

IN THE
COMMONWEALTH COURT OF
PENNSYLVANIA

Docket No. 694 M.D. 2019

LANDMARK FIREARMS LLC, US RIFLE, LLC, POLYMER80, INC.,
and FIREARMS POLICY COALITION

Petitioners

vs.

COLONEL ROBERT EVANCHICK, COMMISSIONER
PENNSYLVANIA STATE POLICE

Respondent

**PETITIONERS' APPLICATION FOR SPECIAL RELIEF IN THE
FORM OF AN EMERGENCY PRELIMINARY INJUNCTION
UNDER PA. R.A.P. 1532**

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December 20, 2019

Petitioners, by counsel, hereby move pursuant to Rule 1532 of the Pennsylvania Rules of Appellate Procedure for special relief in the form of an emergency preliminary injunction enjoining Colonel Robert Evanchick, the Commissioner of the Pennsylvania State Police, from implementing or enforcing any practice, policy, regulation, rule, or interpretation relating to either the stage at which point an unfinished receiver (80% receiver or frame) meets the definition of “firearm” or the Attorney General’s December 16, 2019 Legal Opinion. In support of their application, Petitioners hereby incorporate the Petition for Review filed in this action on December 20, 2019, as well as their declarations, and brief in support of this Application. Petitioners further state the following:

BACKGROUND

1. As set forth more fully in the Petition for Review, on December 16, 2019, Attorney General Joshua Shapiro, along with Governor Tom Wolfe, held a press conference to announce that the Attorney General has issued a Legal Opinion, which putatively determined that non-firearm objects are properly classified as firearms under the UFA. *See* Exhibit C. ¹
2. The press release also stated that “[f]ollowing this legal opinion issuance, the Office of Attorney General and Pennsylvania State Police will now work

¹ Also available at: <https://www.attorneygeneral.gov/taking-action/press-releases/ag-shapiro-gov-wolf-80-receivers-are-firearms/>.

together on an implementation strategy to ensure that these weapons do not end up in the hands of criminals, convicted felons or prohibited purchasers.”

Id.

3. On December 20-22, 2019, the annual holiday Oaks Gun Show, which features 1,700 tables, will be held.²
4. Petitioners Landmark Firearms and US Rifle, have purchased table space at the show and plan to attend with inventory of non-firearm objects. *See* Declaration of Benjamin Brown at ¶15 and Declaration of Timothy Mulverhill at ¶15.
5. Landmark Firearms expects to lose between \$1,800 and \$3,600 and US Rifle expects to lose up to \$12,000 in revenue should they be unable to conduct transactions involving non-firearm objects. *See* Declaration of Benjamin Brown at ¶14 and Declaration of Timothy Mulverhill at ¶16.
6. Polymer80 has submitted its non-firearm objects for classification by ATF. ATF has repeatedly held that their non-firearm objects are not firearms for the purposes of federal law. *See* Exhibit 1 to Declaration of David Borges.
7. Polymer80 sells directly to individuals the non-firearm objects it produces on its website www.polymer80.com. In the past fourteen (14) days,

² *See* <http://www.eagleshows.com>.

Polymer80 has had five (5) orders from Pennsylvanians. *See* Declaration of David Borges at ¶16.

8. Firearms Policy Coalition, Inc. (“FPC”) has a member in Pennsylvania who has several non-firearm objects en route to his home for which he attempted to cancel the order or stop the shipment but has been unsuccessful. *See* Declaration of Brandon Combs at ¶¶ 4-9.
9. The federal definition of the term “firearm” found in the Gun Control Act (“GCA”) is almost identical to the definition of the term “firearm” contained in the Legal Opinion, and in relation to the pertinent portions addressed in the Legal Opinion, is verbatim. *Cf.* 18 U.S.C. § 921(a)(3) and 18 Pa.C.S. § 6105(i)(emphasis reflecting verbatim pertinent portions).

The term “firearm” means (A) any weapon (including a starter gun) which will or is designed to or may readily be converted to expel a projectile by the action of an explosive; (B) the frame or receiver of any such weapon...

the term “firearm” shall include any weapons which are designed to or may readily be converted to expel any projectile by the action of an explosive or the frame or receiver of any such weapon.

10. ATF has repeatedly determined that non-firearm objects, like the ones the Legal Opinion purports *are* firearms, are not firearms under the federal definition. *See* Exhibit 1 to Declaration of David Borges.
11. Yet, the Pennsylvania Attorney General and Pennsylvania State Police have seemingly reached the opposite conclusion, despite the definitions being

almost identical and lacking any sort of division that is a technical authority regarding firearms and their classification.

INJUNCTIVE RELIEF

12. Petitioners move this Court for an Order preventing the Pennsylvania State Police from implementing or enforcing any practice, policy, regulation, rule, or interpretation relating to either the stage at which point non-firearm object meets the definition of “firearm” or the Attorney General’s December 16, 2019 Legal Opinion. To effectuate that ruling, Petitioners now seek an emergency preliminary injunction to maintain the status quo until such time this Court may rule on the merits.
13. Pursuant to Pa. R.A.P. 1532(a), this Court may order special relief, including a preliminary or special injunction “in the interest of justice and consistent with the usages and principles of law.” The standard for obtaining a preliminary injunction under this rule is the same as that for a grant of a preliminary injunction pursuant to the Pennsylvania Rules of Civil Procedure. *Shenango Valley Osteopathic Hosp. v. Dep’t of Health*, 451 A.2d 434, 439 (Pa. 1982); *Commonwealth ex rel. Pappert v. Coy*, 860 A.2d 1201, 1204 (Pa. Commw. Ct. 2004). Preliminary injunctive relief may be granted

at any time following the filing of a Petition for Review. *See* Pa. R.A.P. 1532(a).

