintiff,

10 vs.

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

15 Defendants.

16  
17 **DEFENDANTS' OPPOSITION TO POLYMER80'S**

18 **MOTION FOR SUMMARY JUDGMENT**

19 Defendants Stephen Sisolak, Governor of Nevada, Aaron Ford, Attorney General of  
20 Nevada, George Togliatti, Director of the Nevada Department of Public Safety, Mindy  
21 McKay, Administrator of the Records, Communications, and Compliance Division of the  
22 Nevada Department of Public Safety (collectively "Defendants"), oppose Polymer80, Inc.'s  
23 motion for summary judgment.

24 **MEMORANDUM OF POINTS AND AUTHORITIES**

25 **I. Introduction**

26 This Court should deny Polymer80's motion for summary judgment. Polymer80 is  
27 correct on one issue. The issue of whether a statute complies with Nevada's constitution is  
28 a pure question of law. *Cornella v. Just. Ct.*, 132 Nev. 587, 591, 377 P.3d 97, 100 (2016).

1 Polymer80's motion falls steeply downhill from there. AB 286 is presumed constitutional,  
2 and it is.

3 To evade summary judgment against it on its vagueness challenge, Polymer80  
4 embraces an extreme position that a statute can be deemed impermissibly vague based on  
5 hypothetical circumstances. Polymer80 does so out of necessity to distract the court from  
6 Polymer80's own knowledge of the disputed terms and the natural and usual meaning of  
7 these terms in the context of firearms construction that Polymer80 is intimately familiar.  
8 Nothing permits a plaintiff "who has engaged in conduct that is clearly proscribed [to]  
9 complain of the vagueness of the law as applied to the conduct of others." *Sheriff of Washoe*  
10 *Cty. v. Martin*, 99 Nev. 336, 340, 662 P.2d 634, 637 (1983) (citing *Village of Hoffman Estates*  
11 *v. Flipside Hoffman Estates, Inc.*, 455 U.S. 489, 495 (1982)).

12 Polymer80 does not principally rely on any case but seeks shelter under a laundry  
13 list of authorities that regurgitate general vagueness principles. But the Grand Canyon  
14 separates Polymer80 from a hypothetical a person of ordinary intelligence with no  
15 familiarity with firearms and their components. However, even if the Court indulges  
16 Polymer80's speculative argument, this Court still should rule in the Defendants' favor and  
17 against Polymer80. AB 286's scienter requirement gives Polymer80 notice of what is  
18 prohibited and affords adequate law enforcement standards. *Ford v. State*, 127 Nev. 608,  
19 621, 262 P.3d 1123, 1132 (2011).

## 20 **II. Statement of undisputed material facts**

### 21 **A. Polymer80 does nothing to describe its products**

22 Polymer80 writes, "which of Polymer80's products, if any, are now prohibited in  
23 Nevada and subject to AB 286's criminal sanctions remains unknowable and presently  
24 unknown owing to the statute's unintelligible and unconstitutionally vague text." Br.  
25 15:23-26. But this is a problem of Polymer80's own making.

26 Rather than describe its products and explain how Polymer80 is confused by AB  
27 286's application to them, Polymer80's Daniel McCalmon writes the following conclusory  
28 statement, "[w]ithout an understanding of what the above terms and phrases mean,

1 Polymer80 is not able to conform its conduct in accordance with AB 286.” Br., Ex. I at ¶7.  
2 Similarly, Loran Kelley concludes, “because AB 286 is so vaguely written and so difficult  
3 to understand, I do not and cannot divine to what precise extent AB 286 does and will  
4 impact Polymer80’s business. Br., Ex. K at ¶3.

5 There is no admissible evidence before this Court to back up Polymer80’s putative  
6 confusion. Polymer80 never describes any of its products. Apart from *saying* they are  
7 confused, Polymer80 has not *shown* with admissible evidence how there could be any  
8 confusion regarding the application of AB 286’s terms to Polymer80’s products.

9 **B. Polymer80’s admissions on AB 286’s terms**

10 **1. Polymer80 knows AB 286 applies to its 80 percent kits**

11 Polymer80 filed a verified complaint. Ex. A at 16.<sup>1</sup> Polymer80 calls itself a “major  
12 commercial entity.” Compl. ¶6. Polymer80 admits it is a “leading manufacturer of the  
13 innovative gun-related products, components, and aftermarket accessories.” *Id.* at ¶33.  
14 Polymer80 sells products to customers to allow them to “participate in the build process” of  
15 making firearms. *Id.* at ¶34.

16 Polymer80 further writes that it is the target of AB 286. Polymer writes, “[t]ellingly,  
17 Nevada legislators and officials have made clear that the purpose of AB 286 is to  
18 criminalize Polymer80’s business.” *Id.* at ¶36. Polymer80 then admits that “AB 286 was  
19 and is designed by its drafters – and will undoubtedly be used by its enforcers – with the  
20 Company’s product in the forefront of their minds.” *Id.* at ¶38.

21 Polymer80’s person most knowledgeable, Daniel McCalmon, was deposed. After  
22 testifying that Polymer80 did not know what the term 80 percent defined as a company,  
23 Mr. McCalmon testified as follows:

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

25 A. Yes.

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

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

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

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

10 Q. What are those estimates obtained from customers?

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

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

## 16 2. Polymer80 uses the terms it says are vague

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

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

---

<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           **3. Polymer80 testified it knows the terms' meaning in its industry**

2           In its deposition, Polymer80 concedes that the terms are used both by ATF and those  
3 in its industry.

4                   **a. Unfinished frames, receivers, and blanks**

5           Mr. McCalmon testified that Polymer80 knew the definition of an unfinished frame.  
6 He described it as "one that is not capable of accepting components to be manufactured into  
7 a complete firearm." Ex. D, 57:14-17.

8           Mr. McCalmon testified that Polymer80 knew the definition of an unfinished  
9 receiver. He stated that "[i]t's the same understanding as unfinished frame." *Id.* at 58:22-  
10 59:4.

11           Mr. McCalmon professed not to know what the term "blank" meant. *Id.* at 63:18-23.  
12 However, Mr. McCalmon then acknowledged that the term is synonymous with "an  
13 unfinished frame or receiver." *Id.* at 64:9-13.

14                   **b. Casting and machined body**

15           Mr. McCalmon testified he did not know the meaning of casting or machined body.  
16 *Id.* at 64:14-16 and 65:5-7. However, he then testified that he knew that the terms casting  
17 and machined body were used synonymously by the ATF under federal law. *Id.* at 66:3-24.  
18 He testified that he had no reason to believe that the terms machined body and casting  
19 meant something different in Nevada law as compared to federal law. *Id.* at 66:3-67:3.

20                   **C. Department of Public Safety's testimony as to AB 286's meaning**

21           Captain Scott Stuenkel testified as the person most knowledgeable for the  
22 Department of Public Safety. Ex. I. Captain Stuenkel testified regarding DPS's  
23 understanding of AB 286.

