

Case No. 83999

IN THE SUPREME COURT OF THE STATE OF NEVADA

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.

JOINT APPENDIX – VOLUME V

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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)
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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

1 CASE NO. 21-CV-00690

2 DEPT. I

3

4 THE THIRD JUDICIAL DISTRICT COURT - THE STATE OF NEVADA

5 IN AND FOR THE COUNTY OF LYON

6 THE HONORABLE JOHN P. SCHLEGELMILCH, DISTRICT JUDGE

7

8 POLYMER80, INC.,

9 PLAINTIFF,

10 v.

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

18 DEFENDANTS.

19 ----- /

20

21 TRANSCRIPT OF PROCEEDINGS

22 MOTION HEARING FOR SUMMARY JUDGEMENT

23 NOVEMBER 23, 2021

24 COURTHOUSE

YERINGTON, NEVADA

Reported by:

KATHY TERHUNE, CCR #209

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NO OTHER APPEARANCES.

* * * * *

1 TRANSCRIPT OF PROCEEDINGS

2
3 THE COURT: Okay. So, this is Case
4 21-CV-00690, Polymer80 versus Sisolak, et al. This
5 time set on motion for summary judgment in relation to
6 this matter.

7 Okay. So, I would guess Polymer80 has to go
8 first because they bear the burden to show me it's
9 unconstitutional. And that would be followed up by the
10 State to show me why it should be constitutional.

11 MR. NEWBY: Fair enough.

12 THE COURT: Fair enough?

13 MR. MCGUIRE: Yes, sir.

14 THE COURT: All right.

15 So, Mr. McGuire, go ahead.

16 And I'm sorry, sir?

17 MR. NEWBY: Craig Newby, Deputy Solicitor
18 General for State defendants.

19 THE COURT: Okay.

20 MR. MCGUIRE: Just for the record, I think you
21 permitted my Nevada co-counsel, Mr. Johnston, to appear
22 by Zoom, and I believe he's -- there is he.

23 THE COURT: He is.

24 MR. MCGUIRE: Very good.

1 THE COURT: He's up on the screen, and I think
2 he can hear us.

3 Can you hear us, Mr. Johnston?

4 MR. JOHNSTON: Good afternoon, Your Honor. I
5 can hear you. Thank you. And thank you for the
6 accommodation with my holiday plans. I appreciate it.

7 THE COURT: Not a problem.

8 Okay. So, go ahead --

9 MR. MCGUIRE: May I proceed, Judge?

10 THE COURT: What?

11 MR. MCGUIRE: May I proceed?

12 THE COURT: Please, go ahead.

13 MR. MCGUIRE: Good afternoon, Your Honor, and
14 may it please the Court.

15 You've already indicated we're here today on
16 the dueling summary judgment motions by both sides
17 regarding Assembly Bill 286.

18 Polymer80 asked this Court upon its motion to
19 issue summary judgment on both of the two counts in its
20 verified complaint.

21 One count seeks a declaration or a declaratory
22 judgment that AB286 is essentially unconstitutional as
23 void for vagueness under the Due Process Clause of the
24 Nevada Constitution. And the second count seeks a

1 permanent injunction extending this Court's preliminary
2 injunction issued back in July for the same reason.

3 The case, I think it is agreed, is a facial
4 challenge to AB 286 under the Due Process Clause of the
5 State Constitution. Nothing more, nothing less.

6 And of course our position is, and it has
7 various iterations, is that that statute, specifically
8 Sections 3, Your Honor, 3.5, and 6 9, or 6(9), are all
9 unconstitutionally vague and thus constitutionally
10 void.

11 The vagueness is centered on a specific portion
12 of AB286, and that of course is the term "unfinished
13 frame or receiver". AB286 purports to criminalize the
14 sale, possession, transfer, manufacture, assembly, and
15 other things related to an unfinished frame or receiver
16 in those provisions that I just mentioned.

17 Specifically, Your Honor, we contend that the term
18 "unfinished frame or receiver" is unconstitutionally
19 vague for a number of reasons.

20 First, there is no definition in the statute of
21 what a finished frame or receiver is, which is a hot
22 topic in the law whether it's in the States or in
23 federal law. But with no definition in AB286 of what a
24 finished frame or receiver is, we don't believe the

1 average Nevadan can decipher what an unfinished frame
2 or receiver is.

3 In addition, as Your Honor knows, the specific
4 definition of unfinished frame or receiver --

5 THE COURT: Well, all right. Let me stop you
6 just one second there.

7 All right. So, you keep saying "finished frame
8 or receiver". Isn't it just a frame or receiver at
9 that point?

10 MR. MCGUIRE: It could be, Your Honor.

11 THE COURT: I mean, we're talking about -- all
12 right. So -- all right. So, we're talking about a
13 frame or receiver. So, now, the definitions of those,
14 I'm not going to get into right now. But, regardless,
15 if there are such thing as a frame or receiver, that is
16 what it is, and if it's not finished, then it's not
17 that.

18 MR. MCGUIRE: I suppose my point, Your Honor,
19 and I don't dispute what you just said, would be
20 because of the lack of clarity in the definition of
21 unfinished frame or receiver. That lack of clarity
22 might have been ameliorated if there had been some
23 definition in the statute of what a finished frame or
24 receiver is. Which I'll represent to you is a legal

1 issue in various jurisdictions.

2 Now, as the Court well knows, the definition of
3 unfinished frame or receiver itself incorporates three
4 terms which we believe do not have a common meaning and
5 are themselves vague and ambiguous and
6 unconstitutionally so. Blank, casting, and machined
7 body. And more significantly, as Your Honor has often
8 discussed, the definition of unfinished frame or
9 receiver contains a murky continuum test, which is as
10 follows.

11 "An unfinished frame or receiver is a blank, a
12 casting, or a machined body that is intended to be
13 turned into the frame or receiver of a firearm with
14 additional machining." I'll stop there.

15 Now, leaving aside the ambiguity in blank,
16 which has multifarious meanings in various businesses,
17 in real life, and in various industry. And a casting,
18 which is undefined, and a machined body, there
19 obviously is great dispute in the law as to what a
20 firearm is. And also there is no definition in the --
21 in the -- in the term or no clarity in the term as to
22 what additional machining means. But more importantly,
23 and let's get to perhaps where the action is.

24 There is a conjunctive, not a disjunctive, a

1 conjunctive connection here whereby the definition also
2 says to be a frame or receiver it must also have been
3 formed "or machined to the point at which most of the
4 major machining operations have been completed to turn
5 that blank, casting, or machined body into a frame or
6 lower receiver of a firearm".

7 Now, to that I say in my Brooklynese, Your
8 Honor, "Say what?" There is no clarity whatsoever as
9 to what the major machining's operations are or could
10 be. There is no clarity as to when most of them are
11 completed. And then of course, that portion, that
12 conjunctive portion of the deposition drags along the
13 terms blank, casting, machine body, additional
14 machining, et cetera.

15 Now, Your Honor at some point earlier in this
16 case was looking forward to finding out in discovery
17 whether or not the legislative history would cast any
18 light on what the Nevada Legislature meant or wanted to
19 mean or was intending to mean by any of those terms.

20 Your Honor, I think I can represent to you
21 quite clearly, and I'm not sure my friend and colleague
22 would disagree, there is no clarity whatsoever in the
23 legislative history about any of the terms to which I
24 have just called the Court's attention.

1 And most importantly, the bottom line, Your
2 Honor, is that this statute is a criminal statute.
3 First offense is a gross misdemeanor. A second offense
4 is a felony. People can go to jail. They can lose
5 their liberty. Or a business probably could lose its
6 license to do business upon a criminal conviction under
7 the statute.

8 Now, in trying to support and stand behind the
9 statute, the defendants clearly have a problem. Not
10 just the problems that I outlined before, but they
11 can't make up their mind what the appropriate legal
12 standard is for the Court to utilize in determining
13 this motion and indeed the entire case.

14 In short, they speak, as we say in our briefs,
15 out of both sides of their mouths. On one hand, from
16 the start of this case, defendants have argued that the
17 case presents merely a pure question of law. But, in
18 the same paragraph, indeed in some of the same
19 sentences of their brief while they take that position,
20 they go on to argue, "But Polymer80's knowledge of or
21 understanding of the meaning of the terms and the
22 statute is relevant." Clearly, Your Honor, defendants
23 can't have it both ways.

24 In what we say to the Court, and I want to be

1 absolutely clear on this, we are content to leave it
2 with the Court to determine how to decide this motion
3 and/or how to decide this case. Whether as a pure
4 question of law or taking into account other factors in
5 the record and in discovery. Either way, Your Honor,
6 we say to the Court we should prevail.

7 Your Honor has already ruled, I believe it is
8 fair to say, that the pure question of law must be
9 decided, as the Court decided on the preliminary
10 injunction motion, in Polymer80's favor. But, the
11 discovery that's been taken, Your Honor, and I'll go
12 through that if the Court please in a moment,
13 overwhelmingly establishes that these defendants do not
14 know or understand or have any conception of what the
15 challenge terms and especially that continuum test
16 mean.

17 So, breaking that all down, Your Honor, we're
18 going to ask the Court, if you will, to decide this
19 case. If you decide this case on summary judgment,
20 both as a pure question of law, which we believe you've
21 already done, but also to take into account the
22 discovery that's been taken which corroborates and
23 buttresses Polymer80's bottom line position.

24 Now, on the pure question of law, Your Honor, I

1 know I'm telling you what you already know, but for the
2 record I would like the opportunity to make clear, that
3 we basically, as you've already indicated, have a
4 burden of proving one of two things.

5 First, the statute is unconstitutionally vague.
6 And we can show that it's so ambiguous and so vague
7 that the average Nevadan of ordinary intelligence
8 cannot understand it, that the statute does not give
9 it, him, or her fair notice, or it fair notice of what
10 it provides so that Nevadan can conform his, her, or
11 its conduct in accordance with the provisions and the
12 statute.

13 Secondly, we are charged with proving, if we do
14 not prove the first point, with the second point.
15 Which is that the statute is so standardless, that it
16 authorizes or encourages arbitrary --

17 THE COURT: Hold on. I'm sorry. Hold on one
18 second.

19 We have some people that came in the waiting
20 room. And I don't know if that's the public that wants
21 to listen in or if they're folks from --

22 MR. MCGUIRE: Your Honor, I believe some of my
23 colleagues may be listening in from New York who've
24 been supporting me in this case. I don't believe they

1 are admitted pro hac vice. They will not be addressing
2 the Court. But I think they'll just --

3 THE COURT: Well, it's a public courtroom, and
4 I have a Zoom link. So, I mean, if they want to listen
5 in, as long as they don't say anything.

6 MR. MCGUIRE: No, that's -- I just want to let
7 the Court perhaps that's who or what it is.

8 THE COURT: All right. So, can the folks that
9 I just admitted on the telephones with the telephone
10 numbers, just quickly tell me who they are.

11 MR. PATRICK: Michael Patrick, Your Honor, from
12 GreenspoonMarder.

13 THE COURT: Thank you.

14 ZOOM ATTENDEE: Mark Doerr, Your Honor,
15 GreenspoonMarder.

16 THE COURT: Mr. Doerr, thank you.

17 Then I have one more. 1977 -- 19177482408,
18 who's that? 717 area code?

19 MR. PATRICK: Your Honor, I believe that's
20 our -- I believe that's our colleague, Mark Fawer. He
21 is -- he may be muted on the Zoom. But that's
22 Mark Fawer's number up here, if it please the Court.

23 THE COURT: All right. So, mute yourselves,
24 and you can list listen in, but no comments. Okay?

1 All right. So --

2 MR. MCGUIRE: Your Honor, all three of those
3 gentlemen are my partners.

4 Your Honor, the second standard of the second
5 task, if you will -- and I stress that we need not
6 prove both, if we prove either we should prevail. Is
7 that the statute is so standardless that it authorizes
8 or encourages arbitrary and discriminatory enforcement.
9 We believe we have established both, and that we should
10 prevail on both prongs of that test.

11 Your Honor, if there's one case that I would
12 ask the Court to scrutinize, and I believe you may well
13 have already done it, it is the Flamingo case. The
14 case literally is almost on all fours procedurally and
15 substantively with this case. And in the ruling's
16 going both ways, if you will, which I'll come to in a
17 minute. And on one hand establishes Polymer80's core
18 position, and on the other, vitiates the position, the
19 lead position that I see, that defendants have taken in
20 their brief.

21 Flamingo, Your Honor, was a vagueness challenge
22 both to the criminal and civil portions of the Nevada
23 Clean Indoor Air Act. And the court struck down on
24 summary judgment the criminal provisions on vagueness

1 grounds. The court found that the standards and tests
2 that a court must apply on the criminal provisions is a
3 different one and a more stringent one than that which
4 applies to the civil provisions.

5 As to the criminal side of things, the court
6 found that vagueness must permeate the statute in such
7 a way that it would apply and would permeate the
8 statute in most circumstances.

9 And in that case, Your Honor, I ask the Court
10 to focus on this. Maybe you have already. The two key
11 terms in that case which that court and the Supreme
12 Court of Nevada found to be unconstitutionally vague
13 were large room and smoking paraphernalia. And I say
14 to you, Your Honor, if large room is vague,
15 unconstitutionally so, and so too is smoking
16 paraphernalia, how is it that any of the terms, and
17 most particularly the continuum test, could possibly be
18 deemed to be clear enough to withstand constitutional
19 scrutiny?