14. The prerequisites of a preliminary injunction are: 1) the injunction is necessary to prevent immediate and irreparable harm not compensable in money damages; 2) greater injury will result from refusing the injunction than from granting it; 3) the injunction restores the parties to *status quo ante*; and 4) the activity sought to be restrained is actionable and the plaintiff's right to relief is clear. *Dillon v. City of Erie*, 83 A.3d 467, 470 n.1 (Pa. Cmwlth. 2014) (*en banc*).
15. Petitioners meet all of the elements for the entering of a preliminary injunction in this case.
16. ***First***, an injunction is necessary to prevent immediate and irreparable harm that cannot be adequately compensated by damages. Pennsylvania law does not require a person to be prosecuted to find that he has suffered irreparable harm. *See City of Erie v. Northwestern Food Council*, 322 A.2d 407, 411-12 (Pa. Cmwlth. 1974), quoting *Harris-Walsh, Inc. v. Borough of Dickson City*, 216 A.2d 329, 331 (Pa. 1966) (holding that petitioner was not required to undergo criminal prosecution before availing himself of an equitable remedy).

17. It cannot be disputed that Petitioners are under threat of immediate and irreparable harm, as the PSP's website makes explicitly clear that it now contends that it is unlawful to sell or transfer "partially-manufactured (often referred to as 80%) frames and receivers" in the absence of "a background check through the Pennsylvania Instant Check System" and that "PSP is not yet ready to process such checks and is working diligently to have a process in place as soon as possible within the next thirty days to allow these checks to occur in a lawful manner." *See* Exhibit B.
18. ***Second***, greater injury will result from refusing the injunction than granting it.
19. As Petitioners are under threat of criminal prosecution and civil penalties for the *pre-* and *post-*PSP Policy sale of non-firearm objects that have not been specified in a manner that a person of ordinary intelligence is able to determine what is being regulated or enforced, there simply cannot be any greater injury than the refusal to grant an injunction, as Petitioners are facing misdemeanor and felony threats of prosecution, fines, and monumental loss of revenue, including for conduct that when they performed it, there was not dispute that it was lawful.
20. ***Third***, Petitioners' requested injunction seeks only to preserve the status quo. *See City of Philadelphia v. Commonwealth*, 837 A.2d 591, 604 (Pa.

Commw. Ct. 2003) (granting preliminary injunctive relief and noting that “the public interest lies in favor of maintaining the status quo” pending determination of the merits in the case). *See also* “The *status quo ante* to be preserved by a preliminary injunction is the last actual, peaceable, lawful, noncontested status which preceded the pending controversy.” *Dillon v. City of Erie*, 83 A.3d 467, 472 n. 7 (Pa. Cmwlth. 2014) (*en banc*).

21. In this case, there can be no dispute that the last noncontested status existed immediately prior to the Attorney General’s Legal Opinion of December 16, 2019, and the PSP’s interpretation, implementation, and enforcement of it, immediately thereafter through the PSP’s Policy.
22. ***Fourth***, the Petitioners’ right to relief is clear and as such, they are likely to prevail on the merits of the underlying claims on this case.
23. As discussed at length in the Brief in Support of this Application, the Legal Opinion and PSP’s Policy violates Article II, Section 1 of the Pennsylvania State Constitution because it is an arbitrary exercise of uncontrolled discretionary power which results in the PSP making new law without the General Assembly’s oversight or public involvement.
24. Further, the Legal Opinion and PSP’s Policy violates the Regulatory Review Act (“RRA”) inasmuch that it did not comply with a single provision of the Act. In two sections of the Pa. Code, the Pennsylvania State Police

previously entered into rulemaking in order to define the term “firearm”. *See* 37 Pa. Code §§ 31.102 and 33.102. Notably devoid from both of the definitions and the other pertinent sections in the regulations promulgated by the PSP, is a framework for determining what it means to be “readily be converted to expel a projectile by action of an explosion.” Perhaps more importantly, the terms “designed” and “may readily be converted” are also not defined.

25. Additionally, the Legal Opinion and PSP’s Policy are void for vagueness and pursuant to the Rule of Lenity. As discussed in detail in the Brief in Support of this Application, a law is void on its face if it is so vague that persons “of common intelligence must necessarily guess at its meaning and differ as to its application.” *Connally v. General Construction Co.*, 269 U.S. 385, 391 (1926). The Legal Opinion sets forth a framework of seven (7) factors, none of which are dispositive in order to determine whether a non-firearm object is now a “firearm” pursuant to the opinion, leaving individuals to guess as to the status of the object they have.
26. The “principle of legality,” the “first principle” or otherwise known as the *nulla poena sine lege* of criminal law, requires that criminal laws be explicitly and unambiguously specified in advance by statute. *Liparota v. United States*, 471 U.S. 419, 424 (1985) (“The definition of the elements of

a criminal offense is entrusted to the legislature.” (citation omitted)). While “a statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application violates the first essential of due process of law” (*Connally v. Gen. Const. Co.*, 269 U.S. at 391).