24           Polymer80 writes that Captain Stuenkel "needed to reach out to a Special Agent of  
25 the federal Bureau of Alcohol Tobacco, Firearms and Explosives for help in defining and  
26 understanding certain of AB 286's terms." Br. 13:19-21. Polymer80 is incorrect, as Captain  
27 Stuenkel explained:

28    ///

1 Q. But the purpose of your reaching out to him, and then to  
2 Agent Cahill with the ATF, was to become better educated about  
3 some of the issues related to this case; correct?

4 A. Specifically, I wanted – so it’s clear that the verbiage in  
5 the assembly bill is drafted from verbiage used by the ATF. So  
6 some specific terms I – I couldn’t find a definition through the  
7 ATF’s website. So I wanted to reach out to an agent to see if the  
8 ATF actually defined terms, or if it was just, like common  
9 knowledge terms.

10 Ex. I., 56:2-12.

11 Polymer80 then writes that Captain Stuenkel “corroborated the unassailable  
12 conclusion that AB 286 is vague and indecipherable.” Br. 12:18-19. The opposite is true,  
13 as Captain Stuenkel testified:

14 Q. What is your understanding, if any, based upon that  
15 review and your reading through the bill and the other work you  
16 did in preparation for today’s deposition, of what it is that AB  
17 286 criminalizes?

18 A. The possession or selling or transportation of an  
19 unfinished product of a firearm, a receiver, or – basically,  
20 criminalizes if you’re in possession of a – of a major component  
21 of a firearm that has had most of the major machining so it’s –  
22 it’s basically in the process of becoming a firearm or component  
23 of a – a major component of a firearm. To the extent where most  
24 of the major machining has been complete. So my interpretation  
25 of most would be majority. Majority meaning more than 50  
26 percent, or 50 percent of that component has been machined to  
27 become a firearm, and the intent of that component is to make a  
28 firearm.

Ex. I, 120:21-121:11.

21 Captain Stuenkel then testified regarding the meaning of the terms blank, frame, or  
22 receiver. Captain Stuenkel explained that “the blank is – is basically an interchangeable  
23 term to be used for the materials that will become a frame or a receiver.” *Id.* at 128:20-  
24 129:2. Captain Stuenkel then testified as the meaning of machined bodies and castings. *Id.*  
25 at 130:18-131:2 and 131:22-132:13.

26 Polymer80 then writes that “Captain Stuenkel also stated under oath that nothing  
27 in AB 286 has clarified the definitions and/or tests at issue.” Br. 13:15-17. However, the  
28 portions of the deposition cited by Polymer80 are revealing. Polymer80’s counsel asks, “Are



1 you aware that there are thousands of Nevadans, maybe hundreds of thousands of  
2 Nevadans who have never fire or carried a firearm? Ex. I., 65:1-3. Later, Polymer80's  
3 counsel and Captain Stuenkel have the following exchange:

4 Q. In your opinion, based on your experience, would an  
5 average Nevadan, of ordinary intelligence with no background in  
6 guns or firearms, possibly be able to understand the meaning of  
the words, "that is intended to be turned into the frame or lower  
receiver of a firearm with additional machining"?

7 Mr. Shevorski: Object to the form.

8 A. I -- --I have no way to answer that.

9 *Id.* at 135:16-23. AB 286 only applies to individuals who intend on building a firearm.  
10 Polymer80 cites testimony regarding a hypothetical question without context.

### 11 **III. Legal standards**

12 Summary judgment is warranted "when the pleadings, depositions, answers to  
13 interrogatories, admissions, and affidavits, if any, that are properly before the court  
14 demonstrate that no genuine issue of material fact exists, and the moving party is entitled  
15 to judgment as a matter of law." *See Cuzze v. Univ. & Cmty. Coll. Sys. of Nev.*, 123 Nev.  
16 598, 602-03, 172 P.3d 131, 134 (2007).

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

### 22 **IV. Legal discussion**

#### 23 **A. AB 286 is presumed constitutional**

24 Polymer80 cannot justify its attack on AB 286. The weakness of Polymer80's case is  
25 readily apparent by Polymer80's decision to skip where this Court is required to start.

26 Polymer80 never acknowledges this Court's duty to construe acts of the legislature  
27 consistent with Nevada's constitution. *State v. Glusman*, 98 Nev. 412, 419, 651 P.2d 639,  
28 644 (1982). Nor does Polymer80 come to grips that this Court should construe AB 286 in

1 such a way to find it constitutional. *Ford v. State*, 127 Nev. 608, 612 262 P.3d 1123, 1126  
2 (2011). This is because ambiguities in a statute are not of constitutional concern. If a  
3 supposed ambiguity in a statute were enough to seal its fate, then hardly any statute would  
4 survive such a radically expansive interpretation of the due process clause.

5 Nevada laws are presumed constitutional. *Sheriff of Washoe Cty. v. Martin*, 99 Nev.  
6 336, 662 P.2d 634 (1983). Because of this presumption in favor of passed legislation,  
7 Polymer80 has the burden of proving a “clear showing” AB 286’s constitutional deficiency.  
8 *Id.* Accordingly, the Court starts with a presumption against Polymer80’s argument and  
9 “every reasonable construction must be resorted to, in order to save a statute from  
10 unconstitutionality.” *State v. Castaneda*, 126 Nev. 478, 481, 245 P.3d 550, 552 (2010).

11 **B. Even in a facial challenge, the void for vagueness doctrine is**  
12 **grounded in the context in which the challenge arises**

13 The void-for-vagueness doctrine is rooted in the Due Process Clauses of the Fifth and  
14 Fourteenth Amendments.” *Carrigan v. Comm’n on Ethics*, 129 Nev. 894, 899, 313 P.3d 880,  
15 884 (2013). “A criminal statute can be invalidated for vagueness (1) if it fails to provide a  
16 person of ordinary intelligence fair notice of what is prohibited; or (2) if it is so standardless  
17 that it authorizes or encourages seriously discriminatory enforcement.” *Scott v. State*, 131  
18 Nev. 1015, 1021, 363 P.3d 1159, 1164 (2015). The key difference between the two tests is  
19 that the first test deals with the person whose conduct is at issue, while the second deals  
20 with those who enforce the laws, such as police officers. *Id.* The two tests are independent  
21 of one another, and failing either test renders the law unconstitutionally vague. *Castaneda*,  
22 126 Nev. at 481–82, 245 P.3d at 553.