20 In other words, the Flamingo court held that
21 large room and smoking paraphernalia did not have
22 common meanings, and as such, they were
23 unconstitutionally vague. And I submit to the Court
24 you should make those same findings here with respect

1 to the terms that we are challenging on vagueness
2 grounds.

3 At the same time, Your Honor, the Supreme Court
4 denied summary judgment. Where it had granted summary
5 judgment on the criminal side, it denied summary
6 judgment on the civil provisions holding that there was
7 a different test. A test that might colloquially be
8 described as the clearly proscribed test. That is if I
9 am challenging civil provisions on vagueness grounds
10 and I allegedly have myself violated those provisions
11 that are clearly proscribing my conduct, then I can't
12 make an appropriate facial challenge to that.

13 Now, that is precisely the standard, the
14 clearly proscribed standard. The argument being that
15 Polymer80 has violated these provision and cannot
16 facially challenge them. That's precisely the same
17 argument that defendants make.

18 THE COURT: Well, all right. So, I'm a little
19 bit unclear on that as well. I mean, Polymer80
20 apparently calls their weapons, based upon the
21 discovery that was provided to the Court with motions
22 for summary judgment, 80 percents. Okay? And I think
23 this Dungar -- or how you do you pronounce his name?
24 I'm not quite sure. That said well, we look at it as

1 more done than not. That is 51 percent.

2 Okay. So, the question is, in all the
3 discovery that I've been provided, there's been no
4 indication from anybody, ATF or anybody else, what
5 level of the manufacturing process the Polymer80 guns
6 are. Just because you call them something, doesn't
7 necessarily mean that they are. I mean, I think what
8 has been shown by the discovery is that this, we call
9 them 80 percenters because they come -- they don't fit
10 within the federal definition of a firearm.

11 So, the question is -- and nobody's told me
12 this one way or another, so I don't even know if
13 Polymer80 is in fact violative of the law at this point
14 or not because nobody's indicated whether or not or in
15 what phase that blank frame is in. We know a number of
16 things. It doesn't have a number of pins. I mean,
17 different frames. You know, different frames. It
18 depends which frame it is, of course.

19 You know, they don't have different holes for
20 different pins. They don't have -- the trigger
21 assembly is completely blanked out. Some of them don't
22 have rails on them, others do. Some of them don't have
23 -- you know, I mean, which -- I mean, just because
24 they're called something, couldn't Polymer80 just say

1 50 percent and have a safe haven under the law?

2 MR. MCGUIRE: The truth is, Your Honor,
3 federally there's never been a determination by the ATF
4 or the federal government that these so-called
5 80 percent kits are firearms.

6 THE COURT: Well, that's it. All right. So,
7 we know that -- all right. So --

8 MR. MCGUIRE: Are not firearms under federal
9 law, Your Honor.

10 THE COURT: Right. But, in relation to -- in
11 relation to that, they're not frame and receivers.
12 Okay? So, they've made the determination that the
13 Polymer80's, whatever you want to call them -- call
14 them Polymer 10s. You know it really doesn't matter
15 what you call them. There's been no determination ever
16 made that I can see that in any of the discovery
17 provided to me that there's a "percentage of
18 completion" that they judge.

19 No. They judge what's in there and what's not
20 in there, and whether or not it is a firearm -- a
21 firearm under federal law, which includes a frame or
22 receiver.

23 So, but nobody says that -- in none of the ATF
24 letters that I've seen, the advisement letters, does it

1 ever say the gun was only 60 percent complete. So,
2 there -- you know, the receivers only 60 percent
3 complete. Therefore, it's not a frame or receiver. It
4 just says it's not a frame or receiver under federal
5 law, period.

6 MR. MCGUIRE: Two points, Your Honor. First, I
7 don't think there's any dispute. And the
8 classification letters, the three of them, which say
9 that the specific Polymer80 receivers or frames are not
10 firearms, all call them, and Polymer80 agreed and
11 submitted them as such as frames or receivers.
12 Clearly, unfinished frames or receivers because the gun
13 is incomplete. And you've just put your finger on it.
14 Whether it's 50 percent, 60 percent, 80 percent, or
15 2 percent. That by definition is an unfinished frame
16 or receiver.

17 THE COURT: Well, right. A frame or receiver
18 is defined in the -- in the federal law as -- in the
19 definition of a firearm. So, it is actually included
20 in the definition of a firearm.

21 So, and then further on down the road, frame
22 and receiver under federal law is defined in the CFR,
23 and it's not frame and receiver. It's firearm frame
24 and receiver. Okay? Is defined as that part of a

1 firearm which provides housing for basically four
2 things: The hammer, the bolt or breechlock, the firing
3 mechanism, and the barrel.

4 MR. MCGUIRE: Correct under the Gun Control Act
5 of 1968.

6 THE COURT: Right. So, those are the -- under
7 federal law. All right. Now, we won't get into
8 whether or not federal law is even applicable here for
9 a moment. Okay?

10 So, under federal law, potentially if you
11 remove the firing mechanism, that cannot -- or the
12 breech assembly, that cannot be by definition -- and I
13 haven't seen -- so, is that 50 percent? I mean, this
14 is -- this is -- all right. So, these are -- these are
15 the questions that I have.

16 I mean, if you don't -- you know, if you don't
17 have a rail to attach the upper receiver, you can never
18 make it really a functioning firearm, if there's no
19 rail. Because -- on a frame. Okay? So, if you don't
20 have any rail ports on the frame, you have to insert
21 the rail ports in order to have the slide operate. So,
22 if you can't have the slide operate, you can't have the
23 bullet go into the barrel, and the firing pin to do it.

24 So, which has always been kind of one of my

1 issues in relation to this. But the question is, has
2 there ever been any kind of -- the question I have
3 though. Has there ever been any kind of determination
4 as to what percentage or anything else these firearms
5 actually are?

6 MR. MCGUIRE: No.

7 THE COURT: Okay. That was -- that was really
8 the question I had. So --

9 MR. MCGUIRE: And I would respectfully tell
10 Your Honor, in the context of AB286, the percentage is
11 irrelevant. The issue is whether a Nevadan of ordinary
12 intelligence could determine when most of the major
13 machining operations are. Everything you've just said
14 is consistent with Polymer80's repeated position,
15 stated position on the federal side.

16 Those unfinished frames or receivers that the
17 ATF and those three letters have blessed as
18 non-firearms, are not firearms for many reasons. One
19 of which is they don't meet the four part test in the
20 Gun Control Act that you've put your finger on. And
21 here the Nevada Legislature could have incorporated
22 that test. It did not. And in fact, as we point out
23 in our papers, the AB286 purports to criminalize things
24 that federal law permits.

1 We had this debate about serializing all the
2 Polymer80 products, but not all the Polymer80 products
3 are required to be serialized under federal law. So, I
4 think the 80 percent versus 60 percent versus
5 50 percent question is a very interesting one, but I
6 think it's largely a red herring when it comes down to
7 the tests that are applicable here.

8 And especially, Your Honor, whether or not the
9 second test about which these questions are basically
10 irrelevant, is this statute so standardless that it
11 leaves total discretion to the law enforcement
12 authorities to determine how, when it will be applied,
13 and against whom. So, I hope I've answered Your
14 Honor's question.

15 Now, Your Honor, again, we argued to the Court
16 on preliminary injunction, we do so here again, that
17 you have enough in the record to determine that we
18 prevail on summary judgment if all that this case
19 presents is a pure question of law.

20 But in addition, Your Honor, the discovery, if
21 Your Honor were to venture beyond the legal realm if
22 you will and look at the evidence, the stuff that was
23 adduced in discovery, you will find out that
24 George Togliatti, I took his deposition, a former

1 Vietnam Navy pilot, 22 years an FBI agent, rose to be a
2 supervisory special agent, which is pretty high up in
3 the FBI, two terms. He's in his second one as the head
4 of the Nevada Department of Public Safety, he couldn't
5 say what the continuum test mean.

6 He didn't know what a machined body was. He
7 didn't know what a casting was. He said, "Blank could
8 mean any number off things, and I don't know which one
9 of them this statute incorporates." That's arguably,
10 after the governor and the attorney general, the top
11 law enforcement officer in this state.

12 Ms. McKay, one of his top assistants, who in my
13 judgment, if anyone is the average Nevadan, or Nevadan
14 of average intelligence, if not her ambition, she's
15 certainly an extremely bright woman, who has a
16 familiarity with guns, her mother owns guns, her
17 friends own guns, she's fired guns, she didn't know
18 what any of the terms meant.

19 And then the person most knowledgeable,
20 Mr. Stuenkel, 25 years with the Nevada Department of
21 Public Safety, a U.S. Marine Corps veteran to his great
22 credit, he too said, "Honestly, if I hadn't had some of
23 the training that I've had over the last 25 or
24 30 years, I wouldn't know what these terms mean."

1 Doesn't that redound to the question of what the
2 average Nevadan could possibly know?

3 And again, Your Honor, in the legislative
4 history, you've asked us about it, and I'm going to
5 respond. There is nothing, nothing that clarifies
6 these terms. And we do know, as you --

7 THE COURT: How about -- how about Nevada law
8 itself, is there anything in Nevada law in the
9 manufacturing statutes or anything else that defines
10 casting or blank or machined body or machine?

11 MR. MCGUIRE: No, sir. We -- I can represent
12 to the Court we have found nothing, and we have done as
13 much research as we possibly could on that.

14 Now, Your Honor, if I could make a practical
15 point here for a minute on this vagueness issue. This
16 is a criminal statute. If someone were indicted and
17 prosecuted, that person could come up for trial,
18 perhaps even in this court. If this Court presided
19 over a criminal indictment in trial of a Nevadan, Your
20 Honor, how would this Court instruct the jury about the
21 meaning of AB286? What guidance would the Court have
22 on these terms that are undefined and extraordinarily
23 vague? Especially, Your Honor, on the continuum test.
24 I think that's a practical problem that could make it

1 very difficult for this Court to perform its function
2 and discharge its responsibility.

3 Finally, Your Honor, the law, and I think I've
4 said this to you before, this may be the longest string
5 cite I'd ever put in a brief that I've written in 37
6 years. Three pages long of Nevada Supreme Court
7 authority on vagueness, which we contend all point to
8 this statute for the reasons I've stated being
9 unconstitutionally vague.

10 Now, on the second test, the arbitrary and
11 discriminatory enforcement test, the second most
12 important case, I would suggest to Your Honor, in this
13 matter is the Silvar case. The Supreme Court of Nevada
14 decision, I believe, in 2006 in Silvar. And Silvar
15 held that the most important of the -- or the more
16 important, if you will, of the two tests is the second
17 one.

18 And what do we know by pure logic as to the
19 second test? What Polymer80 knows, or don't know --
20 doesn't know, excuse me, about the meaning of any of
21 these terms is irrelevant to whether or not the statute
22 itself is clear enough so that it doesn't encourage or
23 authorize arbitrary or discriminatory enforcement. The
24 Nevada law could hardly be clearer that when facing a

1 due process challenge like this one, a court needs not
2 to apply subjective interpretations, but objective
3 interpretations. Where we are left, given the
4 defendants' position here, is that the government
5 should be left, the Nevada State Government and its law
6 enforcement authorities, should be left themselves to
7 determine what this statute means.

8 But, what do we know from discovery?

9 Mr. Togliatti doesn't know what the statute means.

10 Ms. McKay doesn't know what the statute means. And

11 Mr. Stuenkel has only a, what I would consider to be a
12 very rough understanding of what these terms mean. No
13 offense meant to them. They were telling the truth
14 under oath. And I don't fault them for that because
15 they have the same problem in understanding what this
16 statute means as the average Nevadan does.

17 So, if indeed the test to be applied with
18 regard to the second standard, the arbitrary and
19 discriminatory enforcement standard, must be objective,
20 I don't know how we get there if none of the law
21 enforcement people know what these terms mean, but
22 they're left to determine what they mean. Thus, it
23 would be entirely subjective, thus, it would be left
24 entirely to the government authorities, and thus, by

1 definition it would be arbitrary and potentially
2 discriminatory.

3 Thus, Your Honor, what I think we have
4 established, Polymer80 has established upon this
5 record, both given its legal argumentation to the Court
6 and the evidence that we've presented to the Court
7 through the discovery process, is that either way,
8 whether it's a pure question of law or not, we should
9 prevail. And we have established that we should
10 prevail on both tests, the vagueness test and the
11 arbitrary and discriminatory enforcement test.

12 Just a few words, if my might, about a few
13 other issues. On harm, and I'm not even sure at this
14 point whether defendants are contending that Polymer80
15 would not experience harm if this statute were to be
16 enforced. But, I think the law is clear in Nevada that
17 on a facial challenge to a criminal statute under the
18 constitution, the Due Process Clause, harm is presumed.
19 If a -- if a constitutional right, a constitutional
20 benefit is to be restricted or taken away by a statute
21 as this one with Polymer80 being unable to do business,
22 then harm is presumed.

23 THE COURT: Well, didn't they presume it in
24 Flamingo? Wasn't it a -- nobody got cited or a

1 complaint was not issued against Flamingo or any of the
2 other plaintiffs in that case. Harm was presumed based
3 upon --

4 MR. MCGUIRE: Yes, sir.

5 THE COURT: -- based upon the violation of the
6 criminal statute.

7 MR. MCGUIRE: Precisely my point, Your Honor.
8 Yes, sir.

9 But if, Your Honor saw fit again to go beyond
10 Flamingo and look at the record, you have it in
11 Mr. Kelley's declaration, the CEO of Polymer80, who
12 says "If we can't sell frames or receivers, unfinished
13 frames or receivers, we will lose 50 to 75 percent of
14 our business." Moreover, Your Honor, just practically
15 speaking, if a company, any company, Polymer80 or
16 anybody else, were to be indicted and convicted, I dare
17 say that convicted, but possibly felonious company
18 could not continue to do business in this state.