27. Finally, the Legal Opinion and PSP’s Policy violate all notions of due process. “The touchstone of due process is protection of the individual against arbitrary action of government.” *Wolff v. McDonnell*, 418 U.S. 539, 558 (1974). “In terms of procedural due process, government is prohibited from depriving individuals of life, liberty, or property, unless it provides the process that is due.” *Com. v. Turner*, 622 Pa. 318, 335 (2013).
28. All citizens have a protected interest in being free from arbitrary exercise of uncontrolled discretion and ensuring the laws are complied with, including, but not limited to, being provided notice and opportunity to be heard under the RRA. Accordingly, the Legal Opinion and the PSP’s Policy violate due process and are void.

WHEREFORE, for all the foregoing reasons and those alleged in the Petition for Review, Petitioners, Landmark Firearms LLC, US Rifle, LLC, Polymer80, Inc., and Firearms Policy Coalition, respectfully request that this

Honorable Court grant their Application for Special Relief in the Nature of a Preliminary Injunction and enter an order:

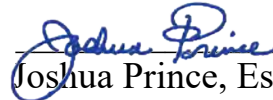
- a. Enjoining the Pennsylvania State Police and its officers, agents, servants, employees, and all persons in active concern or participation with them from implementing or enforcing any practice, policy, regulation, rule, or interpretation relating to either the stage at which point a non-firearm object meets the definition of “firearm” or the Attorney General’s December 16, 2019 Legal Opinion;
- b. Ordering that the Pennsylvania State Police remove the notice posted on the ePICS background check website relating to non-firearm objects;
- c. Ordering that the Pennsylvania State Police post a section on their website which shall display information related to these proceedings, including but not limited to all Orders of the Court;
- d. Ordering that the Pennsylvania State Police post a notice on their website and ePICS background check website stating:

The sale of partially-manufactured (often referred to as 80%) frames and receivers and kits which include the same, **DO NOT** require a background check through the Pennsylvania Instant Check System, as the 12/16/19 Attorney General’s legal opinion has been enjoined from enforcement at this time. More information can be found at: [web address from subsection c]; and

- e. Any other relief this Court may see fit.

Respectfully Submitted,

Date: December 20, 2019



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CERTIFICATION

I certify that this filing complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.

Date: December 20, 2019


Joshua Prince, Esq.

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

LANDMARK FIREARMS	:	
LLC, <i>et al.</i>	:	
Petitioners	:	
v.	:	
	:	
ROBERT EVANCHICK	:	
COMMISSIONER OF THE	:	
PENNSYLVANIA STATE	:	
POLICE	:	Docket No.
Respondent	:	

DECLARATION OF BENJAMIN BROWN

I, Benjamin Brown, am competent to state and declare the following based on my personal knowledge:

1. I am the owner of Landmark Firearms LLC, a plaintiff in this action, which holds a federal firearms license. I have also obtained a license to sell firearms in Pennsylvania, pursuant to 18 Pa.C.S. § 6113, as required by 18 Pa.C.S. § 6112.
2. As used herein, whenever I use the term “non-firearm object” or its plural form, it is referring to a piece of matter (i.e., any substance that has mass and takes up space by having volume), such as an object made of metal or plastic that is not a firearm pursuant to federal law, but that Respondent and his Pennsylvania State Police

calls a “partially-manufactured (often referred to as 80%) frames and receivers and kits which include the same,” or also “80% receivers,” “80% frames,” or “unfinished receivers.”

3. I first became aware of 80% receivers around 2014 from attending gun shows and being a firearms enthusiast.
4. In addition to the sale of firearms, I also sell “non-firearm objects,” which are not firearms under federal law. *See* <https://www.atf.gov/qa-category/receiver-blanks>. These sales began sometime in 2018.
5. As the federal Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) has declared:

80% receiver,” “80% finished,” “80% complete,” “unfinished receiver” are all terms referring to an item that ... has not yet reached a stage of manufacture that meets the definition of firearm frame or receiver found in the Gun Control Act of 1968 (GCA).

See <https://www.atf.gov/firearms/qa/what-%E2%80%9C80%E2%80%9D-or-%E2%80%9Cunfinished-receiver>.
6. Prior to the Attorney General issuing a legal opinion, it was my understanding that non-firearm objects were not firearms under State law, which was previously confirmed to me by several Pennsylvania State Troopers at prior gun shows.

7. Since non-firearm objects were not considered firearms by the State until the Attorney General's Legal Opinion, and the PSP interpreted and enforced the Opinion, neither I, nor anyone else, had any knowledge that the State would require the firearm surcharge under 18 Pa.C.S. § 6111.2 for any non-firearm objects that I have sold.
8. As part of my business practice, I have been present and offered items for sale at least one (1) gun show each month. Earlier this month, on December 14th and 15th, I attended the C & E Harrisburg Gun Show, during which I sold approximately thirty-five (35) non-firearm objects.
9. I plan to attend the Oaks Gun Show, which is being held on December 20-22, 2019. See <http://www.eagleshows.com>.
10. Based on my experience, and on information and belief, the Oaks Gun Show will encompass about 1,700 tables, where some Pennsylvania and non-Pennsylvania vendors – some, but not all, of which are federal firearm licensees and some are not – will offer for sale non-firearm objects.
11. I also plan to attend the following gun shows in the coming year:
 - a. York Gun Show on December 28-29, 2019;

- b. Carlisle Gun Show on January 18-19, 2020;
- c. Gettysburg Gun Show on January 25-26, 2020;
- d. Oaks Gun Show on February 7-9, 2020;
- e. York Gun Show on February 22-23, 2020;
- f. Oaks Gun Show on March 13-15, 2020;
- g. Gettysburg Gun Show on March 28-29, 2020;
- h. Carlisle Gun Show on May 16-17, 2020;
- i. Oaks Gun Show on May 30-31, 2020;
- j. Gettysburg Gun Show on June 6-7, 2020;
- k. York Gun Show on June 27-28, 2020;
- l. Oaks Gun Show on August 1-2, 2020;
- m. Gettysburg Gun Show on September 12-13, 2020;
- n. Oaks Gun Show on October 2-4, 2020;
- o. York Gun Show on October 24-25, 2020; and,
- p. Oaks Gun Show on December 18-20, 2020.