23 But the objective standard for vagueness, i.e., a person of ordinary intelligence  
24 receives fair notice, is not license for the Court to stray into the hypothetical, as the United  
25 States Supreme Court long ago explained:

26 The delicate power of pronouncing an Act of Congress  
27 unconstitutional is not to be exercised with reference to  
28 hypothetical cases ... [A] limiting construction could be given to  
the statute by the court responsible for its construction if an  
application of doubtful constitutionality were ... presented. We

1 might add that application of this rule frees the Court not only  
2 from unnecessary pronouncement on constitutional issues, but  
also from premature interpretations of statutes in areas where  
their constitutional application might be cloudy.

3 *U.S. v. Nat'l. Dairy Prod. Corp.*, 372 U.S. 29, 32 (1963) (quoting *U.S. v. Raines*, 362 U.S.  
4 17, 22 (1960)). “[V]agueness challenges to statutes which do not involve First Amendment  
5 freedoms must be examined in light of the facts of the case at hand.” *Village of Hoffman*  
6 *Estates v. Flipside, Hoffman Estates, Inc.*, 455 U.S. 489, 495 n.7 (1982) (quoting *U.S. v.*  
7 *Mazurie*, 419 U.S. 544, 550 (1975)).

8 **C. The void for vagueness doctrine has no application to Polymer80**

9 Polymer80 contends that it has standing to challenge AB 286 on vagueness grounds.  
10 Br. 19-20. Polymer80 never grapples with the problem that the same arguments it makes  
11 for standing also doom its argument on the merits. No plaintiff “who has engaged in  
12 conduct that is clearly proscribed [may] complain of the vagueness of the law as applied to  
13 the conduct of others.” *Martin*, 99 Nev. at 340, 662 P.2d at 637.

14 AB 286 by its terms applies to Polymer80. Section 3.5(1) applies to “person[s]  
15 [who]...sell, offer to sell or transfer an unfinished frame or receiver.” Polymer80 is a  
16 commercial entity. Compl. ¶6. Polymer80 freely admits it sells gun-related products to  
17 enable customers to build firearms. *Id.* at ¶¶33 and 34. Polymer80 then admits that its  
18 products were at the forefront of the legislature’s mind when it passed AB 286. *Id.* at ¶38.  
19 Polymer80 cannot have it both ways. Polymer80 cannot gripe that it was specifically  
20 targeted by AB 286, but then assert that vagueness permeates AB 286.

21 Polymer80 cannot complain the terms unfinished frame, receiver, blank, casting, or  
22 machined body is unclear as to Polymer80. Polymer80 testified as to Polymer80’s  
23 understanding of their meaning. Ex. D, 57:14-17, 58:22-59:4, 64:9-13, 66:7-11, and 66:21-  
24 24. Polymer80 further testified that it has no reason to believe that the terms unfinished  
25 frame, receiver, blank, or casting, machined body mean anything different as they are used  
26 in AB 286. *Id.* at 58:17-21, 59:4-7, 66:12-16, and 66:25-67:3.

27 Polymer80 complains that that blank, casting, or machined body are not defined  
28 within AB 286. Br. 25:7-25. No authority requires them to be. No due process challenge

1 based on vagueness is maintainable where the words and phrases have an easily  
2 ascertainable meaning. *Martin*, 99 Nev. at 340-41, 662 P.2d at 637-38 (using Webster’s  
3 Third New International Dictionary to deny a vagueness challenge). As explained in *State*  
4 *v. Castaneda*, “constitutional analysis is does not treat statutory text as a closed universe.”  
5 126 Nev. 478, 483, 245 P.3d 550, 553 (2010). Vagueness can be defeated by giving words  
6 their understood meaning. *Castaneda*, 126 Nev. at 483, 245 P.3d at 554.

7 Here, the terms blank, casting, machined body, frame, or receiver have common,  
8 well-settled meanings. Captain Stuenkel testified as to DPS’s understanding of these  
9 terms in AB 286. Captain Stuenkel then testified regarding the meaning of the terms  
10 blank, frame, or receiver. Captain Stuenkel explained that “the blank is – is basically an  
11 interchangeable term to be used for the materials that will become a frame or a receiver.”  
12 Ex. I, 128:20-129:2, 130:18-131:2 and 131:22-132:13. Nowhere does Polymer80 contest  
13 Captain Stuenkel’s testimony. Polymer80 also never provides this Court with admissible  
14 evidence showing that these terms mean anything different in its industry. That is not  
15 surprising, given Polymer80 itself uses these terms.

16 **D. There is no danger of arbitrary enforcement against Polymer80**

17 Polymer80’s burden is to establish a clear showing of AB 286’s invalidity. *Silvar v.*  
18 *Eighth Jud. Dist. Ct.*, 122 Nev. 289, 292, 129 P.3d 682, 684 (2006). Polymer80 accordingly  
19 has the heavy burden to show that AB 286 is so vague that it lacks sufficient standards  
20 and encourages arbitrary enforcement. *Silvar*, 122 Nev. at 293, 129 P.3d at 685. Statutes  
21 like AB 286 only lack sufficient standards where they would allow “police, prosecutors, and  
22 juries to ‘pursue their personal predilections.’” *Id.* (quoting *Kolender v. Lawson*, 461 U.S.  
23 352, 358 (1983)). Nothing in AB 286 even approaches that threshold.

24 Polymer80’s attack on the precision of the phrase “most of the major machining  
25 operations have been completed” is foreclosed by Nevada authority. Polymer80 writes that  
26 AB 286’s “turbid and unworkable machining test” lacks standards for when most  
27 machining operations are concluded. Br. 27:8-13. However, these words have plain,  
28 ordinary meaning they give sufficient notice to persons of ordinary intelligence and protect

1 against arbitrary enforcement. *Ford*, 127 Nev. at 622, 262 P.3d at 1132. The word “most”  
2 when used as an adjective, such as in section 9 of AB 286, means “greatest in quantity,  
3 extent or degree” or “the majority of.” The New Oxford American Dictionary, 2nd Ed. 2005.  
4 The word “major” when used as an adjective means as “important, serious, or significant.”  
5 *Id.*

6 Importantly, nowhere does Polymer80 write that it is under any delusion that its 80  
7 percent kits fall outside section 9 of AB 286’s definition and section 3.5’s prohibition. It is  
8 beyond peradventure that an 80 percent kit, which Polymer80 admits in its deposition is  
9 80 percent complete towards a completed firearm, has had most of the major machining  
10 operations completed – that is why Polymer80’s customers can turn the 80 percent kit into  
11 a gun in 30 minutes!

12 It makes no difference that the legislature in crafting AB 286 did not use a  
13 mathematical percentage of completion such as 51% or use a word favored by Polymer80  
14 such as “critical” instead of the word it did use, major. Mathematical precision is not  
15 required. *Castaneda*, 126 Nev. at 482, 245 P.3d at 553. It is also irrelevant to a vagueness  
16 challenge that there may be a close case whether a lower receiver or frame reached the  
17 stage where “most of the major machining operations have been completed.” But close  
18 cases do not pose a vagueness problem because they are addressed by the “requirement of  
19 proof beyond a reasonable doubt.” *U.S. v. Williams*, 553 U.S. 285, 306 (2008).