19 That's a little bit too much information, Your
20 Honor, but in my prior life my major client was
21 Arthur Andersen. Arthur Andersen was criminally
22 indicted, and it's not around anymore. So, what I'm
23 suggesting to the Court is that a criminal indictment
24 and conviction of Polymer80 literally would destroy it.

1 On balance of the equities, Your Honor, another
2 factor for the Court's consideration, what we have on
3 the one hand is the possible destruction of a vibrant,
4 growing, I think admirable company in this State,
5 Polymer80. Which has gone from nothing in 2013 to a
6 \$75 million business in 2020, the destruction of that
7 company and the loss of all those jobs versus the need
8 for the legislature, in our view, to do what they're
9 supposed to do, to do their job, to go back and do what
10 they didn't do to begin with, which is draft a proper
11 and constitutional piece of legislation.

12 We don't think there's any contest between
13 destruction of a business and the need to revise or
14 amend or come up with a new statute. The damage and
15 injury to Polymer80 on the balance of equities is far
16 beyond any damage or burden to defendants.

17 The last point that I would make, Your Honor,
18 is this. There are many other issues that are raised
19 which it seems the defendants have given up on. Harm
20 may be one of them. Balance of the equities may be
21 another. Ripeness may be another. Standing may be
22 another. And my position today, bottom line with this
23 Court, is that there's no need for a trial in this
24 matter. If you want to have a trial, if you determine

1 that a trial should take place, we will be ready. We
2 will be here next Tuesday, and we will be ready to go,
3 and we will put our case on to the best of our ability.

4 But given the record before the Court, whether
5 the Court sees this as a pure question of law or
6 whether you venture into the evidentiary record, in
7 both ways we believe we have sustained our burden to
8 obtain summary judgment, again to be clear, seeking a
9 declaration and a permanent injunction with respect to
10 Sections 3, 3.5, and 6(9) of the statute.

11 Now finally, a few points about defendants'
12 arguments, and I'd like to reserve a bit of time in
13 rebuttal. And I appreciate the Court's patience in
14 listening to me.

15 You've already heard our response to what I
16 believe is the lead argument that plaintiffs try to
17 impose. Which is that the civil test, if you will, in
18 Flamingo, the one that was employed in the Washoe case
19 more than 20 years before Flamingo, and in the Hoffman
20 case, also more than 20 years before Flamingo, should
21 be applied. And because arguably the clearly
22 proscribed test applies to Polymer80, they should not
23 be able to propound a facial challenge. For the
24 reasons I've stated, we've believe that's a meritless

1 argument.

2 Again, the argument on Polymer80's knowledge
3 and its own use of some of these terms, which we freely
4 admit. We're not saying to the Court Polymer80 has
5 never heard what a blank is or what a frame is or what
6 a receiver is. This isn't a gambling at Rick's moment,
7 going back to Casablanca. We're not saying that. What
8 we are saying is we don't know what those terms mean
9 within this statute. And as a Nevada business, we have
10 to conform our conduct to that statute. So, our
11 understanding in the federal realm or generally in the
12 industry is really irrelevant because we don't know
13 what this means here.

14 Thirdly, I'm not sure exactly what the argument
15 is, but I think the defendants are asking the Court to
16 somehow import or apply federal law. Now, in this
17 regard, the third case I respectfully call Your Honor's
18 attention to is Gallegos, which was the fugitive from
19 justice case. Which term, notwithstanding a federal
20 definition of that term, was found to be
21 unconstitutionally vague by the Nevada Supreme Court.

22 Again, here the legislature chose not --
23 deliberately not to incorporate federal law, but it did
24 incorporate bits of it, as you know, and as we've

1 discussed in this case. The bottom line is and the
2 truth is, that this statute seeks to expand the ambit
3 of criminality far beyond anything in federal law at
4 the moment. And that is another reason why it should
5 be struck down.

6 Finally, Your Honor, there is a scienter
7 argument raised by defendants who claim that the bill,
8 AB286, because of the intended language in the
9 definition of unfinished frame or receiver, thus,
10 imposes a scienter requirement, which we have not met.
11 We believe that argument is groundless. There is no
12 such requirement in the statute. There is no need for
13 what might be called specific intent here, and the
14 scienter argument must fall flat.

15 THE COURT: Well, and that's another question I
16 have, too. If there's a specific intent to have it --
17 to make it a firearm, that's not your intent. So, if
18 there is a specific intent to make it in -- to make
19 that into a firearm, that's not your intent. Your
20 intent is that it's not a firearm and to sell it as not
21 a firearm. It could be somebody else's intent down the
22 road. So, does that -- does that obviate your business
23 as well? If their --

24 MR. MCGUIRE: It could.

1 THE COURT: -- if their claim is, is that you
2 have to have the specific intent to make that blank,
3 you make it. But you have to the specific intent to
4 make that blank into a firearm, and you have no such
5 intent. Because your intent is to sell them to other
6 people. I don't know what their intent is.

7 MR. MCGUIRE: Well, that -- if we were
8 indicted, I suppose that might be a defense that we
9 would -- we would imply. But I would suggest to the
10 Court there is no such requirement in the statute as
11 drafted currently.

12 THE COURT: Because if there is a specific
13 intent -- I mean, clearly it would seem that
14 Polymer80's intent is not to make it into a firearm.

15 MR. MCGUIRE: That is our position and belief,
16 Your Honor. That's correct. That is our intent.

17 THE COURT: Yeah. That appears on everything.

18 MR. MCGUIRE: That's right, sir.

19 THE COURT: Is that it's not a firearm, so it's
20 not our intent to build a firearm.

21 MR. MCGUIRE: But the problem is that with them
22 leaving it to this uninformed group -- admittedly
23 uninformed group of law enforcement authorities to
24 determine whether or not Polymer80 has that intent,

1 should be indicted. And Polymer80 then might defend
2 that case on that basis. But --

3 THE COURT: Well, that --

4 MR. MCGUIRE: -- that indictment would be a
5 hard-earned -- hard-earned lesson, Your Honor.

6 THE COURT: Well, that creates, I guess, an
7 additional problem with the definition. Because it
8 says, "The blank, frame, or receiver needs to intend to
9 become a firearm." How is that possible?

10 MR. MCGUIRE: I don't know.

11 THE COURT: How can an inanimate object intend
12 to do anything?

13 MR. MCGUIRE: And who's intent are we talking
14 about, Your Honor? We talking about Polymer80, who
15 sells these products and manufactures parts of them, or
16 the consumer then who receives them and may need to do
17 work on them himself to build the firearm, and then
18 perhaps put it in a position to be fired? The
19 ambiguity is extraordinary.

20 THE COURT: Well, I mean, it's not only
21 Polymer80. It's -- I guess, it would be anybody. You
22 know, any seller at a gun show or something like that.
23 I mean, they have no intent to make that kit into a
24 firearm perhaps, you know. We don't even know if the

1 end purchaser ultimately has any intent to do --
2 specific intent to do it.

3 So, I guess the question is, how does that
4 intent element fall in the way it's set forth in the
5 definitional statute?

6 MR. MCGUIRE: Well, my position would be --

7 THE COURT: Because it says, "The blank,
8 casting, or machined body that is intended to be turned
9 into a frame or lower receiver of a firearm with
10 additional machining."

11 So, it doesn't say the seller. It doesn't say
12 the manufacturer. It doesn't say the possessor. It
13 doesn't say -- what are the other things that are
14 proscribed? The purchaser.

15 MR. MCGUIRE: Transferor.

16 THE COURT: The transporter. The receiver.

17 So, that's another question I have, is whose
18 intent? Now, if it's a -- if it's the person's intent
19 that's in possession of them, clearly if Polymer's in
20 possession of them and manufacturing them, they have no
21 intent to make that into a firearm.

22 MR. MCGUIRE: But, there are people today who
23 say that what Polymer80 produces, sells, transfers,
24 distributes, whatever the verb might be under the

1 statute, is a firearm. And the threat in this statute
2 is that that determination, at least in the first
3 instance, before we get to a jury, would be left to
4 the --

5 THE COURT: Well, if that's --

6 MR. MCGUIRE: -- law enforcement.

7 THE COURT: -- in the statute, you'd be
8 violating. All right. So, you know, I mean, that's --
9 that's a -- if it was a firearm, we'd be hearing
10 different.

11 MR. MCGUIRE: But, the term firearm -- I don't
12 mean to dispute what Your Honor says, but we do know
13 the term "firearm" is used within the definition of
14 unfinished frame or receiver. Which in my judgment,
15 lends an additional level of ambiguity --

16 THE COURT: Well, a firearm --

17 MR. MCGUIRE: -- along with intent.

18 THE COURT: Firearm is defined in Nevada law as
19 "Any device designed to be used as weapon from which a
20 projectile may be expelled through a barrel by the
21 force of any explosion or other form of combustion."
22 Okay? Pretty clear definition of what a firearm is.
23 Okay?

24 So the question is, you know, if what you're

1 manufacturing is a firearm, which you're not
2 manufacturing a device that can expel something through
3 the barrel, it's -- clearly, the -- you know, I mean,
4 that's why you don't have to have a serial number.
5 It's not a firearm.

6 So, I guess the question, you know, if you get
7 a -- so, firearm itself we know what it is. That's why
8 probably the other sections of the law don't have the
9 due process issues that this particular section of the
10 law has.

11 MR. MCGUIRE: Just to go back to where I ended
12 up. In our view, there is no specific intent element
13 in the statute, but there is an intent element. And as
14 Your Honor has pointed out, that introduces levels of
15 vagueness as well.

16 Unless the Court has any further questions,
17 that's all I have. If I could reserve a little time in
18 rebuttal? Thank you for your attention.

19 THE COURT: I'll let everybody argue as much as
20 they want. We have all afternoon.

21 MR. MCGUIRE: Thank you, Your Honor.

22 MR. NEWBY: Good afternoon, Your Honor. Again,
23 Craig Newby, Deputy Solicitor General, on behalf of the
24 State defendants in this case.

1 I agree with my colleague that this matter is
2 capable of being decided on summary judgment. Do not
3 disagree in terms of the two part. There is a two part
4 test regarding -- determining whether a statute should
5 be void for vagueness. And -- but there are some
6 additional case law that's addressed in our opposition
7 and in our motion that's not addressed.

8 As addressed by the U.S. Supreme Court in
9 Village of Hoffman Estates, we're not to look at --
10 simply look at hypothetical cases. We're to look at
11 facts on hand. In this case, for better or for worse,
12 we're dealing with a purported manufacturer who may
13 be -- and a -- and a seller who may be impacted by
14 AB286. We do not have any Nevadan who is a potential
15 purchaser who's a -- who's a plaintiff challenging this
16 statute here today. We have -- okay, so, that leaves
17 us with what pol -- which makes what Polymer --

18 THE COURT: Just like in Flamingo. All right.
19 Mr. Newby, I understand what you're saying. But, in
20 Flamingo, I mean, the Flamingo said a lighter could be
21 considered smoking paraphernalia, so therefore, you
22 know, I mean, how do I know what I have to prohibit?

23 MR. NEWBY: And certainly Flamingo and the
24 context of that statute, in terms of dealing with a

1 novel, at the time, anti-smoking statute in public
2 places, which is what that was. Flamingo had
3 questions. Flamingo had not had consideration to
4 determine what constituted smoking paraphernalia prior
5 to that statute being promulgated by the legislature.

6 As noted by the Court, and not saying what my
7 colleague has said, we're in a slightly different
8 situation here. Polymer80 uses this terminology in
9 this industry that they sell products and they
10 manufacture products in. They know what these terms
11 are. And their -- their position is, the fact that
12 they know what these are for purposes of interacting
13 with federal law means they still can't know what they
14 mean under state law.

15 And what this Court is tasked with here is
16 Polymer80 needs to demonstrate the unconstitutionality
17 of this statute, and this Court is obligated as a first
18 step in terms of doing a void for vagueness standard as
19 set forth in Ford, in attempting to construe the
20 statute. And the instructions from our Supreme Court
21 are pretty clear, that we're to attempt to utilize any
22 reasonable interpretation of the statute possible to
23 preserve constitutionality.

24 And one possible interpretation of that that's

1 been argued before and was not accepted by this Court
2 at the motion for preliminary injunction, and may again
3 not be accepted here for purposes of summary judgment,
4 is that utilizing federal terms that are commonly used
5 in this industry reduce and/or eliminate any purported
6 vagueness in terms of what Polymer80 understands with
7 regards to this statute.

8 THE COURT: But, are they common? Are they
9 terms that are supplied through the common law? Are
10 they terms that are in Nevada statute?

11 MR. NEWBY: I do not believe the terms are
12 outside of what is in AB286. I do not -- and outside
13 of what "the Court referenced" --

14 THE COURT: Are they even terms that are
15 defined in Websters?

16 MR. NEWBY: Blank, machining, these are terms
17 that are defined under something that's more applicable
18 than just a common dictionary. They're defined by
19 federal statute what these terms are, and these are
20 terms that Polymer80 uses. Should this Court -- and
21 I'll be frank, should this Court determine that it's
22 inappropriate to incorporate the federal meaning of
23 these terms that Polymer80 itself uses in the course of
24 its ATF letters and thing of that sort, and decides

1 it's inappropriate to incorporate that meaning to
2 arrive at a construction of this statute to preserve
3 its constitutionality, this Court should grant summary
4 judgment, and should grant summary judgment in favor of
5 my colleague.