See <http://www.eagleshows.com> and

<http://www.thegunshows.com>.

12. Attorney General Joshua Shapiro's 'press release'¹ references the gun shows at Oaks, Harrisburg, and York, all of which I attend.
13. During the average gun show, I sell approximately thirty (30) non-firearm objects. In the past, I have sold as many as sixty (60) non-firearm objects.
14. If I am unable to sell these non-firearm objects at the Oaks Gun Show due to the Attorney General's Legal Opinion and the Respondent's interpretation, implementation, and enforcement (either exclusively or through his PSP,) I, and others similarly situated to me, would each expect to lose between \$1,800 and \$3,600 in sales from the selling of non-firearm objects. This does not include lost revenue from the sales of other items, such as machine parts and tooling kits.
15. Earlier this month, on December 14, 2019, I placed an order with Anderson Manufacturing for 20 non-firearm objects, which arrived on December 19, 2019.
16. Based on the Respondent's prior position, the State's laws, and guidance provided by ATF, there is no lawful mechanism for me to

¹ Available at: <https://www.attorneygeneral.gov/taking-action/press-releases/ag-shapiro-gov-wolf-80-receivers-are-firearms> (last visited Dec. 19, 2019).

record the acquisition or disposition of non-firearm objects in the “acquisition and disposition book” (i.e., the “A&D book”) that I am required to keep under federal law, because non-firearm objects are not firearms under federal law.

17. Additionally, I am unsure as to what the Legal Opinion of Attorney General Joshua Shapiro or Respondent’s rule is applicable to, as it lacks specificity or any guidance that would allow a person of ordinary intelligence to determine what is regulated.
18. The Attorney General’s Legal Opinion, upon which Respondent’s rule and enforcement practice is believed to be based, readily acknowledges that the State’s Uniform Firearms Act “does not provide statutory definitions of [‘designed’ or ‘may readily be converted’]”; yet, it rambles on to provide a number of factors [for someone – who?] to consider, none of which are dispositive, as to what constitutes “designed” and “may be readily converted.”
19. Additionally, the Respondent and his PSP have issued no interpretations or guidance as to non-firearm objects and at what stage they are considered by the PSP to be a firearm; yet, the PSP has published, *only* on its electronic background check website (<https://epics.pa.gov/Pics/>) the following:

As of 12-16-19, the sale of partially-manufactured (often referred to as 80%) frames and receivers and kits which include the same, requires a background check through the Pennsylvania Instant Check System, in accordance with the Attorney General's binding opinion and applicable requirements within the UFA. No sales may occur by a licensed firearms dealer without such a check. PSP is not yet ready to process such checks and is working diligently to have a process in place as soon as possible within the next thirty days to allow these checks to occur in a lawful manner.

20. I am unsure of what "the Attorney General's binding opinion and applicable requirements within the UFA" is applicable to, as it lacks specificity or any guidance that would allow a person of ordinary intelligence to determine what is being regulated or enforced.
21. This confusion is amplified since the pertinent portions of the definition of firearm under federal law is identical to the pertinent portions of the definition of firearm under state law, and ATF has concluded that an 80% receiver is not a firearm under the identical statutory language. Compare 18 U.S.C. § 921(a)(3) with 18 Pa.C.S. § 6105(i)

The term "firearm" means (A) any weapon (including a starter gun) which will or is designed to or may readily be converted to expel a projectile by the action of an explosive; (B) the frame or receiver of any such weapon...

the term "firearm" shall include any weapons which are designed to or may readily be converted to expel any projectile

by the action of an explosive or the frame or receiver of any such weapon.

22. Even more confusing, since the use of the term “80% receivers” is to refer to something that is not yet a firearm, “80% receivers” has no legal meaning would seemingly encompass everything from the metal, while still within the earth (up to 80%?), up until the point in time (80%?) right before it becomes a firearm (80%? and if so, based upon what?). Thus, everything from .0000000000000001% up to and including a firearm is, or may be, a firearm according to Respondent and his PSP.
23. Neither the Attorney General nor the Respondents and his PSP have notified anyone of their new position/rule/regulations/enforcement practice(s).
24. Therefore, only if a person happened to stumble upon the Respondent’s ‘electronic background check’ website – which is not necessary to perform the background check, as it can be conducted via telephone – would the person be informed of this position.
25. Thus, a Pennsylvania federal firearms licensee, including those who attend the Oaks Gun Show and other upcoming gun shows, who only utilizes the phone to conduct background checks or who

is only currently selling non-firearm objects and thus has no reason to see the Respondent's website, have been provided no notice of this position/rule/regulations/enforcement practice(s) and therefore may be prosecuted or otherwise subject to seizure/penalty for violating this position/rule/regulations/enforcement practice(s) in the absence of any notice.