20 The Nevada Supreme Court had little time for arguments similar to Polymer80’s  
21 with respect to Nevada’s DWI statutes. *See Williams v. State*, 118 Nev. 536, 548, 50 P.3d  
22 1116, 1123 (2002); *see also Slinkard v. State*, 106 Nev. 393, 395, 793 P.2d 1330, 1331 (1990).  
23 In *Slinkard*, the criminal defendant argued that he, nor any person of ordinary intelligence  
24 could not when they reached the prohibited threshold of alcohol level. In rejecting that  
25 argument, the court explained that a person of average intelligence could reason that  
26 consumption of substantial amount of alcohol could result in the illegal level being reached.  
27 106 Nev. at 395, 793 P.2d at 1331.

28 ///

1 Here, there is even less danger of arbitrary enforcement against Polymer80 or  
2 anyone who buys its products than in *Slinkard* or *Williams*. AB 286 has a scienter  
3 requirement. Criminal laws requiring specific intent to produce a prohibited result may  
4 avoid vagueness, both by giving the defendant notice of what is prohibited and by affording  
5 adequate law enforcement standards. *Ford*, 127 Nev. at 621, 262 P.3d at 1132 (citing *City*  
6 *of Las Vegas v. District Court (Krampe)*, 122 Nev. 1041, 1051, 146 P.3d 240, 247 (2006)).  
7 Section 9 of AB 286 in its definition of unfinished frame or receiver requires the intent to  
8 turn the blank, casting or machined body into a firearm. Whether an entity such as  
9 Polymer80 had the requisite specific intent to violate AB 286 is a question of fact in a  
10 possible, future enforcement action, not reason to ditch AB 286 on vagueness grounds.  
11 *Ford*, 127 Nev. at 621-22, 262 P.3d at 1132.

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

17 **E. Polymer80 presents no evidence to carry its burden on the other**  
18 **prerequisites for injunctive relief**

19 **1. No evidence of irreparable harm**

20 Polymer80 does not point to any form of irreparable harm besides its failed  
21 vagueness argument. Br. 27-28. As explained above, AB 286 does not violate due process.  
22 This Court should find that Plaintiffs have not met their burden to demonstrate irreparable  
23 harm, which is an essential element of their requested remedy of injunctive relief.

24 Polymer80 writes that it has demonstrated a "reasonable probability" of great injury  
25 to its business. Br. 28:9-10. However, a permanent injunction cannot issue in the absence  
26 of a demonstration by the moving party of success on the merits of an underlying cause of  
27 action. *State Farm Mut. Auto. Ins. Co. v. Jafbros, Inc.*, 109 Nev. 926, 860 P.2d 176 (1993).  
28 The moving party bears the burden of providing testimony, exhibits, or documentary

1 evidence to support its request for an injunction. *Coronet Homes, Inc. v. Mylan*, 84 Nev.  
2 435, 437, 442 P.2d 901, 902 (1968).

3 Here, Polymer80 forgets these requirements. Polymer80 has not come forward with  
4 any evidence demonstrating that any loss of business is due to AB 286. Polymer80 writes  
5 that it may lose “business, customer relationships, and goodwill through a potential  
6 enforcement of AB 286.” Br. 28:22-23. Polymer80 cites no admissible evidence to support  
7 its speculative assertion. This failure is fatal to Polymer80’s motion for summary judgment.

8 Further, Polymer80 testified that it knows that AB 286 does not target a part of its  
9 existing business, the sale of handguns that it manufactures. Ex. H, 38:22-25 and 45:10-  
10 16. Moreover, Polymer80 testified that it has suffered an approximately 50% drop in  
11 revenue for the year because of *potential* federal regulations affecting its products, which  
12 predate passage of AB 286.<sup>3</sup> *Id.* at 54:20-55:21. Polymer then estimated that its sales would  
13 drop a further 30% should that federal regulation come into force. *Id.* at 55:22-56:14. The  
14 forecasted drop in Polymer80’s business has no nexus to AB 286.

## 15 2. The public interest favors the Defendants

16 Persons who sell unfinished frames or receivers within the definition of AB 286 can  
17 be subject to criminal penalty for violating AB 286. However, AB 286 has a specific intent  
18 requirement included in section 9. Polymer80 never explains how it is in danger of a  
19 criminal prosecution under AB 286 considering the *mens rea* requirement.

20 Polymer80 does not balance their purported interest in this litigation with the public  
21 interest in protecting Nevadans from untraceable firearms that can be constructed easily  
22 from Polymer80’s kits in 30 minutes. Nevada’s Legislature was reacting to the plague of  
23 gun violence from these new weapons. *See, e.g.*,  
24 <https://www.nytimes.com/2021/11/14/us/ghost-guns-homemade-firearms.html> (last visited  
25 on 11/16/2021).

26 ///


27 \_\_\_\_\_  
28 <sup>3</sup> This is in addition to the revenue drop already suffered by Polymer80 following  
execution of a federal search warrant and ongoing federal investigation in December 2020.  
*Id.* at 48:8-10.

1 **V. Conclusion**

2 For these reasons, this Court should grant Defendants' motion for summary  
3 judgment and deny Polymer80's motion.

4 DATED this 18th day of November, 2021.

5 AARON FORD  
6 Attorney General

7 By:   
8 GREGORY L. ZUNINO, Bar #4805  
9 Deputy Solicitor General  
10 100 N. Carson Street  
11 Carson City, Nevada 89701  
12 (775) 684-1237  
13 gzunino@ag.nv.gov

14 *Attorneys for Defendants*




1 **CERTIFICATE OF SERVICE**

2 I certify that I am an employee of the State of Nevada, Office of the Attorney General,  
3 and that on this 18th day of November, 2021, I served a true and correct copy of the  
4 foregoing **DEFENDANTS' MOTION FOR SUMMARY JUDGMENT** via regular U.S.  
5 Mail, addressed to the following:

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

10 *Attorneys for Polymer80, Inc.*

11  
12  
13   
14 An employee of the  
15 Office of the Attorney General

# **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



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**

# **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 Toval

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

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.

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](http://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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1           54. The impossibility of persons of ordinary intelligence being able to discern  
2 the conduct that AB 286 proscribes and criminalizes is thus more than evident. While  
3 absolute precision in drafting statutes is not required to withstand Constitutional  
4 scrutiny, criminal statutes must, at minimum, delineate the boundaries of unlawful  
5 conduct. AB 286 fails to delineate those boundaries.