6 Because without those federal -- I mean, those
7 federal statutes are -- these terms are commonly
8 understood by Polymer80 based on this interaction with
9 federal statute. If the Court does not wish to utilize
10 these federal statutes to define those terms, that's
11 a -- that's a decision of law. That's not a fact issue
12 at that point. And that's something that would warrant
13 summary judgment in this case, admittedly, not in my
14 client's favor.

15 THE COURT: But in Gallegos, the Supreme Court
16 chose specifically not to do that. In fact, in the
17 same definitional statute that define -- 18 USC Section
18 921, in this particular case, it was (a)(15). In our
19 case it's (a)(3). Okay? So, but it's the same United
20 States Code provision. They indicate "We cannot
21 determine from the statute provisions whether the
22 person has to have been formally charge with a crime,
23 wanted as a suspect," et cetera, et cetera. Okay?

24 They say that "Unlike Congress, the Nevada

1 Legislature has not defined 'fugitive from justice.' By
2 failing to adopt the federal definition of 'fugitive
3 from justice' or incur any definition of that phrase,
4 the Legislature failed to provide the public with
5 statutory notice of what that term means." I mean,
6 that seems to be a pretty clear directive from the
7 Supreme Court.

8 MR. NEWBY: I think the facts would be somewhat
9 different in Gallegos versus what we have here to the
10 extent that we have effectively party admissions that
11 show that the party challenge conducting this facial
12 challenge does know what these terms actually mean in
13 terms of the context of their industry. I think that's
14 the distinguishing factor that's --

15 THE COURT: In Gallegos the guy had a warrant
16 issued for him for his failure to appear for a
17 sentencing in California. I mean, as a -- as a -- and
18 he was in possession of a firearm, and he was charged
19 with a fugitive in possession of a firearm.

20 So, I guess -- I guess, how clear does it -- I
21 mean, that seems, in my mind, that -- but our Supreme
22 Court said the difficulty in that is if it had ordinary
23 and well established meaning, that would mitigate the
24 legislative failure to define it.

1 But here, there was no definition in Nevada
2 law, there's no jurisprudence, the federal -- the
3 federal law was inconsistent, and if there's no well
4 established and ordinary meaning of those terms, what
5 is it? In fact, in that particular instance, I mean,
6 it seems to me that it may even be clearer than the
7 test established in AB286.

8 So, I mean, basically, they made a directive
9 that says we can't assume that the Nevada Legislature
10 meant to imply federal law if they don't do it,
11 especially if the statute itself uses some definitions
12 from federal law. Right? They define antique firearm
13 as the meaning as ascribed to it in 18 USC 921(a)(16).

14 MR. NEWBY: That's certainly in AB286, yes.

15 THE COURT: Okay. They have firearms importer
16 or manufacturer means a person licensed to import or
17 manufacture firearms pursuant to 18 USC Chapter 44.

18 So, but, they have not, either of their
19 definition of a firearm, which they define themselves,
20 or in their definition of unfinished frame or receiver,
21 incorporate any federal provisions.

22 MR. NEWBY: The statute speaks for itself, Your
23 Honor.

24 THE COURT: So, am I supposed to presume that's

1 what they meant? Is there anywhere in the legislative
2 history that federal law well defines these? I didn't
3 find it. I read -- I read 450 pages of legislative
4 history the other day, and I couldn't find it.

5 MR. NEWBY: Certainly, within the briefing if
6 we had found such legislative history, that would have
7 been included in our briefing before this Court for
8 this hearing today, and the legislative history was
9 silent on that question. There -- it did not -- the
10 legislature did not specifically say --

11 THE COURT: One way or another.

12 MR. NEWBY: One way or the other.

13 THE COURT: Right, and I agree with that. It
14 was just completely silent.

15 MR. NEWBY: I would argue that the most
16 reasonable interpretation of what the legislator --
17 legislature intended to do based on using these terms
18 that are common within this industry, that they're
19 attempting to do additional regulation, additional
20 restrictions on above and beyond what currently exists
21 under federal law, which I would agree with my
22 colleague on. That that certainly is the legislative
23 intent to this statute, is that their intent -- this
24 was intended to be an extension of what was already

1 existing federal law by using the same terms that are
2 used not only under federal statute but also used
3 within this industry, and also used by Polymer80 in the
4 context of what they're seeking permission to do under
5 federal law. Which the Nevada Legislature intended its
6 statute to be more restrictive than federal law.

7 THE COURT: All right. So, if I'm just some
8 Joe Schmoe sitting on the street who buys himself a gun
9 kit, doesn't know any different.

10 MR. NEWBY: Yes.

11 THE COURT: Okay? How am I supposed to have
12 notice of what that entails?

13 MR. NEWBY: Well, first of all, I think going
14 go back to Village of Hoffman Estates, we don't -- we
15 don't -- we have to deal with the fact we have. We
16 have a manufacturer and seller of kits. We do not have
17 any person of ordinary intelligence who's a party to
18 this case, who can assert claims that they do or don't
19 understand what AB286 means in terms of being a
20 purchaser. We don't have those facts. We don't have
21 them from discovery.

22 THE COURT: But didn't Flamingo make pretty
23 clear that that section of Hoffman applied to civil
24 vagueness statutes when they say the first -- "The

1 first approach arises under a facial challenge to a
2 civil statute and the plaintiff must show that the
3 statute is impermissibly vague in all of its
4 applications. In making this showing, a complainant
5 who engages in some conduct that is clearly proscribed
6 cannot complain of the vagueness of the law as applied
7 to the conduct of others. But, when the statute
8 involves criminal," -- that's your position. Right?

9 MR. NEWBY: Yes, Your Honor.

10 THE COURT: But, they go further. "But, when
11 the statute involves criminal penalties or
12 constitutional standard of whether vagueness permeates
13 the text," -- okay -- "both these standards are applied
14 to the consideration of the two-factor."

15 So, its very vagueness permeates the text in a
16 criminal proceeding, it's -- you can't complain if it's
17 clearly proscribed conduct in a civil proceeding.
18 That's what they say.

19 MR. NEWBY: That certainly is part of what is
20 said in the Flamingo case.

21 THE COURT: Which is -- which is well after
22 Hoffman and well after TR, and, you know, and well
23 after -- because Hoffman -- because Flamingo designedly
24 said the feds are all over the place on which standard

1 is actually applicable where. And I they made clear
2 this is the standard for a civil challenge, this is the
3 standard for the criminal challenge.

4 So, I just don't believe that just because
5 Polymer may understand what those terms mean under
6 federal law that necessarily precludes them. Or if the
7 conduct is necessarily proscribed. We'll get in that
8 when we get to the definition. Because, to be honest
9 with you, you know, the definition, you know, is that
10 conduct proscribed? Are they making something that
11 would be considered under Nevada law an unfinished
12 frame or receiver?

13 MR. NEWBY: And --

14 THE COURT: Do we know that?

15 MR. NEWBY: I mean, of -- the answer, of
16 course, is we don't know that because the statute
17 hasn't been enforced in any way or shape or form as of
18 yet, based at least in part on this case and the
19 injunction that's in place. There's been no effort to
20 enforce that. And the way to sort through whether a
21 defendant in a criminal case had violated a criminal
22 statute, there would need to be determinations made
23 beyond a reason -- beyond any reasonable doubt to the
24 satisfaction of a jury, or unless the jury --

1 THE COURT: If they --

2 MR. NEWBY: -- finds weight to it.

3 THE COURT: They have to come in jeopardy in
4 order for that to happen. You see, the first part of
5 the vagueness test is -- you know, basically, the
6 standard is, they don't have notice so they can conform
7 their conduct with the requirements at all. So, why do
8 they need to be put in jeopardy? If they know what
9 they have to do, then they would never have to be put
10 in jeopardy.

11 MR. NEWBY: And respectfully, Your Honor, I
12 would submit, and I think the briefing submits, that
13 Polymer80 does know what's restricted by this. And
14 it's a significant restrictions, and it may impact --
15 may impact their -- the entirety of their accessory
16 business, their non-firearm business.

17 THE COURT: But what do they do to conform
18 their conduct?

19 MR. NEWBY: Not sell unfinished frames or
20 receivers would be what would be necessary to --

21 THE COURT: Okay. But, how do they know what
22 that is?

23 MR. NEWBY: Based on -- based on what the
24 statute says.

1 THE COURT: All right. So, what are the major
2 machine operations -- the major machining operations?
3 Nobody -- in reading the depositions, I didn't see
4 anybody that could even guess what major machining
5 operations that are in. What are the major machining
6 operations?

7 MR. NEWBY: I mean, these things are addressed,
8 and this is language borrowing from what Polymer80 has
9 submit in its own letters to the ATF seeking approval.
10 They identify things that are machine -- machining --
11 major machining versus not major machining for purposes
12 of this thing in mathematical certainty in terms of
13 what exact percentage constitutes most versus what
14 doesn't.

15 I mean, there's a standard definition for that,
16 and it's certainly a majority of. And I can't say with
17 a hundred percent certainty whether Palmer80's
18 accessory kits constitute majority of machining
19 operations, but they certainly are --

20 THE COURT: But, it's got to be the majority of
21 the major machining operations. Let me make -- they
22 have -- they certainly have laundry lists of things
23 that are complete or not complete on the gun.

24 MR. NEWBY: Yes.

1 THE COURT: Okay? In those letters. So, is
2 forming the frame into a -- into something that looks
3 like it, is that a major or is that just machining?
4 Putting the clip receiver and putting a hole in there,
5 is that part of the major? Under federal law it
6 wouldn't be. Because under federal law it's not part
7 of the -- well, it might be considered part of the
8 firing mechanism, I guess, potentially. But, I
9 don't -- I don't see it that way because they define
10 the firing mechanism as to where the trigger assembly
11 goes. So, I'm somewhat confused in relation to that.

12 All right. Go ahead. Continue.

13 I'm just wondering how do they conform their
14 conduct to be able to comply with the law.

15 MR. NEWBY: And I think the short answer, and I
16 think it's reflected in Polymer80's verified complaint
17 where they assert that they're being -- assert that
18 they're being targeted by the legislature, imply
19 they're being targeted unfairly, I think the verified
20 complaint itself evinces an understanding that this
21 statute is intended to stop the -- stop the sale of
22 such gun assembly kits, accessory kits such as what
23 Polymer's prime -- 80's primary business is. And I
24 don't say that lightly.

1 THE COURT: But, what makes it less than most?
2 All right. So, because apparently, it's not stopping
3 it all because the definition doesn't stop it all. I
4 mean, if the definition just said anything intended to
5 be used as a frame or receiver of a firearm cannot be
6 sold.

7 MR. NEWBY: Well --

8 THE COURT: Right?

9 MR. NEWBY: I mean, we're going -- I'll go a
10 little bit far afield in terms of attempting to address
11 this. I mean, once they --

12 THE COURT: They may -- but, then they come up
13 with this most of the major machining functions.

14 MR. NEWBY: And part of this, Your Honor,
15 respectfully, comes out of the context of litigation
16 that's not before this Court in terms of what do these
17 terms mean. Because some response to this is if I was
18 to go to the store and -- or go to a manufacturing
19 facility and buy a clump of polymer, which is the
20 starting product before it's molded before it turns
21 into one of these accessories.

22 If I was simply to have like a vat of polymer
23 sitting in my house, is that a blank or this or that
24 for purposes of federal law. And the legislature was

1 attempting, and perhaps not successfully based on Your
2 Honor's questions, attempting to balance between taking
3 raw assembly materials versus taking materials that are
4 machined to the point where they're intended to be used
5 by the final user at some point to create -- to have
6 the ability to create a finished firearm.

7 THE COURT: Okay. Intended by the final user,
8 which brings up your intent argument. Okay? So, how
9 can that transfer of intent go to a manufacturer or a
10 seller? I have no intent, okay, as a manufacturer or
11 seller to make a firearm.

12 MR. NEWBY: And I think that's --

13 THE COURT: My intent is just the opposite.

14 MR. NEWBY: I think it's fair to say that
15 Polymer80's intent is to make a product that those who
16 wish to purchase it would be able to complete it, in a
17 relatively short period of time, into a firearm subject
18 to the 1968 act.

19 THE COURT: Right.

20 MR. NEWBY: That's what Polymer80 is selling.

21 THE COURT: But, you're transferring intent on
22 a specific -- in your argument, a specific intent.
23 That means the violator of the law has to have that
24 specific intent to make a lower receiver of a

1 firearm -- make it a frame or lower receiver of a
2 firearm. They have to have that specific intent,
3 right, under the statute?

4 So, if it's a general intent that they intended
5 somewhere in the range of wherever it goes to, that
6 somebody unknown to us creates a firearm out of it,
7 even though it's our intent to make sure it's not a
8 firearm, because we're selling it not as a firearm.

9 MR. NEWBY: And I think -- respectfully, I'm
10 going to -- I disagree with that interpretation or
11 argument of subsection nine in the statute. Which,
12 again, going back to the definition of unfinished frame
13 or receiver, it means a blank, a cast, or machined body
14 that is intended to be turned into the frame or lower
15 receiver of a firearm with additional machining.

16 THE COURT: Okay. So, how does that --

17 MR. NEWBY: It doesn't say -- it doesn't say
18 that it's the intent of Polymer80 to make that into a
19 firearm. It's the intent to make a product that can --
20 that most of the machining operations have been
21 completed such that it can be turned readily into a
22 firearm.