26. Moreover, a non-Pennsylvania federal firearms licensee, including those who will attend the Oak Gun Show and other upcoming gun shows, have been provided no notice of this position/rule/regulations/enforcement practice(s) and therefore may be prosecuted or otherwise subject to seizure/penalty for violating this position/rule/regulations/enforcement practice(s) in the absence of any notice.
27. Even more disconcerting, as a federal firearms license is not necessary to sell a non-firearm object – since it is not a firearm – non-licensees, including those who will attend the Oaks Gun Show and other upcoming gun shows, have been provided no notice of this position/rule/regulations/enforcement practice(s) and therefore may be prosecuted or otherwise subject to seizure/penalty for

violating this position/rule/regulations/enforcement practice(s) in the absence of any notice.

28. As the Attorney General's legal opinion contains a number of factors to consider, none of which are dispositive, and because of the unclear and vague guidance as to what constitutes a firearm, I fear prosecution and seizure/penalty for the sale, transfer, and failure to properly record non-firearm objects.

I, Benjamin Brown, owner of Landmark Firearms LLC, verify that Landmark Firearms LLC, is a Plaintiff named in the foregoing and all the information contained therein is true and correct to the best of my information, knowledge and belief. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 relating to unsworn falsification to authorities.

Dated: December 20, 2019



Benjamin Brown

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LLC, <i>et al.</i>	:	
Petitioners	:	
v.	:	
	:	
ROBERT EVANCHICK	:	
COMMISSIONER OF THE	:	
PENNSYLVANIA STATE	:	
POLICE	:	Docket No.
Respondent	:	

DECLARATION OF TIMOTHY MULVERHILL

I, Timothy Mulverhill, am competent to state and declare the following based on my personal knowledge:

1. I am the owner of US Rifle, LLC., a plaintiff in this action, which holds a federal firearms license. US Rifle, LLC., is based out of Dublin, NH.
2. I am the former Development Manager and Recce 7 and Ammunition Program Manager at Barrett Firearms.
3. I am also the former Head of Product Development for Kimber Firearms.
4. As used herein, whenever I use the term “non-firearm object” or its plural form, it is referring to a piece of matter (i.e., any substance that has mass and takes up space by having volume), such as an

object made of metal or plastic that is not a firearm pursuant to federal law, but that Respondent and his Pennsylvania State Police calls a “partially-manufactured (often referred to as 80%) frames and receivers and kits which include the same,” or also “80% receivers,” “80% frames,” or “unfinished receivers.”

5. In addition to the sale of firearms, I also sell non-firearm objects, which are not firearms under federal law. *See*

<https://www.atf.gov/qa-category/receiver-blanks>. These sales began sometime in Q3 2018.

6. I became generally aware of 80% receivers around 2012 while working at Kimber.

7. As the federal Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) has declared,

80% receiver,” “80% finished,” “80% complete,” “unfinished receiver” are all terms referring to an item that ... has not yet reached a stage of manufacture that meets the definition of firearm frame or receiver found in the Gun Control Act of 1968 (GCA).

See <https://www.atf.gov/firearms/qa/what-%E2%80%9C80%E2%80%9D-or-%E2%80%9Cunfinished-receiver>

8. Since non-firearm objects were not considered firearms by the State until the Attorney General’s Legal Opinion, and the PSP

interpreted and enforced the Opinion, neither I, nor anyone else, had any knowledge that the State would require the firearm surcharge under 18 Pa.C.S. § 6111.2 for any non-firearm objects that I have sold.

9. Earlier this year, US Rifle, LLC, began to attend gun shows in Pennsylvania, in order to expand sales.
10. US Rifle, LLC, plans to attend the Oaks Gun Show, held on December 20-22, 2019. See <http://www.eagleshows.com>.
11. Based on my experience, and on information and belief, the Oaks Gun Show will encompass about 1,700 tables, where some Pennsylvania and some non-Pennsylvania vendors – some, but not all, of which are federal firearm licensees and some are not, will offer for sale non-firearm objects.
12. I also plan to attend future gun shows held at Oaks and Split Rock in 2020 as a vendor. See 2020 Gun Shows Schedule at <http://www.eagleshows.com>.
13. Additionally, US Rifle, LLC., may attempt to secure a vendor booth at the NRA Great American Outdoor Show, held in Harrisburg, PA on February 1-9, 2020, which saw 179,000 attendees in 2019.

14. During the past Oaks Gun Show, held on October 4-6, 2019, we sold approximately sixty (60) non-firearm objects, which was almost all of the inventory of such products that we possessed.
15. In preparation for the Oaks Gun Show, being held on December 20-22, 2019, we began to order inventory in November of 2019. To date, we have secured almost \$8,500 in non-firearm objects to sell at the upcoming show. Shipments arrived in November 2019 and the week of December 16, 2019. To date, we have one hundred and eighty-two (182) non-firearm objects.
16. If I am unable to sell these non-firearm objects at the Oaks Gun Show due to the Attorney General's Legal Opinion and Respondent's interpretation, implementation, and enforcement either exclusively or through his PSP,) I, and others similarly situated to me, would each expect to lose up to \$12,000 in sales from the selling of non-firearm objects. This does not include lost revenue from the sales of other item, such as machine parts and tooling..