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

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

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

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SECOND CAUSE OF ACTION AGAINST ALL DEFENDANTS

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

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

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

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

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

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

PRAYER FOR RELIEF

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


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

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

12 DATED this 22nd day of June, 2021

13 **Simons Hall Johnston PC**

14   
15 Brad M. Johnston, Esq.  
16 Nevada Bar No. 8515  
17 Simons Hall Johnston PC  
18 22 State Route 208  
19 Yerington, Nevada 89447  
20 Tel: (775) 463-9500  
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24 *for Pro Hac Vice Forthcoming*)  
25 Michael Patrick, Esq. (*Application for*  
26 *Pro Hac Vice Forthcoming*)  
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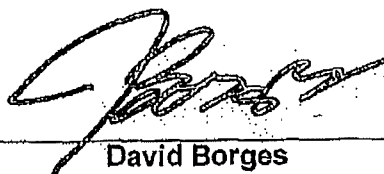
*Attorneys for Plaintiff*



**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**

# **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: 

Brad M. Johnston, Esq.

Nevada Bar No. 8515

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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*  
Greenspoon Marder LLP  
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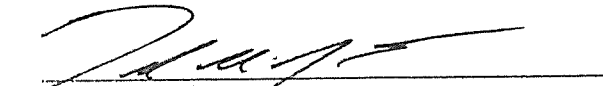
*Attorneys for Plaintiff Polymer80, Inc.*

CERTIFICATE OF SERVICE

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

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

DATED this 16th day of July 2021.

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

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# Exhibit A

# Exhibit A

FILED

2021 JUL 16 PM 2:41

CLERK OF COURT  
CLERK ADMIN. SERV.  
THIRD JUDICIAL DISTRICT

*Andrea Andersen*

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

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

POLYMER80, INC.,

Plaintiff,

vs.

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

Defendants.

**ORDER GRANTING PRELIMINARY INJUNCTION**

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

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

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

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

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



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

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

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

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

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

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

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

28

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

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

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

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

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

24  
25   
26 JOHN P. SCHLEGELMILCH  
27 DISTRICT JUDGE  
28

# Exhibit D

# Exhibit D

1 IN THE THIRD JUDICIAL  
2 OF THE STATE OF NEVADA  
3 IN AND FOR THE COUNTY OF LYON  
4

5 PLOYMER80, INC., )  
6 Plaintiff, )  
7 vs. ) CASE NO.  
8 STEPHEN SISOLAK, Governor of ) 21-CV-00690  
9 Nevada; AARON FORD, Attorney )  
10 General of Nevada; GEORGE )  
11 TOGLIATTI, Director of the Nevada )  
12 Department of Public Safety; )  
13 MINDY McKAY, Administrator of the )  
14 Records, Communications; and )  
15 Compliance Division of the Nevada )  
16 Department of Public Safety, )  
17 Defendants. )  
18 \_\_\_\_\_ )

19 VIDEO DEPOSITION VIA ZOOM  
20 OF  
21 DANIEL McCALMON  
22 LAS VEGAS, NEVADA  
23 FRIDAY, OCTOBER 22, 2021

24 REPORTED BY: DONNA E. MIZE, CCR NO. 675, CSR 11008  
25 Job No.: 814430

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;

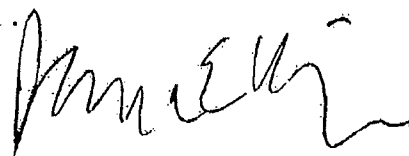
18 That the reading and signing of the transcript  
19 was requested.

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**

# **Exhibit E**

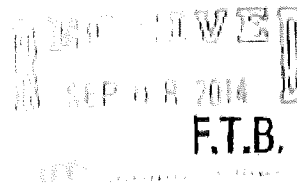


The Law Offices of  
**DAVIS & ASSOCIATES**

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

EVAL.

302-663



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 000877

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

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



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).

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

September 4, 2014

Page 5

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: (949) 310-0817  
Earl Griffith  
BATFE: Firearms Technology Branch  
244 NEEDY RD  
MARTINSBURG, WV 25405

Origin ID: WDBA

**FedEx**  
Express



J14201406190328

Ship Date: 04SEP14  
ActWgt: 1.0 LB  
CAD: 104951484/NET3550

*EVAL.*

*302-663*

Delivery Address Bar Code



Ref # Polymer 80 - G-150

RMA #:  
Return Reason.

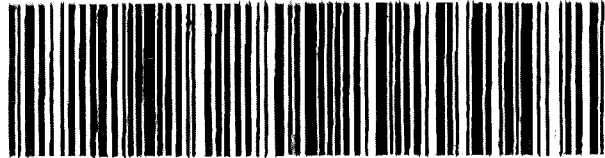
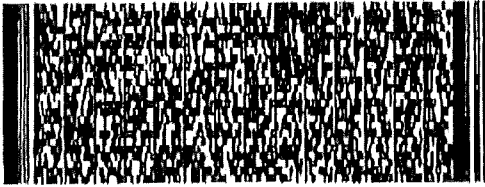
SHIP TO: (949) 310-8817  
**Jason Davis**  
**Davis & Associates**  
**41593 Winchester Rd.,**  
**Suite 200**  
**Temecula, CA 92591**

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DEF0240  
ATF0213  
APP 000882

# **Exhibit F**

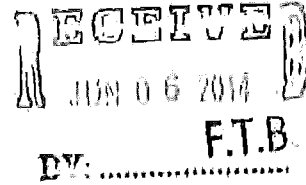
# **Exhibit F**



EVAL. 302-384-46

The Law Offices of  
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www.CalGunLawyers.com



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  
ATE0202  
APP 000884

Re: In re: POLYMER 80, INC.

June 4, 2014.

Page 2

### DEFINITION OF FIREARM

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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  
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?).)

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1. Drilling the holes for the takedown/assembly pins;
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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  
F.T.B.  
BY: .....

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)

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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

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Earl Griffith  
BATFE: Firearms Technology Branch  
244 NEEDEY RD

Origin ID: WDBA



MARTINSBURG, WV 25405

Ship Date: 04JUN14  
ActWgt: 1.5 LB  
CAD: 1049514041NET3490

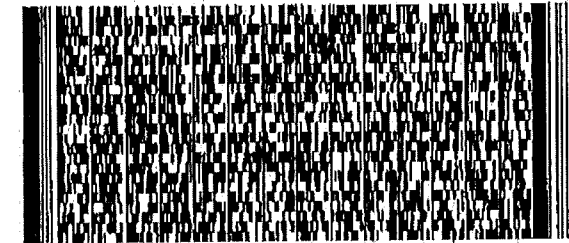
Delivery Address Bar Code



Ref # Polymer 80

RMA #:  
Return Reason:

SHIP TO: (949) 310-0817 **BILL SENDER**  
**Jason Davis**  
**Davis & Associates**  
**41593 Winchester Rd. Suite 200**  
**Suite 300**  
**Temecula, CA 92691**



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3

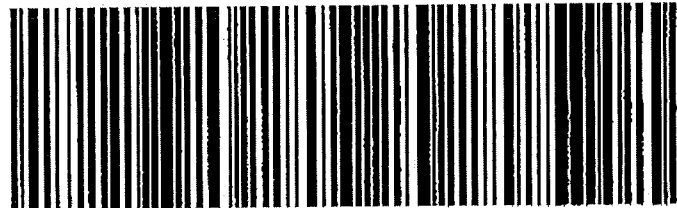
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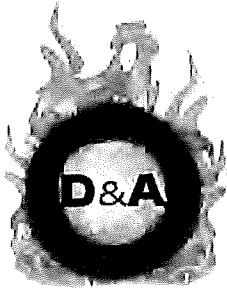
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very cannot exceed actual documented loss. Maximum for items of extraordinary  
truments and other items listed in our Service Guide. Written claims must be filed

DEF0246

APP 000889



*The Law Offices of*  
**DAVIS & ASSOCIATES**

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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.

