

CASE NO. 83999

IN THE SUPREME COURT OF THE STATE OF NEVADA

Electronically Filed
Feb 02 2024 05:15 PM
Elizabeth A. Brown
Clerk of Supreme Court

STEPHEN SISOLAK, Governor of Nevada;
AARON FORD, Nevada Attorney General;
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,

Appellants,

v.

POLYMER80, INC.,

Respondent.

*Appeal from the Findings of Fact, Conclusions of Law, and Order Granting
Summary Judgment in Favor of Plaintiff, Polymer80, Inc.*
Entered by the Third Judicial District Court on December 10, 2021

NOTICE OF SUPPLEMENTAL AUTHORITY

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Attorneys for Respondent Polymer80, Inc.

Respondent Polymer80, Inc. (“Polymer80”), by and through its undersigned counsel, hereby files this notice of supplemental authority pursuant to Nevada Rule of Appellate Procedure 31(e).

The purpose of this notice is to update this Court on a more recent decision in the ongoing litigation challenging the Federal Bureau of Alcohol, Tobacco, Firearms and Explosives’ (“ATF”) April 26, 2022 regulation that is codified at 27 C.F.R. parts 447-449, and particularly 27 C.F.R. § 478.12.

This notice of supplemental authority is necessary because 27 C.F.R. § 478.12 is the subject matter of the parties’ supplemental briefs, which Respondents and Polymer80 filed on September 1, 2023, and September 29, 2023, respectively. *See Order Directing Supplemental Briefing* dated August 9, 2023 (“we direct the parties to supplement the appellate briefing on the question of whether it is appropriate to use federal law, including 27 C.F.R. § 478.12 (2022), to clarify the purportedly vague terms in the challenged statutes and whether the use of federal law clarifies the terms.”).

Respondents previously directed this Court’s attention to an order of the United States Supreme Court in *Garland v. Blackhawk Mfg. Grp., Inc.*, ___ S. Ct. ___, No. 23A302, 2023 WL 6801523 (October 16, 2023), for the proposition that that the ATF’s April 26, 2022 regulation – and particularly 27 C.F.R. § 478.12 – “is again enforceable.” *See Respondents’ Notice of Supplemental Authority* at p. 3. The

entirety of the Supreme Court's order cited by Respondents as supplemental authority was as follows: "Application to vacate injunction presented to Justice Alito and by him referred to the Court granted. The September 14, 2023 order of the United States District Court for the Northern District of Texas, case No. 4:22-cv-691, is vacated." *See id.*

However, after the above-referenced order was issued by the United States Supreme Court, vacating an injunction, the United States Court of Appeals for the Fifth Circuit issued its decision in *Vanderstock v. Garland*, 86 F. 4th 179 (2023), on November 9, 2023. That decision resolved the direct appeal that the government took from the decision of the United States District Court for the Northern District of Texas vacating the ATF's new rule, including 27 C.F.R. § 478.12, on summary judgment.

The Fifth Circuit affirmed the District Court's finding that the ATF exceeded its authority in adopting its new rule, stating "the challenged portion of the Final Rule that redefines 'frame or receiver' to include partially complete, disassembled, or nonfunctional frames or receivers constitutes unlawful agency action." *See Vanderstock v. Garland*, 86 F. 4th 179, 190 (2023). Thus, the Fifth Circuit found that 27 C.F.R. § 478.12 is invalid. *See id.* Therefore, as stated in Polymer80's Supplemental Brief at pages 2-3, this Court should not examine 27 C.F.R. § 478.12

in an attempt to clarify the vague terms found in AB 286 because that federal regulation resulted from an unlawful exercise of the ATF's rulemaking authority.¹

DATED this 2nd day of February, 2024

/s/ Brad M. Johnston

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¹ The Fifth Circuit reversed the District Court to the extent the lower court vacated the ATF's new rule in its entirety and remanded the case "to the district court for further consideration of the remedy, considering this Court's holding on the merits." *See Vanderstock*, 86 F. 4th at 196-97.

CERTIFICATE OF SERVICE

I hereby certify that on this date, pursuant to NRAP 25(a), I electronically filed the foregoing *Notice of Supplemental Authority* with the Clerk of the Court by using the ECF system which served the following parties electronically:

Aaron Ford, Nevada Attorney General
Kiel B. Ireland, Deputy Solicitor General
Jessica E. Whelan, Deputy Solicitor General

Attorneys for Appellants

Dated this 2nd day of February, 2024

/s/ Brad M. Johnston _____
Brad M. Johnston