17. Attorney General Joshua Shapiro's press release ¹ references the gun show at Oaks, which I attend.
18. Based on the Respondent's prior position, the State's laws, and guidance provided by ATF, there is no lawful mechanism for me to record the acquisition or disposition of non-firearm objects in the "acquisition and disposition book" (i.e., the "A&D book") that I am required to keep under federal law, because non-firearm objects are not firearms under federal law.
19. Additionally, I am unsure as to what the Legal Opinion of Attorney General Joshua Shapiro or Respondent's rule is applicable to, as it lacks specificity or any guidance that would allow a person of ordinary intelligence to determine what is regulated.
20. The Attorney General's Legal Opinion, upon which Respondent's rule and enforcement practice is believed to be based, readily acknowledges that the State's Uniform Firearms Act "does not provide statutory definitions of ['designed' or 'may readily be converted']; yet, it rambles on to provide a number of factors [for someone – who?] to consider, none of which are dispositive, as to what constitutes "designed" and "may be readily converted."

¹ <https://www.attorneygeneral.gov/taking-action/press-releases/ag-shapiro-gov-wolf-80-receivers-are-firearms>

21. To date, I have not received any formal contact from the Pennsylvania Attorney General or the Pennsylvania State Police which would provide guidance to me on what Pennsylvania now considers to be a firearm.
22. I have contacted the promoter of the Oaks Gun Show, Eagle Arms, to see whether there was any guidance issued. The promoter told me that the Pennsylvania State Police have confirmed there are no guidelines available currently but will be available “soon”.
23. Further, I am unsure of what “the Attorney General’s binding opinion and applicable requirements within the UFA” is applicable to, as it lacks specificity or any guidance that would allow a person of ordinary intelligence to determine what is being regulated or enforced.
24. Additionally, this confusion is amplified since the pertinent portions of the definition of firearm under federal law is identical to the pertinent portions of the definition of firearm under state law and ATF has concluded that an 80% receiver is not a firearm under the identical statutory language. Compare 18 U.S.C. § 921(a)(3) with 18 Pa.C.S. § 6105(i)

The term “firearm” means (A) any weapon (including a starter gun) which will or is designed to or may readily be converted to

expel a projectile by the action of an explosive; (B) the frame or receiver of any such weapon...

the term “firearm” shall include any weapons which are designed to or may readily be converted to expel any projectile by the action of an explosive or the frame or receiver of any such weapon.

25. Even more confusing, since the use of the term “80% receivers” is to refer to something that is not yet a firearm, “80% receivers” has no legal meaning would seemingly encompass everything from the metal, while still within the earth (up to 80%?), up until the point in time (80%?) right before it becomes a firearm (80%? and if so, based upon what?). Thus, everything from .0000000000000001% up to and including a firearm is, or may be, a firearm according to Respondent and his PSP.
26. Even more disconcerting, as a federal firearms license is not necessary to sell, nor can one be procured solely to sell, a non-firearm object – since it is not a firearm – non-licensees, including those who will attend the Oaks Gun Show and other upcoming gun shows, have been provided no notice of this new position/rule/regulations/enforcement practice and therefore may be prosecuted or otherwise subject to seizure/penalty for violating

this position/rule/regulations/enforcement practice in the absence of any notice.

27. As the Attorney General's Legal Opinion contains a number of factors to consider, none of which are dispositive, and because of the unclear and vague guidance as to what constitutes a firearm, I fear prosecution and seizure/penalty for the possession, sale, transfer, and failure to properly record non-firearm objects.
28. We wish to continue to be able to sell non-firearm objects in Pennsylvania; yet, we fear prosecution and seizure of our non-firearm objects sold in Pennsylvania, as a result of the PSP's position/rule/regulation/enforcement practice.
29. We also fear the criminal prosecution of our Pennsylvania customers and the seizure of their property, including their non-firearm objects, as a result of the PSP's position/rule/regulation/enforcement practice.
30. It is my understanding that I am unable to obtain a license to sell firearms in Pennsylvania as required by 18 Pa.C.S. § 6112, as we do not have a business or other address in Pennsylvania and therefore, do not have a Pennsylvania chief of police or sheriff with jurisdiction to issue the license.

I, Timothy Mulverhill, owner of US Rifle, LLC., verify that US Rifle, LLC. is a Plaintiff named in the foregoing and all the information contained therein is true and correct to the best of my information, knowledge and belief. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 relating to unsworn falsification to authorities.

Dated: December 20, 2019


Timothy Mulverhill

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

LANDMARK FIREARMS	:	
LLC, <i>et al.</i>	:	
Petitioners	:	
v.	:	
	:	
ROBERT EVANCHICK	:	
COMMISSIONER OF THE	:	
PENNSYLVANIA STATE	:	
POLICE	:	Docket No.
Respondent	:	

DECLARATION OF DAVID BORGES

I, David Borges, am competent to state and declare the following based on my personal knowledge:

1. I am the Chief Executive Officer, Chief Financial Officer, and co-founder of Polymer80, Inc., (Polymer80), a plaintiff in this action.
2. As used herein, whenever I use the term “non-firearm object” or its plural form, it is referring to a piece of matter (i.e., any substance that has mass and takes up space by having volume), such as an object made of metal or plastic that is not a firearm pursuant to federal law, but that Respondent and his Pennsylvania State Police calls a “partially-manufactured (often referred to as 80%) frames and receivers and kits which include the same,” or also “80% receivers,” “80% frames,” or “unfinished receivers.”