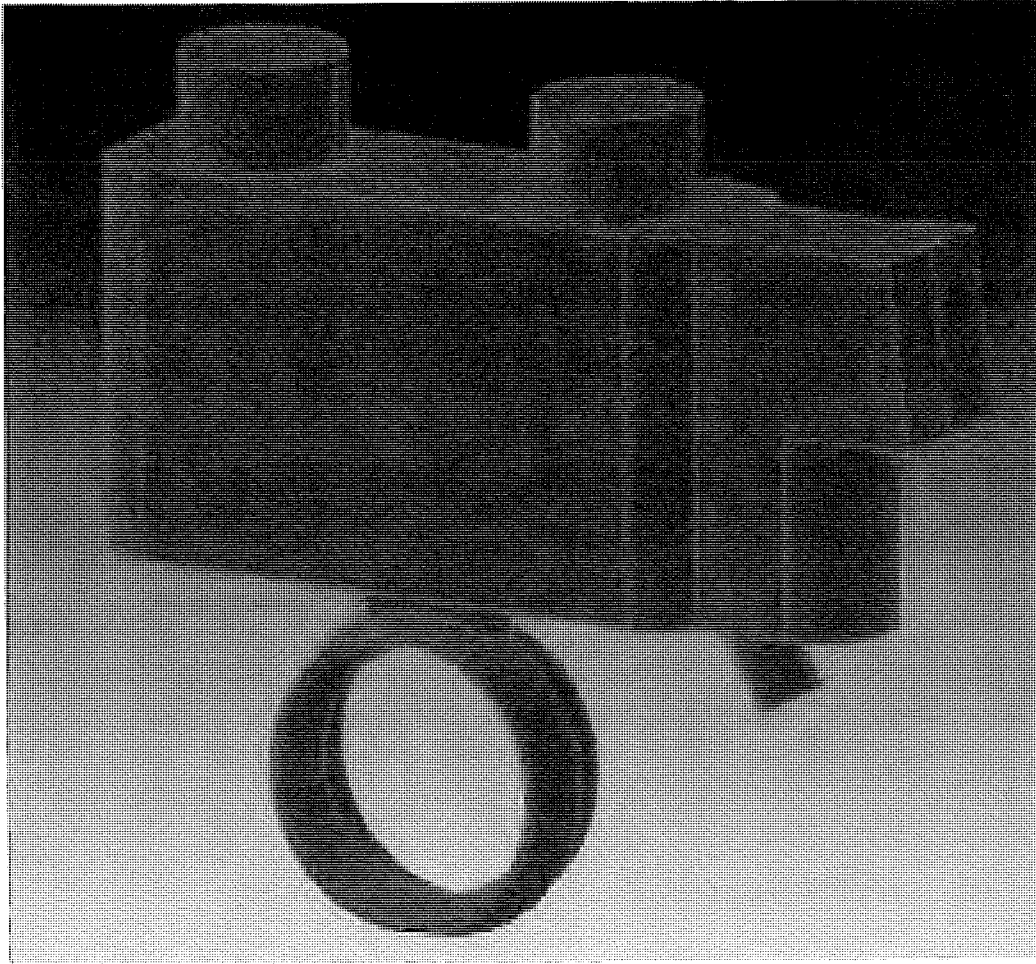
The first stage consisted of manufacturing an inner core. The core consists of features designed to ensure structural integrity of the product, including round features on the top and bottom of the core, which are present to hold the core in place in the injection mold during the second stage molding 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  
ATE0215  
APP 000890

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



J151015011403w

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 #

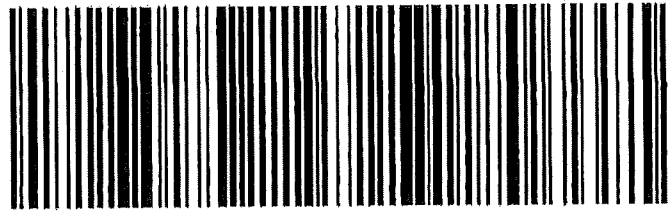
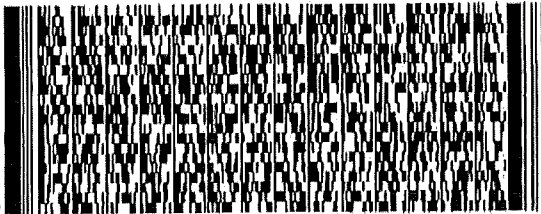


BY: ..... **F.T.B.** THU - 05 FEB AA  
\*\* 2DAY \*\*

TRK# 7728 0985 7671  
0201

**25405**  
wv-US  
IAD

**SC WDBA**



537J1/A1B3/EE48

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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 000894

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> (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. WARRHOGG 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**

Temecula Office: 41593 Winchester Rd. Suite 200, Temecula, CA 92590  
Orange County Office: 27201 Puerta Real, Suite 300, Mission Viejo, CA 92691  
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.

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 000899

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 DAVIS.



# **Exhibit G**

# **Exhibit G**

E/



The Law Offices of  
**DAVIS & ASSOCIATES**

Temecula Office: ~~41593 Winchester Rd. Suite 200, Temecula, CA 92590~~  
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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

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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.”

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.

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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 Hoffinan, 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. PF940C BLANK**

October 3, 2016

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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**

Re: **IN RE: POLYMER 80, INC. PF940C BLANK**

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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.

# Exhibit H

# Exhibit H

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

PLOYMER80, INC., )  
 )  
Plaintiff, )  
 )  
vs. ) CASE NO.  
 ) 21-CV-00690  
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. )  
 )

VIDEO DEPOSITION VIA ZOOM  
OF  
DANIEL McCALMON  
LAS VEGAS, NEVADA  
FRIDAY, OCTOBER 22, 2021

REPORTED BY: DONNA E. MIZE, CCR NO. 675, CSR 11008  
Job No.: 814430



1 MR. McGUIRE: Objection to form.

2 You may answer if you can.

3 THE WITNESS: Yes, we do.

4 BY MR. NEWBY:

5 Q. What are those estimates obtained from  
6 customers?

7 A. It actually varies quite greatly. We have  
8 had some people say it takes them as short as 30  
9 minutes. Others as long as three to four hours.