23 THE COURT: So, then there's no scienter, no
24 specific intent under the law then.

1 MR. NEWBY: There's the specific intent of
2 Polymer80 to manufacture an unfinished frame or
3 receiver as defined by the legislature.

4 THE COURT: Okay. Okay. Go ahead.

5 MR. NEWBY: Okay. In going back to where I had
6 left off I believe, there certainly could be close
7 cases associated with any eventual implementation of
8 AB286. But, as the Nevada Supreme Court and others
9 counseled us, just because there's close cases, those
10 are necessarily addressed in terms of specific facts
11 and a specific case beyond a reasonable doubt.
12 Specifically, U.S. versus Williams from United States
13 Supreme Court addressing that.

14 We don't need mathematical certainty in terms
15 of what most means. We've got that from the Supreme
16 Court in terms of how we deal with certain statutes
17 that people charged with driving while intoxicated
18 don't necessarily have an understanding of whether they
19 are .08, .16, but they certainly have an understanding
20 generally of whether they've -- they should be on
21 notice of having consumed too much alcohol such that
22 are subject to the statute.

23 So, in short, I agree with my colleague this
24 matter is ready for summary judgment to the extent this

1 is a legal question. To the extent the Court wishes to
2 delve into the fact area, there are admissions that
3 Polymer80 generally knows what these terms mean, and if
4 the Court decides that is relevant as something to
5 consider as further grounds for awarding summary
6 judgment in favor of State defendants and against
7 plaintiffs in this case.

8 If there are no further questions, I'm happy to
9 rest at this point.

10 THE COURT: Okay, thank you.

11 Okay, Mr. McGuire, let me take ten minutes, and
12 then I'll let you do your rebuttal. Okay?

13 MR. MCGUIRE: Thank you, sir.

14 THE COURT: Court's in recess for ten minutes.

15 (Recess.)

16 THE COURT: Okay, Mr. McGuire, go ahead.

17 MR. MCGUIRE: Thank you, Your Honor. I'll be
18 brief.

19 I think I heard Mr. Newby say that the
20 defendants were conceding that if the Court were not
21 inclined to incorporate federal law into the analysis,
22 doing what the legislature expressly did not do, then
23 summary judgment at this point was appropriate.

24 I think Gallegos speaks to that directly, Your

1 Honor. I think you pointed that out. And I think it's
2 clear from the legislative history and the terms of the
3 statute itself that federal concepts were cherry-picked
4 by the legislature, but there was no wholesale
5 incorporation of those concepts into the AB286.

6 I think counsel elided a great number of terms
7 that we claim are vague and ambiguous, and essentially
8 argued that all of them are used in the federal realm
9 or in Polymer80's dealings with the federal
10 authorities. And I'm unaware, Your Honor, of any
11 federal use or ATF use of the, what I call, I think
12 what you call, a continuum test, the most of the major
13 machining operations being completed to turn something
14 into a firearm. That, to my knowledge, is not a used
15 or worn, if you will, federal term. And that is really
16 at the heart of our vagueness attack on the statute.

17 Thirdly, as I think you pointed out, Flamingo
18 really resolved, 20 years or so after the fact, the
19 issues or the interesting complexities raised by
20 Hoffman and then Washoe, if I'm using -- if I'm saying
21 that correct, Sheriff of Washoe County. But Flamingo
22 put that to rest, Your Honor. And what we have here
23 again is a facial challenge to a criminal statute, and
24 Flamingo could not be clearer.

1 You mentioned the legislative history. All I
2 would add to it, Your Honor, is sagely and correctly
3 said on that was, and you may recall, a law enforcement
4 or former law enforcement officer called in, or weighed
5 in, and basically said I don't understand this statute.
6 It's vague and ambiguous. And there was no response to
7 that. There was no effort to address that.

8 In other words, the legislative history reveals
9 that not Polymer80, but if you will, an average Nevadan
10 concerned about the statute indicated the statute was
11 vague and ambiguous, and nothing was done to resolve
12 it.

13 Mr. Newby, time and again I think, falls back
14 on the argument that Polymer80 "knows". Well, again if
15 Polymer80 "knows" then -- and that's relevant, this
16 isn't a pure question of law. But, if it is, then the
17 knowledge and beliefs of Polymer80 are utterly
18 irrelevant on the first test.

19 But, again, I stress to the Court on the second
20 test, which Silver says is the more important test,
21 Polymer80's knowledge or understanding and belief is
22 completely irrelevant to how this statute will be
23 applied and enforced and is completely irrelevant to
24 the prospect of arbitrary and discriminatory

1 enforcement.

2 Finally, I believe Mr. Newby and defendants in
3 their briefs argue that because Polymer80 knows, I
4 don't know how it couldn't have, that it was targeted
5 by the statute, that that awareness means that they
6 were aware of the meanings of the terms used in the
7 statute. I think there's a disconnect there. Being
8 aware that people are going after you and trying to put
9 you out of business is not the same thing as knowing
10 what the terms mean through which they're trying to do
11 that.

12 So, unless the Court has any further questions,
13 that's all I have, and I thank you again for your
14 attention.

15 RULING.

16 THE COURT: All right. So, all the parties
17 here clearly believe the Court has enough evidence
18 submitted in front of it for the Court to make its
19 determination in this particular matter. So, let me
20 quickly go through some things.

21 In relation to standing ripeness and harm, the
22 Court finds that Flamingo was pretty clear on facial
23 challenge as long as potentially you could be subject
24 to criminal prosecution as a result of the conduct that

1 bring you into standing in order to contest. And it
2 also is a harm to have to operate under any type of law
3 that is not clear enough to give fair notice as to the
4 conduct that is prescribed.

5 So, it's ripe certainly because one of the
6 sections, that is Section 3, is actually -- oh, no
7 Section 3.5 is actually in effect at this point.
8 Section 3 comes into effect on January 1st. So, it's
9 ripe for this Court to consider whether or not the
10 statute is in fact vague, constitutionally vague under
11 the law of the State of Nevada.

12 So, primarily the Court finds that there's
13 standing, that the issue is ripe, that there is a harm
14 to the public and to anybody who may possession, sale,
15 transfer, purchase, transport, sale, or offer for sale
16 the things that are contemplated potentially under the
17 Statute AB286.

18 Okay. Nevada law is clear in the fact and
19 Flamingo made clear that there are two separating
20 standards in Nevada in relation to determining whether
21 or not a statute is vague.

22 One of those standards relates to vagueness in
23 relation to the civil challenge, and the other relates
24 to vagueness in relation to a criminal challenge.

1 Although, the law that indicates that a person
2 complaintly (sic) engages in conduct that's clearly
3 proscribed cannot complain of the vagueness of the law
4 as applied to the conduct of others is there, but it
5 applies solely to civil vagueness challenges as clearly
6 separated in Flamingo. And it appears that Flamingo
7 was issued for the -- for the very particular purchase
8 to say -- purpose to say under Nevada's Due Process
9 Clause the law of this State is the highest standard is
10 applicable to facial challenges when vagueness
11 permeates the text.

12 Everybody is in agreement that there are two
13 separate types of vaguenesses that may be challenged.
14 There is the proscribed -- I call it the proscribed
15 conduct test. And that is if it fails to answer or it
16 fails to allow an ordinary citizen notice -- fails to
17 give an ordinary citizen notice of the law so that they
18 can conform their conduct to its requirements. Or as
19 otherwise set forth in Flamingo, fails to provide
20 notice sufficient to enable a person or ordinary
21 intelligence to understand what conduct is being
22 prohibited.

23 I requested, asked the question multiple
24 occasions during oral argument as to what these terms

1 mean. I asked whether or not any of these terms were
2 defined at all in the common law. No was the answer
3 that I received. So, I would indicate that Castaneda
4 is not applicable. State v. Castaneda indicated that
5 if the common law as provided in Nevada law can fit --
6 can provide a definition as to what the conduct
7 proscribes, then the common law may be used to do that.

8 In Castaneda it was the definition of what
9 indecent exposure is that the common law prohibited.

10 And the Supreme Court limited indecent exposure
11 statutes of the State of Nevada to that which the
12 common law defined as indecent exposure. Which was
13 exposure of one's genitals and anus solely, not
14 buttocks, which apparently he was being charged with.

15 Secondly, I asked for any statutory
16 definitions in Nevada's law or case law that defined
17 any of the terms that were set forth, including blank,
18 casting, machining, frame, receiver, machined
19 operations, fire control cavity. Court's been provided
20 no statutory definitions in any place in Nevada law
21 under any of the manufacturing statutes or anything
22 else in the State of Nevada that supplies meaning to
23 those terms.

24 So, therefore, the Court finds that Silverwing

1 Development -- and I would note that this is pretty
2 much a brand new case, December 2020, 136 Nevada
3 Advanced 74 -- versus Nevada State Contractors Board is
4 inapplicable. Because in that particular case, the
5 provision that was being violated indicated that it was
6 a subdivision that you couldn't bond around. That the
7 contractors had to stay with their maximum bond on a
8 subdivision site.

9 And since in the planning and zoning laws in
10 the State of Nevada subdivision was clearly defined,
11 they incorporated that into the Contractors Board
12 statutes in relation to the amount of the -- of the
13 contractor's license limit. Because subdivision was
14 clearly defined in the planning and zoning laws of the
15 State of Nevada, it put people on notice as to what
16 subdivision site meant. But, here we do not have that.

17 Here it is more akin to Gallegos where the
18 legislature chose not to provide any definition of
19 those terms that may have existed or do exist in
20 federal law. And again, "By failing to adopt the
21 federal definition" -- I quote, "By failing to adopt
22 the federal definition or include any definition, the
23 legislature failed to provide the public with statutory
24 notice of what the terms mean."

1 Because there is no common law notice to these
2 provisions, there can only be statutory notice in
3 relation to what they are. As opposed to a common law
4 crime of indecent exposure of which this is not. This
5 is a new crime. This is a crime that has never been
6 propounded. It is not a crime under the federal
7 system. And as far as known to the State, other than a
8 couple of comments that Utah was looking at doing the
9 same thing, it's not a crime in any other state that
10 I'm aware of. And California had some statutes, but
11 they were markedly different.

12 So, this Court cannot just imply that the
13 Nevada Legislature wanted to incorporate federal law
14 into Nevada State law without their specific
15 authorization to do so.

16 And in fact, most telling in these statutes on
17 AB286 is that they purposely included some federal
18 definitions and did not include others. Hence, the
19 Court can only conclude based on that, that the
20 legislature purposely did so. Because there's no
21 additional legislative history on the definitions as
22 supplied by the legislature in the legislative history.

23 And I agree I believe there were two comments
24 actually in the legislative history as to how are these

1 things defined because it's unclear. But, no
2 responses, no individual legislators ever addressed the
3 issue, and the legislature themselves were silent on
4 it. It was never debated in the legislature. So, that
5 gives no -- in relation to the definition of any of
6 these terms. So, that gives the Court absolutely no
7 way to determine as well what the legislative intent is
8 because there is none, and that was pretty much
9 stipulated to by both parties.

10 So, the Court does find as a matter of law that
11 the statute is vague because it fails to provide notice
12 sufficient to enable persons of ordinary intelligence
13 to understand what conduct is prohibited.

14 Just a couple other comments in relation to the
15 "scienter" or intent provision. The statute that
16 criminalized a conduct never indicates in itself, in
17 and of itself an intent element. It just says, "A
18 person shall not possess, purchase, transport, or
19 receive an unfinished frame or receiver."

20 The definitional statute of unfinished frame or
21 receiver indicates "means a blank, casting or machined
22 body that is intended to be turned into a frame or
23 lower receiver." It has no indication as to whose
24 intent that is. Is it the person that possesses it?

1 Is it the person that manufactures it? Is it the
2 person that sells it? Or is it the person that's
3 actually accused of committing a crime under the
4 statute?

5 Even if this Court were to imply that that
6 intent element was specifically intended to any
7 individual that violated the statute, for instance, I
8 possess this blank, casting or machined body which is
9 undefined with the intent to turn it into a firearm or
10 lower receiver with additional machining -- or the
11 frame or lower receiver or firearm with additional
12 machining, it still would be vague.

13 Because there is a conjunctive requirement
14 under the law that was defined which requires that this
15 article that is a blank, casting or machined body to be
16 formed or machined to the point where most of the major
17 machining operations have been completed to turn the
18 blank, casting, machined body into a frame or lower
19 receiver or firearm.

20 So, the problem with that is the statute again
21 does not define what major machining operations are,
22 what most of those are, how those would need to be
23 combined in the effect of whether or not most have been
24 completed. And they go further to muddy the waters.

1 "Even if the fire control cavity are of the blank,
2 casting or machined body is still completely solid and
3 un-machined." Which under federal law is a major, or
4 at least critical, application of the law in relation
5 to whether or not it's considered to be a firearm or
6 not under federal law. So, that compounds the
7 requirement as it is.

8 And it does not give fair notice to anyone as
9 to where, in whatever the manufacturing process is,
10 that that requirement is met. So, therefore, any
11 specific intent that could be read into the statute, in
12 the definitional statute, that purports to define
13 blank, casting or machined body that has an intent,
14 does not save this particular statute.

15 Unlike the lewdness statute, and there's cases
16 on that too. I would refer to Martin, which is the
17 statute that defined what cheat was, which was same the
18 situation as the lewdness statute which said you have
19 to commit a fraud in to order cheat, and there has to
20 be a specific intent to cheat. So, and it gave
21 specific notice of that. But, here it doesn't. It
22 doesn't put you on a specific notice of what conduct is
23 prohibited and how to conform to that prohibited
24 conduct.