3. Polymer80 is a manufacturer, distributor, and retail sales company, with a principal place of business at 134 Lakes Boulevard, Dayton, NV 89403, which produces, markets, and sells, among other things, non-firearm objects, which are not firearms under federal law. See <https://www.atf.gov/qa-category/receiver-blanks>. The business was started in 2013, employs over 30 people, impacts over 100 individuals who work full or part-time (internally or externally), and grosses over twelve million dollars in sales annually.
4. On several occasions, we have submitted classification requests to Bureau of Alcohol, Tobacco, Firearms and Explosive's (ATF) Firearms Technology Industry Services Branch (FTISB), which falls under the Firearms and Ammunition Technology Division (FATD). FATD is tasked with, among other things, processing industry requests regarding domestic manufacturing examinations. The division is the federal technical authority regarding firearms and ammunition and their classification under federal laws and regulations. See <https://www.atf.gov/resource-center/fact-sheet/fact-sheet-firearms-and-ammunition-technology-division>.

5. Additionally, according to ATF's website, "FTISB maintains proficiency in manufacturing techniques and practices by providing support to the firearms and ammunition industry."
6. ATF has determined that our products are non-firearm objects for the purposes of federal law. A copy of ATF's determinations are attached hereto and incorporated herein as Exhibit 1.
7. After reviewing the Pennsylvania Attorney General's Legal Opinion, I am unsure what it is applicable to, as it lacks specificity or any guidance that would allow a person of ordinary intelligence to determine what is being regulated or enforced.
8. The Attorney General's Legal Opinion, upon which Respondent's rule and enforcement practice is believed to be based, readily acknowledges that the State's Uniform Firearms Act "does not provide statutory definitions of ['designed' or 'may readily be converted']"; yet, it rambles on to provide a number of factors [for someone – who?] to consider, none of which are dispositive, as to what constitutes "designed" and "may be readily converted."
9. To date, we have not received any formal contact from the Pennsylvania Attorney General or the Pennsylvania State Police

which would provide guidance to us with regard to our products in Pennsylvania.

10. Further, I am unsure of what “the Attorney General’s binding opinion and applicable requirements within the UFA” is applicable to, as it lacks specificity or any guidance that would allow a person of ordinary intelligence to determine what is being regulated or enforced.
11. Additionally, this confusion is amplified since the pertinent portions of the definition of firearm under federal law is identical to the pertinent portions of the definition of firearm under state law and ATF has concluded that an 80% receiver is not a firearm under the identical statutory language. Compare 18 U.S.C. § 921(a)(3) with 18 Pa.C.S. § 6105(i)

The term “firearm” means (A) any weapon (including a starter gun) which will or is designed to or may readily be converted to expel a projectile by the action of an explosive; (B) the frame or receiver of any such weapon...

the term “firearm” shall include any weapons which are designed to or may readily be converted to expel any projectile by the action of an explosive or the frame or receiver of any such weapon.

12. To the best of my knowledge, neither the Pennsylvania Attorney General’s Office nor the Pennsylvania State Police has a branch

which “maintains proficiency in manufacturing techniques and practices” with regard to the firearms industry.

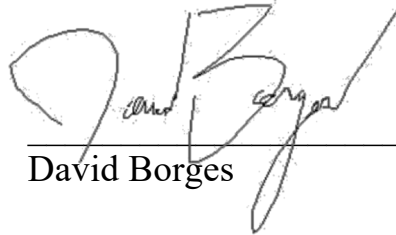
13. Given that ATF has a branch dedicated to industry classification requests, is aware of the case law the Attorney General’s legal opinion cites to, and the similarity of the definition encompassed in federal law and Pennsylvania law, I find it curious that ATF has determined that many products like ours, and including ours, are non-firearm objects, yet the Pennsylvania Attorney General and Pennsylvania State Police, who lack the technical resources the federal government has, have seemingly reached the opposite conclusion.
14. To date, we have 1,894 customers in Pennsylvania who have purchased directly from Polymer80. This does not include any individuals who may have purchased Polymer80 products through various retailers to which we sell directly.
15. To date, we have sold approximately 10,000 units of various Polymer80 non-firearm objects to Pennsylvanians. This does not include any which individuals may have purchased through various retailers to which we sell directly.

16. In the last fourteen (14) days, we have had five (5) orders for non-firearm objects from Pennsylvania residents.
17. We wish to continue to be able to sell our product in Pennsylvania, as one of our largest dealers is located in the state; yet, we fear prosecution and seizure of our non-firearm objects sold in Pennsylvania, as a result of the PSP's position/rule/regulation/enforcement practice.
18. We also fear the criminal prosecution of our Pennsylvania customers and the seizure of their property, including their non-firearm objects, as a result of the PSP's position/rule/regulation/enforcement practice.
19. It is my understanding that I am unable to obtain a license to sell firearms in Pennsylvania as required by 18 Pa.C.S. § 6112, as we do not have a business or other address in Pennsylvania and therefore, do not have a Pennsylvania chief of police or sheriff with jurisdiction to issue the license.

I, David Borges, CEO/CFO of Polymer80, Inc., verify that Polymer80, Inc. is a Plaintiff named in the foregoing and all the information contained therein is true and correct to the best of my information,

knowledge and belief. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 relating to unsworn falsification to authorities.