10 Q. Does the time period vary with the type of  
11 kit or is that -- I will stop at one question.

12 Does that vary with the type of kit, the  
13 estimates between 30 minutes and three to four hours?

14 A. It varies based on the individual consumer.  
15 People of all types of skill levels and knowledge  
16 bases, the type of tools that they have available at  
17 their disposal or that they can afford for that matter  
18 will have an impact on their ability. There are a lot  
19 of different variables that come into play.

20 MR. NEWBY: If we can take a five minute  
21 break here. I'm pretty close to the end in terms of my  
22 notes. I just want to confer with my co-counsel  
23 offline briefly. I'm getting pretty close to done and  
24 pretty close to what we said it would take so if we can  
25 do that and go off the record I would appreciate it.

1 STATE OF NEVADA )  
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 I**

# **Exhibit I**

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DISTRICT COURT

CLARK COUNTY, NEVADA

POLYMER80, INC., )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
STEVE SISOLAK, Governor of )  
Nevada, AARON FORD, )  
Attorney General of Nevada, )  
GEORGE TOGLIATTI, Director )  
of the Nevada Department of )  
Public Safety, MINDY MCKAY, )  
Administrator of the )  
Records, Communications, )  
and Compliance Division of )  
the Nevada Department of )  
Public Safety, )  
 )  
Defendants. )  
\_\_\_\_\_ )

CASE NO: 21-CV-00690  
DEPT NO: I

VIDEO DEPOSITION OF SCOTT STUENKEL, PMK  
Las Vegas, Nevada  
Thursday, November 4, 2021

REPORTED BY: Kailey R. Castrejon, RPR, NV CCR #983  
JOB NO. 816493

1 lawsuit or anything.

2 Q. But the purpose of your reaching out to him, and  
3 then to Agent Cahill with the ATF, was to become better  
4 educated about some of the issues related to this case;  
5 correct?

6 A. Specifically, I wanted -- so it's clear that the  
7 verbiage in the assembly bill is drafted from verbiage  
8 used by the ATF. So some specific terms I -- I couldn't  
9 find a definition through the ATF's website. So I  
10 wanted to reach out to an agent to see if the ATF  
11 actually defined terms, or if it was just, like, common  
12 knowledge terms.

13 Q. What is your basis for saying and thinking that  
14 the verbiage in AB 286 stems from verbiage utilized by  
15 ATF?

16 A. Just comparing it to the Gun Control Act.  
17 Specific language used in that act would -- it leads me  
18 to believe that the verbiage used in the assembly bill  
19 is common verbiage used in the Gun Control Act.

20 Q. Are you -- are you familiar with the Gun Control  
21 Act?

22 A. I -- I did some research into it specifically  
23 looking -- looking for definitions of terms in the  
24 assembly bill.

25 Q. And you did that as part of your preparation for

1 Q. Are you aware that there are thousands of  
2 Nevadans, maybe hundreds of thousands of Nevadans who  
3 have never fired or carried a firearm?

4 A. No.

5 Q. You're not aware of that?

6 A. No.

7 Q. How many Nevadans would you say are out there who  
8 have never fired or carried a firearm?

9 A. There's no way I could make any logical guess.

10 Q. So you don't know how many --

11 A. I have no idea. No.

12 Q. Do you think all Nevadans have had experience  
13 with or know about guns?

14 A. No.

15 Q. But you yourself, prior to your tenure with the  
16 Marines, had no idea what the term machining meant,  
17 correct, at least with respect to guns?

18 A. That's correct.

19 Q. Could you tell me then or summarize if  
20 possible -- and I realize it might not be possible --  
21 what it was that you learned from ATF Agent Cahill in  
22 summary during that ten-minute call that you testified  
23 that you had?

24 A. I didn't learn anything from him.

25 Q. So is it correct to say that that telephone

1 the Judiciary.

2 Do you see that?

3 A. Yes.

4 Q. To your knowledge, have you or any member or  
5 official of the Nevada Department of Public Safety had  
6 any communications of any kind related to AB 286 with  
7 any member or person working for or in connection with  
8 the Nevada Senate Committee on Judiciary?

9 MR. SHEVORSKI: Object. Outside the scope  
10 of 30(b)(6) deposition.

11 THE WITNESS: No.

12 BY MR. MCGUIRE:

13 Q. Okay. May I call your attention to what is  
14 denominated as Exhibit A to the complaint, which is  
15 Exhibit 2 to this deposition, and I'll represent to you  
16 that it is a copy of Assembly Bill 286.

17 Is this the bill that, either in a form identical  
18 or similar to Exhibit A, you reviewed and read through  
19 prior to today's deposition?

20 A. Yes.

21 Q. What is your understanding, if any, based upon  
22 that review and your reading through the bill and the  
23 other work you did in preparation for today's  
24 deposition, of what it is that AB 286 criminalizes?

25 A. The possession or selling or transportation of an

1 unfinished product of a firearm, a receiver, or --  
2 basically, criminalizes if you're in possession of a --  
3 of a major component of a firearm that has had most of  
4 the major machining so it's -- it's basically in the  
5 process of becoming a firearm or component of a -- a  
6 major component of a firearm. To the extent where most  
7 of the major machining has been complete. So my  
8 interpretation of most would be majority. Majority  
9 meaning more than 50 percent, or 50 percent of that  
10 component has been machined to become a firearm, and the  
11 intent of that component is to make it a firearm.

12 Q. So is it any component of the firearm?

13 A. No. Specifically, it's -- it's -- it's stated in  
14 the legislation that an unfinished frame or receiver.

15 Q. So, just to be clear, the only component of a  
16 firearm to which you were referring in your immediately  
17 proceeding answer was, quote, a lower -- of a frame or  
18 lower receiver?

19 A. A frame or receiver, yes.

20 Q. That is unfinished?

21 A. Unfinished.

22 Q. Now, you believe based upon your many years of  
23 experience that you know what a frame is; correct?

24 A. Yes.

25 Q. And you know what a receiver is; correct?



1 MR. SHEVORSKI: Yeah. I can --

2 MR. MCGUIRE: I -- I apologize. I honestly  
3 don't know what happened.

4 MR. SHEVORSKI: No. It's fine.

5 MR. MCGUIRE: I'm sorry.

6 BY MR. MCGUIRE:

7 Q. Six -- Section 6 of 9 states, and I quote,  
8 "'Unfinished frame or receiver' means a blank, a casting  
9 or a machined body that is intended to be turned into  
10 the frame or lower receiver of a firearm with additional  
11 machining and -- and I'll stop there.