1 As to the second test, "Lacks specific
2 standards, thereby encouraging, authorizing, or even
3 failing to prevent arbitrary discriminatory
4 enforcement." Well, you know, the fact of the matter
5 in this particular case is here this encourages anyone
6 to say anything can be considered this.

7 So, and I understand what you're saying
8 Mr. Newby, but under this hugely vague statute, it
9 could be a block of molten-something. Because when is
10 it "machined"? When does to the machining process
11 start? What additional machining needs to be? Does it
12 start when they put it in the vat, is that a major
13 machining operation? It's unclear and undefined under
14 the statute. And it would put an ordinary Nevada
15 citizen in risk of discriminatory enforcement by
16 anybody who just decides yeah, that looks like a gun.

17 And it's extreme. The statute itself on its
18 face doesn't even give very good notice of what the law
19 is even supposed to address. Because the terms of the
20 statute itself says, "A person shall not possess,
21 purchase, transport, or receive an unfinished frame or
22 receiver." If we leave it there, it would be subject
23 to just any kind of interpretation.

24 Now, the Court did look at the interpretation

1 of the definitional statute. But, the problem is none
2 of these terms are even defined in Websters. I asked
3 that question, too. Is it even defined in Websters
4 dictionary? I think Websters Dictionary for a receiver
5 is trustee of property.

6 So, under the enhanced application as clearly
7 set forth in Flamingo, the Court find that vagueness
8 permeates the text.

9 The Court also finds that Polymer does not need
10 to meet the Civil Standard in this particular case, and
11 I dealt with that in harm. And because vagueness
12 permeates the text, it's constitutionally vague under
13 the laws -- under the Due Process Clause of the State
14 of Nevada as clearly defined. I would indicate that
15 even so, federal law and the definition that was
16 supplied by the State in this particular case in
17 relation to frame or receiver are different.

18 So, the State provides a definition from the
19 glossary of the Association of Firearm and Tool Mark
20 Examiners, a professional organization that are
21 scientists that study ballistics and identify weapons
22 used in crimes. And according to the State, the
23 definition that they supply is "The finished part which
24 is capable of being assembled with other parts to put

1 together a firearm." But under federal statute it's
2 "That part of a firearm which provides housing for the
3 hammer, bolt or breechlock and firing mechanism, and
4 which is usually threaded at its forward portion to
5 receive a barrel." So, already there is diversity in
6 what these two things mean.

7 All right. So, therefore, the Court grants
8 declaratory relief, declaratory judgment in favor of
9 Polymer80, declaring that AB286 Section 3 and
10 Section 3.5 are unconstitutionally vague.

11 I don't know if I declare a definitional
12 statute uncon -- I declare the criminal statute's
13 unconstitutionally vague. So, because the definitional
14 statute is unconstitutionally vague in 6.9. I think
15 one is the result of the other. But, I don't know if a
16 definitional statute in and of itself would be vague.

17 But, it's unconstitutionally vague for criminal
18 enforcement in all it's respects, and a permanent
19 injunction is issued against the State of Nevada from
20 enforcing Section 3 and Section 3.5 of AB286 based upon
21 those findings and fact and conclusions of law by the
22 Court.

23 Any questions?

24 MR. MCGUIRE: None from Polymer80. Thank you,

1 Your Honor.

2 MR. NEWBY: None, Your Honor.

3 THE COURT: Mr. Johnston?

4 MR. JOHNSTON: Your Honor, just one question.

5 THE COURT: Yes.

6 MR. JOHNSTON: If the Court want us to prepare
7 the draft or the Court will do that itself?

8 THE COURT: Okay. What I would like for you to
9 do is prepare a draft. But, you know, a draft order
10 you can provide it to the State. It's just that, a
11 draft order. The Court, I am sure, will take -- has
12 taken under consideration everything in this particular
13 matter, and perhaps the order is not -- may add some
14 things or subtract some things, but mostly add some
15 things, I don't think I'll subtract anything, that I
16 think may be further relevant in relation to the
17 constitutionality.

18 I would indicate that the law of the State of
19 Nevada is that I need to put on the record the reasons
20 that I'm finding it vague and cite my conclusions of
21 law in relation to those things. But, the written
22 judgment is the final judgment.

23 Does anybody have any objection to this Court
24 declaring it final under Nevada Rules of Civil

1 Procedure?

2 MR. MCGUIRE: No, Your Honor.

3 THE COURT: The order on summary judgment?

4 MR. NEWBY: No, Your Honor.

5 THE COURT: Okay.

6 MR. MCGUIRE: When would you like that draft to
7 be submitted to the Court?

8 THE COURT: As fast as possible you can get it
9 submitted.

10 MR. NEWBY: And related question. Not to put
11 our court reporter on the spot, but given the Judge's
12 detailed findings, when would be an approximate time we
13 could get a rough draft of the transcript so that the
14 order can track with Judge's ordered here today as
15 closely as possible?

16 THE COURT: They're pretty good at it. I bet
17 you she could give you a time frame.

18 MR. NEWBY: That's what I was asking for, Your
19 Honor. Politely without -- acknowledging the
20 Thanksgiving holiday as well.

21 THE COURT: Well, yeah. All right. So, I
22 don't know.

23 How long, Ms. Terhune, do you think before you
24 can get out a transcript?

1 THE COURT REPORTER: Well, if I got a rough of
2 your comments, it would be quicker, then I could get
3 the whole thing ready a little later. But --

4 THE COURT: I mean, I think you can take my
5 comments, right? So, she indicates she can get that
6 done pretty quickly as a rough.

7 MR. NEWBY: Yes.

8 THE COURT: Okay? Not as a final. So, how
9 long just to take my comments do you think?

10 THE COURT REPORTER: It would by Saturday.
11 Friday, Saturday.

12 THE COURT: Okay.

13 MR. NEWBY: That's fine. Obviously, we --

14 THE COURT: Within a week.

15 MR. NEWBY: That's perfectly fine, Your Honor.
16 Obviously, we're not being here next week for a
17 potential trial in this, so we have time to work
18 through the order and get that to you and get that
19 combined.

20 THE COURT: So, I just want to make clear in
21 relation to the order, I am asking for a proposal
22 order, and you can both submit one if you'd like. I
23 don't have a problem with that. Submit it in either
24 Word or WordPerfect. I know most people work in Word.

1 So, which is fine. Submit it in both Word or
2 WordPerfect. Submit it to my law clerk as proposed
3 orders. If you just -- if the State doesn't wish to
4 submit one, that's fine.

5 MR. MCGUIRE: Do you want us, Your Honor, to
6 submit our draft to the State or --

7 THE COURT: Oh, certainly.

8 MR. MCGUIRE: -- two separate.

9 THE COURT: Certainly submit it to the State.

10 All right. So, I'm not going to take an
11 objections on it or anything because I'm going to
12 review it, modify it --

13 MR. NEWBY: Yeah.

14 THE COURT: -- and make sure that it complies
15 to what I want done. Okay?

16 MR. MCGUIRE: Very good.

17 THE COURT: It's more of a proposed order. In
18 other words, this is not one of those orders that I'm
19 just going to have you guys stipulate to and then sign
20 off on it.

21 MR. NEWBY: Understood, Your Honor.

22 MR. MCGUIRE: Understood.

23 THE COURT: Okay? So, it's going to be -- my
24 face is going to be on the order. So, it's going be

1 fully reviewed, and fully if I believe something else
2 needs to be in there, a section of law or something
3 else, that wasn't fully expressed, it will -- it will
4 be in there.

5 So, all right? So, okey dokey. Any other
6 questions for me?

7 MR. MCGUIRE: None from us, Your Honor.

8 MR. JOHNSTON: No, Your Honor.

9 THE COURT: Okay.

10 MR. NEWBY: None from me. Thank you.

11 THE COURT: With all that being said, the
12 sooner the better because I want to have everything
13 issued and done within a couple of weeks at least.
14 Okay?

15 All right. Thank you.

16 MR. MCGUIRE: Thank you, Your Honor.

17 MR. NEWBY: Thank you, Your Honor.

18 THE COURT: Court's in recess.

19

20 (End of Proceedings.)

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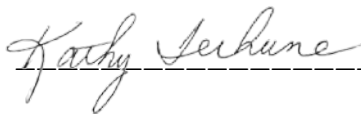
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CERTIFICATE

STATE OF NEVADA)
) SS.
CARSON CITY)

I, Kathy Terhune, CCR 209, do hereby certify that I reported the foregoing proceedings; that the same is true and correct as reflected by my original machine shorthand notes taken at said time and place before the Honorable John P. Schlegelmilch, District Judge, presiding.

Dated at Carson City, Nevada, this
13th day of January, 2022.



CCR #209

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TANYA STUBBS
COURT ADMINISTRATOR
THIRD JUDICIAL DISTRICT

Kathy Thomas

1 Case No. 21-CV-00690

2 Dept. No. I

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

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

8 POLYMER80, INC.,

9 Plaintiff,

10 vs.

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

19 Defendants.

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

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

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

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

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4 I

5 PROCEDURAL HISTORY

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

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

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

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

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

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

16 Accordingly,

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

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

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II

CONTESTED PROVISIONS OF AB 286

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

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

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

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

2. A person who violates this section:

- (a) For the first offense, is guilty of a gross misdemeanor; and
- (b) For the second or any subsequent offense is guilty of a category D felony and shall be punished as provided in NRS 193.130.³

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

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

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

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

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

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

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

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

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

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

III
STANDARD ON SUMMARY JUDGMENT

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

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

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

12 IV

13 FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

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

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

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

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

2 **A. STANDING OF POLMER80**

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

7 NRS 30.040 provides, in pertinent part:

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

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

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

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

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

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

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

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

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19 This Court determines that Polymer80 will suffer irreparable harm in the absence of
20 declaratory and/or injunctive relief, since, as under *Flamingo*, that harm exists if a Nevadan, such as
21 Polymer80, must conduct its affairs in the wake of criminal jeopardy that fails to provide fair notice
22 of the conduct being criminalized.⁶

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27 ⁶ The Defendants previously argued at the preliminary injunction hearing that Section 3(1)(b) would
28 mitigate any harm as all Polymer80 would have to do is put a serial number on its products. The

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

2 The question before this Court is essentially whether or not AB 286 is unconstitutionally
3 vague under the Due Process Clause of the Nevada Constitution. It is undisputed that Section 3 and
4 Section 3.5 of AB286 are criminal statutes with penalties being elevated as high as category D
5 felonies.
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7 Nevada’s Due Process Clause states simply that “No person shall be deprived of life, liberty,
8 or property, without due process of law.” Nev. Const., Art. 1, Sec. 8(2). In Nevada, the determination
9 of whether a statute is constitutional is a question of law. *Silvar v. Dist. Ct.*, 122 Nev. 289, 292, 129
10 P.3d 682, 684 (2006).

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

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

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

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

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

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

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

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

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

21 *Flamingo*, 125 Nev. at 507.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21 As explained by the Nevada Supreme Court:

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

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

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

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

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

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

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

23 V

24 **ORDER AND JUDGMENT**

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

1 Good cause appearing,

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

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

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

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

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

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

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

23 THIS IS A FINAL JUDGMENT.

24 DATED this 10th day of December, 2021.

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JOHN P. SCHLEGELMILCH,
DISTRICT JUDGE

1 Case No. 21-CV-00690

2 Dept. No. I

3 **Certificate of Mailing**

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

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

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


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

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

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

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

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

20
21 
22 Employee of Hon. John P. Schlegelmilch

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SIMONS HALL JOHNSTON PC
22 State Route 208
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Case No. 21-CV-00690

Dept. No. 1

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

FILED

2021 DEC 13 AM 9:12

TANYA SCIRINE
COURT ADMINISTRATOR
THIRD JUDICIAL DISTRICT
TANYA SCIRINE
DEPUTY

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

POLYMER80, INC.,

Plaintiff,

vs.

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

Defendants.

NOTICE OF ENTRY OF ORDER

Plaintiff Polymer80, Inc., by and through its undersigned counsel, hereby provides written notice of entry of the *Findings of Fact, Conclusions of Law, and Order Granting Summary Judgment in Favor of Plaintiff, Polymer80, Inc.* attached hereto as **Exhibit A**.

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

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

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-and-

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

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CERTIFICATE OF SERVICE

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

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

DATED this 13th day of December 2021.



Brad M. Johnston

Exhibit A

Exhibit A

FILED

2021 DEC 10 AM 9:54

CLERK OF DISTRICT COURT
THIRD JUDICIAL DISTRICT

Kathy Thomas

1 Case No. 21-CV-00690

2 Dept. No. I

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

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

8 POLYMER80, INC.,

9 Plaintiff,

10 vs.

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

19 Defendants.

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

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

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

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

3 I

4 PROCEDURAL HISTORY

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

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

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

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

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

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

16 Accordingly,

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

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II

CONTESTED PROVISIONS OF AB 286

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

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

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

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

2. A person who violates this section:

- (a) For the first offense, is guilty of a gross misdemeanor; and
- (b) For the second or any subsequent offense is guilty of a category D felony and shall be punished as provided in NRS 193.130.³

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

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

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

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

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

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

12 IV

13 FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

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

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

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

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

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

2 **A. STANDING OF POLMER80**

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

7 NRS 30.040 provides, in pertinent part:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21 *Flamingo*, 125 Nev. at 507.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21 As explained by the Nevada Supreme Court:

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

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

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

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

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

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

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

23
24 **V**

25 **ORDER AND JUDGMENT**

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

1 Good cause appearing,

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

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

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

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

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

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

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

23 THIS IS A FINAL JUDGMENT.

24 DATED this 10th day of December, 2021.

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JOHN P. SCHLEGELMILCH,
DISTRICT JUDGE

1 Case No. 21-CV-00690

2 Dept. No. I

3 **Certificate of Mailing**

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

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

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


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

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

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

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

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

21 
22 _____
23 Employee of Hon. John P. Schlegelmilch
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1 CASE NO.: 21-CV-00690

2 DEPT. NO.: 1

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

4 **IN AND FOR THE COUNTY OF LYONE**

5 POLYMER80, INC.

6 Plaintiff,

7 vs.

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

17 Defendants.

Electronically Filed
Dec 30 2021 09:31 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

Elizabeth A. Brown
2021 DEC 20 AM 11:24
FILED
CLERK OF SUPREME COURT
THIRD JUDICIAL DISTRICT
STATE OF NEVADA

14 **NOTICE OF APPEAL**

15 Notice is hereby given that Stephen Sisolak, Governor of Nevada, Aaron Ford,
16 Attorney General of Nevada, George Togliatti, Director of the Nevada Department of Public
17 Safety, Mindy McKay, Administrator of the Records, Communications, and Compliance
18 Division of the Nevada Department of Public Safety (collectively, the "State Defendants")
19 hereby appeal to the Supreme Court of Nevada from the November 23, 2021 oral order
20 granting Polymer80, Inc. summary judgment and the "Findings of Fact, Conclusions of
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26 ...

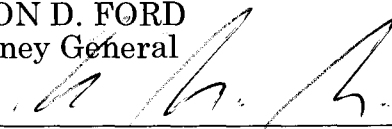
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1 Law, and Order Granting Summary Judgment in Favor of Plaintiff, Polymer80, Inc.”
2 entered December 10, 2021 and notice of entry of which was served on December 13, 2021.

3 DATED this 16th day of December 2021.

4 AARON D. FORD
Attorney General

5 By: 
6 Steve Shevorski (Bar No. 8256)
7 Chief Litigation Counsel
8 555 E. Washington Ave., Ste. 3900
9 Las Vegas, NV 89101
(702) 486-3420 (phone)
(702) 486-3768 (facsimile)
sshevorski@ag.nv.gov

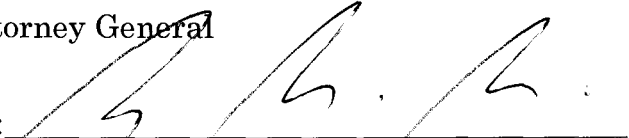
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AFFIRMATION

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

DATED this 16th day of December, 2021.

AARON FORD
Attorney General

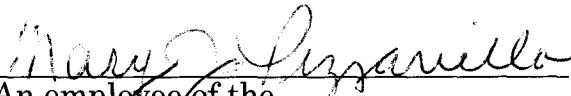
By: 
Steve Shevorski (Bar No. 8256)
Chief Litigation Counsel
Office of the Nevada Attorney General

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1 CERTIFICATE OF SERVICE

2 I hereby certify that I am an employee of the State of Nevada, Office of the Attorney
3 General, and that on the 16th day of December, 2021, I served the foregoing document, by
4 causing a true and correct copy thereof to be served via U.S. Mail, addressed to the
5 following:

6 Brad M. Johnston
7 Simons Hall Johnston PC
8 22 State Route 208
9 Yerington, NV 89447
10 *Attorneys for Polymer80, Inc.*

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

1 CASE NO.: 21-CV-00690

2 DEPT. NO.: 1

3

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

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

6 POLYMER80, INC.

7 Plaintiff,

8 vs.

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

17 Defendants.

Brandon Baptist
2021 DEC 20 AM 11:24
FILED
CLERK OF APPELLATE COURT
THIRD JUDICIAL DISTRICT

18 **CASE APPEAL STATEMENT**

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, the "State Defendants") hereby file their
23 Case Appeal Statement pursuant to Nevada Rule of Appellate Procedure 3(f).

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

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

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

Honorable John P. Schlegelmilch.

...

...

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

2 **(a) Name of appellants**

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

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

8 Steve Shevorski, Esq.
9 Nevada Bar No. 8256
10 Chief Litigation Counsel
11 Office of the Nevada Attorney General
12 555 E. Washington Ave., Ste. 3900
Las Vegas, NV 89101
(702) 486-3420 (phone)
(702) 486-3768 (facsimile)
sshevorski@ag.nv.gov

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

17 **(a) Name of respondent**

18 Polymer80, Inc.

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

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

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

25 ...

26 ...

27 ...

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

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

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

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

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

12 Appellants are represented by retained counsel on appeal.

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

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

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

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

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

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

28 In its complaint and its motion for preliminary injunction, Plaintiff contended that
AB 286 was unconstitutionally vague. Following briefing and argument, the district court
entered an order granting preliminary injunction against Appellants with respect to
enforcing Section 3.5 of AB 286, concluding that it was unconstitutionally vague as a
criminal statute. Further, the district court concluded that Plaintiff sufficiently

1 demonstrated irreparable harm to warrant a preliminary injunction based on the inability
2 to conduct business without the threat of criminal prosecution. Finally, the district court
3 concluded that the public interests and the balance of hardships weigh in favor of a
4 preliminary injunction due to the ambiguity in AB 286.

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

8 Following expedited discovery and briefing on cross motions for summary judgment,
9 the district court issued an oral order granting summary judgment against Defendants,
10 including a permanent injunction, against enforcement of Section 3 and 3.5 of Assembly
11 Bill 286, after oral argument. The district court concluded that those sections of Assembly
12 Bill 286 were unconstitutionally vague, and that Plaintiff had demonstrated the other
13 requirements for a permanent injunction. The written "Findings of Fact, Conclusions of
14 Law, and Order Granting Summary Judgment in Favor of Plaintiff, Polymer80, Inc." were
15 entered December 10, 2021 and notice of entry of which was served on December 13, 2021.

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

19 On July 16, 2021, the district court entered a preliminary injunction against Section
20 3.5 of Assembly Bill 286. Defendants timely appealed the granting of a preliminary
21 injunction on August 18, 2021. The caption for the earlier appeal was as follows:

22 *Sisolak et al. v. Polymer80, Inc.*, Case No. 83385

23 Based on the permanent injunction and judgment entered by the district court on
24 November 23, 2021, Defendants' appeal of the preliminary injunction is now moot.

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

26 This appeal does not involve child custody or visitation.

27 ...

28 ...

...

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

3 This appeal does not involve the possibility of settlement.

4 DATED this 16th day of December 2021.

5 AARON D. FORD
6 Attorney General

7 By: 


8 Steve Shevorski (Bar No. 8256)
9 Chief Litigation Counsel
10 Office of the Nevada Attorney General
11 555 E. Washington Ave., Ste. 3900
12 Las Vegas, NV 89101
13 (702) 486-3420 (phone)
14 sshevorski@ag.nv.gov
15 *Attorneys for Defendants*

AFFIRMATION

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

DATED this 16th day of December, 2021.

AARON D. FORD
Attorney General

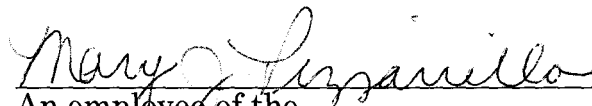
By: 
Steve Shevorski (Bar No. 8256)
Chief Litigation Counsel
Attorneys for Defendants

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1 **CERTIFICATE OF SERVICE**

2 I hereby certify that I am an employee of the State of Nevada, Office of the Attorney
3 General, and that on the 16th day of December, 2021, I served the foregoing document, by
4 causing a true and correct copy thereof to be served via U.S. Mail, addressed to the
5 following:

6 Brad M. Johnston
7 Simons Hall Johnston PC
8 22 State Route 208
9 Yerington, NV 89447
10 *Attorneys for Polymer80, Inc.*

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

Case Summary

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

Case Number: 21-CV-00690

Agency: Third Judicial District Court

Type: Other Civil Matters

Received Date: 6/22/2021

Status: Closed

Status Date: 12/10/2021

Involvements

Primary Involvements

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

Other Involvements

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

2. NRCP ~ RELATED PARTY

Lead/Active: False

3. NRCP ~ RELATED PARTY

Lead/Active: False

4. NRCP ~ RELATED PARTY

Lead/Active: False

5. NRCP ~ RELATED PARTY

Lead/Active: False

Other Civil Matters

1. NRCP 3 ~ COMPLAINT

Lead/Active: True

Case Status History

6/22/2021 3:33:00 PM | Open
12/10/2021 3:33:00 PM | Closed

Documents

6/22/2021 Verified Complaint.pdf - Filed
6/22/2021 Summons- Issued- Aaron Ford.pdf - Issued
6/22/2021 Summons- Issued- George Togliatti.pdf - Issued
6/22/2021 Summons- Issued- Mindy McKay.pdf - Issued
6/22/2021 Summons- Issued- Steve Sisolak.pdf - Issued
6/22/2021 Civil Cover Sheet.pdf - Filed
6/24/2021 Plaintiff's Rule 7.1 Disclosure Statement .pdf - Filed
6/25/2021 Motion for Temporary Restraining Order and Preliminary Injunction.pdf - Filed
6/25/2021 Notice of Entry of Order (Order filed 6-25-21).pdf - Filed
6/25/2021 Order Shortening Time.pdf - Filed
6/25/2021 Emergency Application of Polymer80 Inc. for Order to Show Cause or, Alternatively, .pdf - Filed
Notes: Its Motion for Order Shortening Time
6/30/2021 Motion to Associate Counsel- James J. McGuire.pdf - Filed
6/30/2021 Proof of Service (Summons and Complaint).pdf - Filed
7/2/2021 Order Granting Motion to Associate Counsel- James J. McGuire.pdf - Filed
7/6/2021 Defendants' Opposition to Application for Temporary Restraining Order.pdf - Filed
7/12/2021 Reply Memorandum of Points and Authorities in Support of Motion for Temp Restraining Order.pdf - Filed
7/13/2021 Motion to Associate Counsel- Mark T. Doerr.pdf - Filed
7/14/2021 Order Granting Motion to Associate Counsel- Mark T. Doerr.pdf - Filed
7/15/2021 Security Bond Check.pdf - For Court Use Only
7/15/2021 Notice of Posting Security.pdf - Filed
7/15/2021 Case Management and Trial Scheduling Order.pdf - Filed
7/16/2021 Notice of Entry of Order.pdf - Filed
7/16/2021 Order Granting Preliminary Injunction.pdf - Filed
7/23/2021 Transcript of Proceedings Motion for Temporary Restraining Order July 14, 2021.pdf - Filed
8/16/2021 Appellant's Case Appeal Statement.pdf - Filed
8/16/2021 Notice of Appeal.pdf - Filed
8/18/2021 Defendants' Motion for Stay Pending Appeal.pdf - Filed
8/20/2021 Receipt for Documents S.C..pdf - Filed
8/30/2021 Memorandum of Points and Authorities in Opposition to Motion for Stay Pending Appeal.pdf - Filed
9/7/2021 Defendants' Reply in Support of Motion for Stay Pending Appeal.pdf - Filed
9/16/2021 Request to Submit Defendant's Motion for Stay Pending Appeal.pdf - Filed
9/16/2021 Proposed Order Granting Stay Pending Appeal.pdf - Submitted
9/21/2021 Setting Memo (10-6-21).pdf - Filed
9/27/2021 Defendants Answer to Plaintiffs Complaint.pdf - Filed
10/12/2021 Subpoenaed Nonparty Nevada State Assemblywoman Sandra Jauregui's Motion to Quash Subpoena.pdf - Filed
Notes: and for Protective Order
10/19/2021 Opposition of Polymer80 Inc to Motion of Assemblywoman Jauregui to Quash Subpoena.pdf - Filed
10/19/2021 Stip & Order for Briefing and Hearing.pdf - Filed
10/22/2021 Zoom Link -10-25-2021.pdf - For Court Use Only
10/22/2021 COPY- Subpoenaed Nonparty Nevada State Assemblywoman Sandra Jauregui's Reply in Support.pdf - For Court Use Only
Notes: of Motion to Quash Subpoena and for Protective Order
10/25/2021 Letter to Court- Discovery Issues- Dated 10-25-21.pdf - Filed
10/25/2021 Subpoenaed Assemblywoman Jauregui's Reply in Support of Motion to Quash Subpoena and for Protective Order.pdf - Filed
11/1/2021 Transcript Status Hearing 10-25-21.pdf - Filed
11/5/2021 Plaintiffs Pretrial Disclosures.pdf - Filed
11/8/2021 Motion of Polymer80, Inc. for Summary Judgment (Exhibit D on FlashDrive).pdf - Filed
11/8/2021 Defendant's Motion for Summary Judgment.pdf - Filed
11/8/2021 Defendant's Pretrial Disclosure.pdf - Filed
11/8/2021 Polymer80 Motion for Summary Judgment Exhibit D Flash Drive\Legislative History of AB 286.pdf - Filed
11/9/2021 Order Denying Defendants' Motion for Stay Pending Appeal.pdf - Filed
11/18/2021 Zoom Link 11-23-2021.pdf - For Court Use Only

APP 001061

Case Summary

11/18/2021 Memorandum of Points and Authorities of Polymer80, Inc in Opposition to Defendants Motion for Summary.pdf - Filed

Notes: Judgement an in Further Support of its Motion for Summary Judgement

11/18/2021 Stip & Order for Briefing & Hearing on Motions for Summary Judgment.pdf - Filed

11/19/2021 Plaintiff's Objection to Defendants' Pretrial Disclosures.pdf - Filed

11/19/2021 Defendants' Opposition to Polymer80s Motion for Summary Judgment.pdf - Filed

11/22/2021 Order Granting Subpoenaed Nonparty Nevada State Assemblywoman Sandra Jauregui's Motion to Quash Subpoena.pdf - Filed

Notes: and for Protective Order

11/24/2021 Notice of Entry of Order Granting Sandra Jauregui's Motion to Quash.pdf - Filed

Notes: Subpoena and for Protective Order

12/10/2021 Findings of Fact, Conclusions of Law, & Order Granting Summary Jdgmnt.pdf - Filed

12/13/2021 Notice of Entry of Order-Summary Judgment.pdf - Filed

12/20/2021 Notice of Appeal (Order Filed 12-10-2021).pdf - Filed

12/20/2021 Case Appeal Statement.pdf - Filed

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2021 DEC 10 AM 9:54

TANYA SCIBINE
COURT ADMINISTRATOR
THIRD JUDICIAL DISTRICT

Kathy Thomas

1 Case No. 21-CV-00690

2 Dept. No. I

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

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

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

8 POLYMER80, INC.,

9 Plaintiff,

10 vs.