12 Could I ask you to focus on those fist three  
13 lines of Section 6.9 --

14 A. Yes.

15 Q. -- or 6, sub 9?

16 A. Yes.

17 Q. As you sit here today, do you know whether or not  
18 the term blank is defined within AB 286?

19 A. It is not.

20 Q. Do you, sir, personally, given your  
21 representative role here today, have an understanding of  
22 what a blank is within the meaning or context of AB 286?

23 A. Yes.

24 Q. And what is that understanding?

25 A. My understanding is the -- the blank is -- is

1 basically an interchangeable term to be used for the  
2 materials that will become a frame or a receiver.

3 Q. Is it not true, sir -- again, based on your  
4 understanding -- that the term blank with regard to guns  
5 or firearms has multiple meanings?

6 A. Yes.

7 Q. How could one reading this statute decipher which  
8 of those multiple meanings to apply to the word blank in  
9 the context of this provision?

10 MR. SHEVORSKI: Object to the form.

11 THE WITNESS: I don't know.

12 BY MR. MCGUIRE:

13 Q. Would you agree with me that sometimes a blank is  
14 described, perhaps, as a round of ammunition that could  
15 not wreak any damage or injury to someone else?

16 A. Yes.

17 Q. What are some of the other meanings or  
18 definitions of the word blank that you've encountered in  
19 your -- your years of law enforcement?

20 A. Well, I mean, blank when regards to the receivers  
21 or unfinished receivers. Blank, you know, fill in the  
22 blank, but outside of the -- the round and the -- an  
23 unfinished portion of the firearm, I don't know of  
24 another meaning or another use.

25 Q. Are you familiar with the term grip --

1 A. Yes.

2 Q. -- in the context of a gun or a firearm?

3 A. Yes.

4 Q. Does the term grip bear any relation to the term  
5 blank, based on your experience?

6 A. Sure. If -- if you have -- I don't know.

7 Q. Okay. After the word blank, the word casting or  
8 the words "a casting" appears.

9 Do you see the word or words "a casting" defined  
10 in AB 286?

11 A. No.

12 Q. Let me backtrack for a moment and ask when you  
13 joined the Marines, did you know what a blank was?

14 A. Yes.

15 Q. Okay. And when you joined the Marines, did you  
16 know what a casting was?

17 A. Specifically to firearms? No.

18 Q. Do you have an understanding today, based upon  
19 your experience and in your role as a rule 30(b)(6)  
20 witness, of what the word casting means within the  
21 context of AB 286 here?

22 A. Yes.

23 Q. And what is that understanding?

24 A. The -- the molding or a mold of -- with the -- a  
25 molding in which material, sometimes metal, sometimes

1 plastic, is utilized to -- to create a firearm or a  
2 portion of a firearm.

3 Q. I think, it was implicit in your last answer that  
4 your understanding is that a casting relates to a  
5 process in which raw materials are molded into something  
6 else --

7 A. Yes.

8 Q. -- correct?

9 A. Yes.

10 Q. Do you have an understanding based upon your  
11 experience of when, during that molding process, the raw  
12 material becomes a casting?

13 A. No.

14 Q. Moving on to the second line of 6, sub 9, we  
15 encounter the words a machined body.

16 Are you aware of a definition within AB 286 of  
17 the words "a machined body?"

18 A. No.

19 Q. When you joined the Marines, did you know what a  
20 machined body of a gun was?

21 A. I don't know.

22 Q. Do you have an understanding of what that term, a  
23 machined body, means today within the context of AB 286?

24 A. Yes.

25 Q. And what is that understanding?

1           A. The component that is of the firearm that is  
2           created -- or the process of which the component is  
3           machined or -- or created utilizing the machine.

4           Q. But what component is that?

5                     In other words, in the meaning of the term or the  
6           definition of the term machined body, as you understand  
7           it, you mentioned a component, but you would -- you  
8           would agree with me, sir, that there are numerous  
9           components to a firearm; correct?

10          A. Yes.

11          Q. So which one of those components is this  
12          definition or this term machined body talking about?

13          A. A frame or a receiver.

14          Q. But isn't that circular? This is the definition  
15          of a frame or a receiver, and you're now saying that an  
16          unfinished frame or receiver is an unfinished frame or  
17          receiver by saying that the component that machined body  
18          means is an unfinished frame or receiver?

19          A. True. Understandable. And sometimes it's  
20          difficult to define something without utilizing the  
21          word, especially when we talk about machined body;  
22          however, you could say that it's a primary -- primary --  
23          not a primary -- primary portion of the firearm in which  
24          other components are utilized to render that component  
25          of firearm. So if you're talking about a receiver,

1 MR. SHEVORSKI: Object to the form.

2 THE WITNESS: I -- I would hope so.

3 Additional machining. If -- if you use machining as a  
4 synonym for work, like more work needs to be done with  
5 something, I would think that the average person would  
6 know that additional work needs to be applied to this  
7 entity to make it into something else.

8 BY MR. MCGUIRE:

9 Q. Is that your definition of machining? That it  
10 needs addition work?

11 A. No. I said it -- it's a synonym for machining.

12 Q. Well, that's my point. Are you saying that  
13 machining is a synonym for work and all work is  
14 machining?

15 A. No.

16 Q. In your opinion, based upon your experience,  
17 would an average Nevadan, of ordinary intelligence with  
18 no background or experience in guns or firearms,  
19 possibly be able to understand the meaning of the words,  
20 "that is intended to be turned into the frame or lower  
21 receiver of a firearm with additional machining?"

22 MR. SHEVORSKI: Object to the form.

23 THE WITNESS: I -- I -- I have no way to  
24 answer that.

25 BY MR. MCGUIRE:

1 STATE OF NEVADA )  
 ) SS:  
2 COUNTY OF CLARK )

3 CERTIFICATE OF REPORTER

4 I, Kailey R. Castrejon, a Certified Court  
5 Reporter licensed by the State of Nevada, do hereby  
6 certify: That I reported the DEPOSITION OF SCOTT  
7 STUENKEL, on Thursday, November 4, 2021, at 12:06 p.m.;

8 That prior to being deposed, the witness was duly  
9 sworn by me to testify to the truth. That I thereafter  
10 transcribed my said stenographic notes into written  
11 form, and that the typewritten transcript is a complete,  
12 true and accurate transcription of my said stenographic  
13 notes. That the reading and signing of the transcript  
14 was not requested.

15 I further certify that I am not a relative,  
16 employee or independent contractor of counsel or of any  
17 of the parties involved in the proceeding; nor a person  
18 financially interested in the proceeding; nor do I have  
19 any other relationship that may reasonably cause my  
20 impartiality to be questioned.

21 IN WITNESS WHEREOF, I have set my hand in my  
22 office in the County of Clark, State of Nevada, this 5th  
day of November, 2021.



23  
24 Kailey R. Castrejon, RPR, CCR #983

25