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

18 Defendants.

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

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

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

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

3
4 **I**

5 **PROCEDURAL HISTORY**

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

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

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

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

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

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

16 Accordingly,

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

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II

CONTESTED PROVISIONS OF AB 286

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

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

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

2. A person who violates this section:
 - (a) For the first offense, is guilty of a gross misdemeanor; and
 - (b) For the second or any subsequent offense is guilty of a category D felony and shall be punished as provided in NRS 193.130.³

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

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

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

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

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

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

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

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

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

21 III

22 STANDARD ON SUMMARY JUDGMENT

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

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

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

12 **IV**

13 **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

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

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

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

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

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

2 **A. STANDING OF POLMER80**

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

7 NRS 30.040 provides, in pertinent part:

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

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

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

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

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

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

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

10 Polymer80 satisfies the requirement to show that they would "personally suffer injury that
11 can fairly be traced to the allegedly unconstitutional statute" by facing the prospect of felony
12 criminal prosecution each time they produce a product which allegedly falls under the purview of
13 the statute. Further, Polymer80 would suffer significant economic loss as set forth in the Deposition
14 testimony submitted, and uncontested by the Defendants. This, combined with the legislative history
15 showing that the thrust of the bill was to put Polymer80 out of business, clearly establishes that,
16 unlike any other potential litigant, Polymer80 will vigorously and effectively present the case for
17 facial invalidity of the statute – which is Polymer80's only true redress.
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19 This Court determines that Polymer80 will suffer irreparable harm in the absence of
20 declaratory and/or injunctive relief, since, as under *Flamingo*, that harm exists if a Nevadan, such as
21 Polymer80, must conduct its affairs in the wake of criminal jeopardy that fails to provide fair notice
22 of the conduct being criminalized.⁶
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27 ⁶ The Defendants previously argued at the preliminary injunction hearing that Section 3(1)(b) would
28 mitigate any harm as all Polymer80 would have to do is put a serial number on its products. The

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

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

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

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

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

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

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

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

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

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

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

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

21 *Flamingo*, 125 Nev. at 507.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21 As explained by the Nevada Supreme Court:

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

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

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

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

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

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

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

23 **V**

24 **ORDER AND JUDGMENT**

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

1 Good cause appearing,

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

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

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

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

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

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

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

23 THIS IS A FINAL JUDGMENT.

24 DATED this 10th day of December, 2021.

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JOHN P. SCHLEGELMILCH,
DISTRICT JUDGE

1 Case No. 21-CV-00690

2 Dept. No. I

3 **Certificate of Mailing**

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

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

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


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

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

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

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

19 DATED: This 16th day of December, 2021.

20
21 
22 Employee of Hon. John P. Schlegelmilch

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.

FILED
2021 DEC 13 AM 9:12
TANYA SEVINE
COURT ADMINISTRATOR
THIRD JUDICIAL DISTRICT
Tanya Sevine

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.

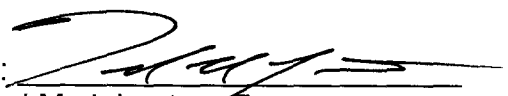
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12 STEPHEN SISOLAK, Governor of Nevada, AARON
13 FORD, Attorney General of Nevada, GEORGE
14 TOGLIATTI, Director of the Nevada Department
15 of Public Safety, MINDY MCKAY, Administrator
16 of the Records, Communications, and Compliance
17 Division 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 *Findings of Fact, Conclusions of Law, and Order Granting*
23 *Summary Judgment in Favor of Plaintiff, Polymer80, Inc.* attached hereto as **Exhibit A**.

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

25 By: 
26 Brad M. Johnston, Esq.
27 Nevada Bar No. 8515
28 22 State Route 208
Yerington, Nevada 89447
Telephone: 775-463-9500
bjohnston@shjnevada.com

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

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

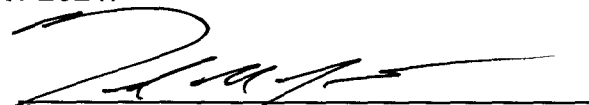
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CERTIFICATE OF SERVICE

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

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

DATED this 13th day of December 2021.


Brad M. Johnston

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

Exhibit A

Exhibit A

FILED

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CLERK OF COURT
JUDICIAL ADMINISTRATION
THIRD JUDICIAL DISTRICT

Kathy Thomas

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.

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

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

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

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

3 I

4 **PROCEDURAL HISTORY**

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

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

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

24
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27 _____
28 ¹ At that time, this Court declined to enter a Preliminary Injunction as to the enforcement of AB 286
Section 3, because that portion of the new statute would not go into effect until January 1, 2022.

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

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

16 Accordingly,

17 IT IS HEREBY ORDERED that the *Motion of Polymer80, Inc., for Summary Judgment* is
18 GRANTED, and that *Defendants' Motion for Summary Judgment* is DENIED, for the reasons set
19 forth herein and on the record at the November 23, 2021, hearing.
20
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23 ² Before the parties filed their competing Motions for Summary Judgment, Defendants filed an
24 appeal from this Court's *Order Granting Preliminary Injunction*. Thereafter, Defendants filed a
25 Motion to Stay this case in this Court, arguing, among other things, that this matter presented a pure
26 question of law that would be resolved upon their then-pending appeal. This Court denied
27 Defendants stay, largely because the issue on appeal was not the ultimate question of whether or not
28 AB 286 was and is unconstitutionally vague but whether or not this Court had abused its discretion
in granting interim relief. Moreover, a stay would have only delayed a ruling on the constitutionality
of AB 286, which would not have been in the best interests of either Plaintiff or Defendants.

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II

CONTESTED PROVISIONS OF AB 286

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

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

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

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

2. A person who violates this section:

- (a) For the first offense, is guilty of a gross misdemeanor; and
- (b) For the second or any subsequent offense is guilty of a category D felony and shall be punished as provided in NRS 193.130.³

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

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

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

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

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

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

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

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

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

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

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

III
STANDARD ON SUMMARY JUDGMENT

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

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

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

12 IV

13 FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

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

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

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

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

2 **A. STANDING OF POLMER80**

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

7 NRS 30.040 provides, in pertinent part:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22 The Nevada Supreme Court has adopted a two-pronged test for determining whether a
23 criminal statute is so impermissibly vague as to run afoul of the due process clause of the Nevada
24

25
26 argument was abandoned on summary judgment. Section 3(1)(b) and Section 3.5(1)(b) by their own
27 terms only provide relief when the "unfinished" frame or receiver is "required" by federal law to be
28 imprinted with a serial number. It is undisputed that the products produced by Polymer80 are not
required by federal law to have a serial number imprinted on them.

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

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

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

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

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

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

21 *Flamingo*, 125 Nev. at 507.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21 As explained by the Nevada Supreme Court:

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

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

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

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

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

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

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

23 **V**

24 **ORDER AND JUDGMENT**

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

1 Good cause appearing,

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

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

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

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

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

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

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

23 THIS IS A FINAL JUDGMENT.

24 DATED this 10th day of December, 2021.

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JOHN P. SCHLEGELMILCH,
DISTRICT JUDGE

1 Case No. 21-CV-00690

2 Dept. No. I

3 **Certificate of Mailing**

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

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

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


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

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

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

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

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

21 
22 _____
23 Employee of Hon. John P. Schlegelmilch
24
25
26
27
28

Case Summary

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

Case Number: 21-CV-00690

Agency: Third Judicial District Court

Type: Other Civil Matters

Received Date: 6/22/2021

Status: Closed

Status Date: 12/10/2021

Involvements

Primary Involvements

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

Other Involvements

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

2. NRCP ~ RELATED PARTY

Lead/Active: False

3. NRCP ~ RELATED PARTY

Lead/Active: False

4. NRCP ~ RELATED PARTY

Lead/Active: False

5. NRCP ~ RELATED PARTY

Lead/Active: False

Other Civil Matters

1. NRCP 3 ~ COMPLAINT

Lead/Active: True

Case Status History

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

12/10/2021 3:33:00 PM | Closed

Events

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

Andersen, Andrea Deputy Clerk -
AANDERSEN

Terhune, Kathy

Staff - STAFF

Court Room B - CourtRmB

Geurts, Patrick Bailiff - X004896

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

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

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

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

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

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

10/6/2021 1:30:00 PM | Motion Hearing | 21-CV-00690 Dept I | Court Room B

Thomas, Kathy Dep. Clerk - KTHOMAS

Staff - STAFF

Clerk - CLERK

lawclerk1 - LAW1

Rye, Cheri - Bailiff

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

Notes: Hearing on Motion For Stay Pending Appeal. Court heard argument and statements of counsel . Court Denied the motion for stay. A motion for summary judgment may be filed at any time. If there is a motion filed It may be heard fairly soon. Parties may request to appear by zoom at the Status hearing on October 25, 2021.

Case Summary

Counsel for the Plaintiff will prepare the Order for the hearing today.
10/25/2021 1:30:00 PM | Status Hearing | DEPT I 21-CV-00690 | Court Room B

Terhune, Kathy

Staff - STAFF

Court Room B - CourtRmB

Tovar, Victoria Deputy Clerk - VTOVAR

lawclerk1 - LAW1

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

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

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

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

via Zoom

Notes: Kevin Powers and Michael Patrick also appeared via Zoom. Kiel Ireland, Esq. appeared on behalf of Attorney General's office. Mr. Powers and Mr. McGuire argued matter. Court finds claim of sovereign immunity does not apply and claim of legislative immunity does not apply to statements made outside legitimate legislative function and activity; finds statements made to Nevada public radio were not within sphere of legitimate legislative activity; stated Nevada's discovery statutes were amended to change hugely broad definition of Nevada discovery to less broad standard; finds statements made outside legislative house have not shown they are privileged statements; and finds statements made in public are basically public speech. Court granted protective order for Assemblywoman and quashed subpoena. Court granted motion at this time and finds not particularly relevant to this matter. Mr. Powers to prepare order. Court advised will set up discovery conference. Mr. Ireland addressed discovery concerns. Court ordered counsel meet and confer on discovery issues within next day; advised Mr. Ireland can file opposition to Mr. Johnston's letter to Court by Wednesday, October 27, 2021; and advised counsel to notify Court if unable to reach agreement on matter. Mr. McGuire and Mr. Ireland advised plan to file motions for summary judgment. Court advised counsel to meet and confer on motions and to notify Court of decision. Court ordered trial disclosures due November 5, 2021; ordered motions for summary judgment to double as pre-trial statement memorandums and to include witness lists, trial exhibit lists, and any objections; ordered joint memorandums be filed by November 29, 2021 by 12:00 p.m.; and ordered motions in limine due by November 15, 2021. Court advised counsel to have five (5) sets of exhibits (1 for clerk, 1 for judge, 1 for witness, 1 for opposing counsel, and 1 for themselves) and to have exhibits pre-marked before trial.

11/23/2021 1:30:00 PM | Motion Hearing | 21-CV-00690 | Court Room B

Thomas, Kathy Dep. Clerk - KTHOMAS

Terhune, Kathy

Staff - STAFF

Clerk - CLERK

Rye, Cherie

lawclerk1 - LAW1

Newby, Craig Esq.

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

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

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

Via Zoom

Notes: Hearing on Motions for Summary Judgment. Court heard argument of Counsel. Court Ordered: The Court finds that Section 3 and 3.5 of AB 286 are unconstitutionally vague. It fails to provide a person of ordinary intelligence as to what conduct is being prohibited. Section 3 and Section 3.5 AB 286 are unconstitutionally vague and violate the Due process Clause. It fails to allow a citizen notice of law so they can conform their conduct. The plaintiff's motion for Summary Judgment is granted and the Defendant's Motion for Summary Judgment is denied. Declaratory Judgment is entered in favor of Polymer80 and against Defendants. The State of Nevada & the Defendants are permanently enjoined from enforcing Section 3 and Section 3.5 of AB 286.

DISTRICT COURT CIVIL COVER SHEET

LYON County, Nevada

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

Dept. I

2021 JUN 22 PM 3:48

TANYA BEECHING
COURT ADMINISTRATOR
THIRD JUDICIAL DISTRICT

V.T. DEPUTY

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

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

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

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

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

June 22, 2021

Date

Signature of initiating party or representative

See other side for family-related case filings.