Dated: December 20, 2019



David Borges

EXHIBIT 1



U.S. Department of Justice

Bureau of Alcohol, Tobacco,
Firearms and Explosives

Martinsburg, WV 25405

www.atf.gov

JAN 18 2017

907010:WJS
3311/305402

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

Mr. Davis:

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

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

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

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

- *The submitted PF940C blank is a solid core unibody design made out of a single casting without any core strengthening inserts. Moreover, it is void of any indicators that designate or provide guidance in the completion of the firearm.*

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

Also, 27 CFR Section 478.11 defines “firearm frame or receiver”. *That part of a firearm which provides housing for the hammer, bolt or breechblock, and firing mechanism, and which is usually threaded at its forward portion to receive the barrel.*

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

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

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

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

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

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

Machining operations or design features not yet present or completed:

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

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

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

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

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

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

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

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

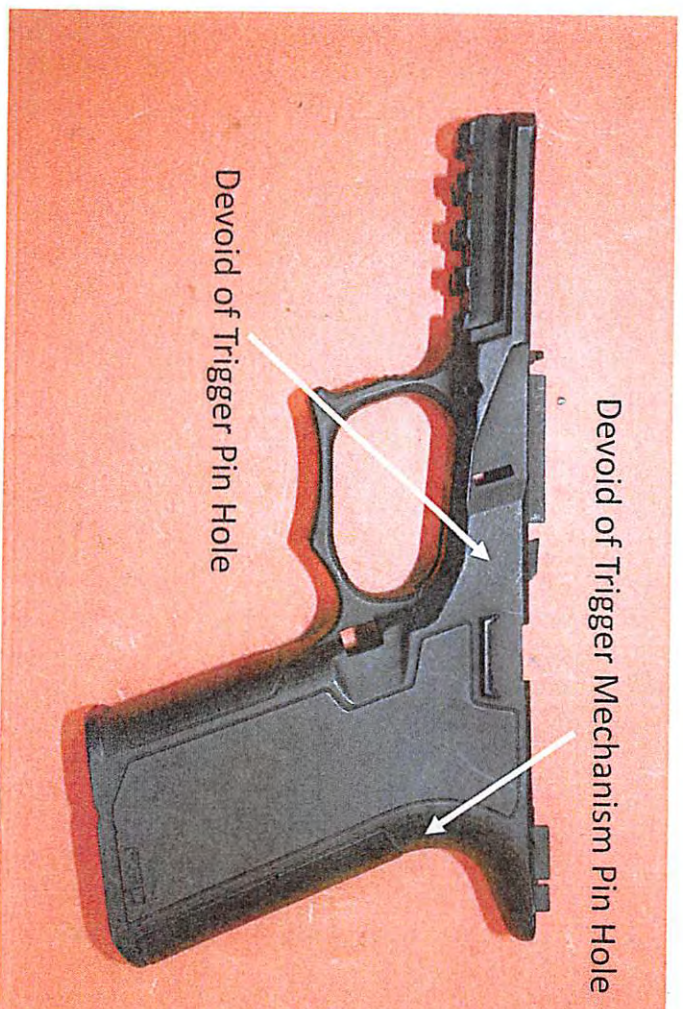
Sincerely yours,



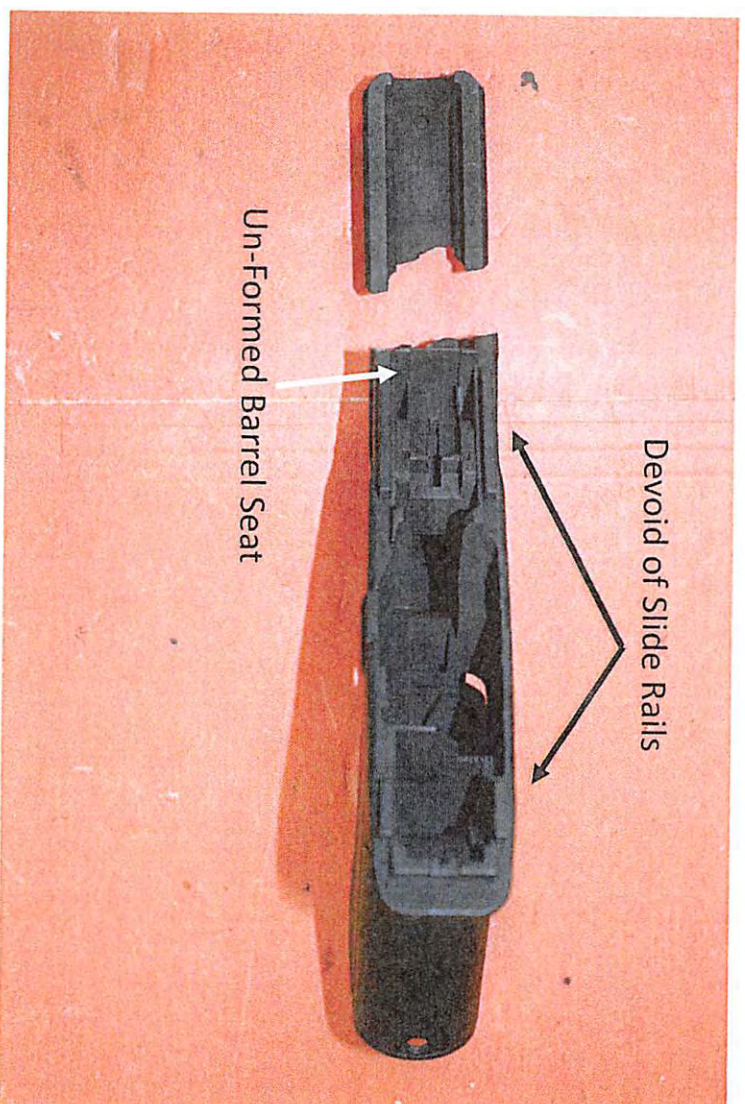
Michael R. Curtis
Chief, Firearms Technology Industry Services Branch

Enclosure

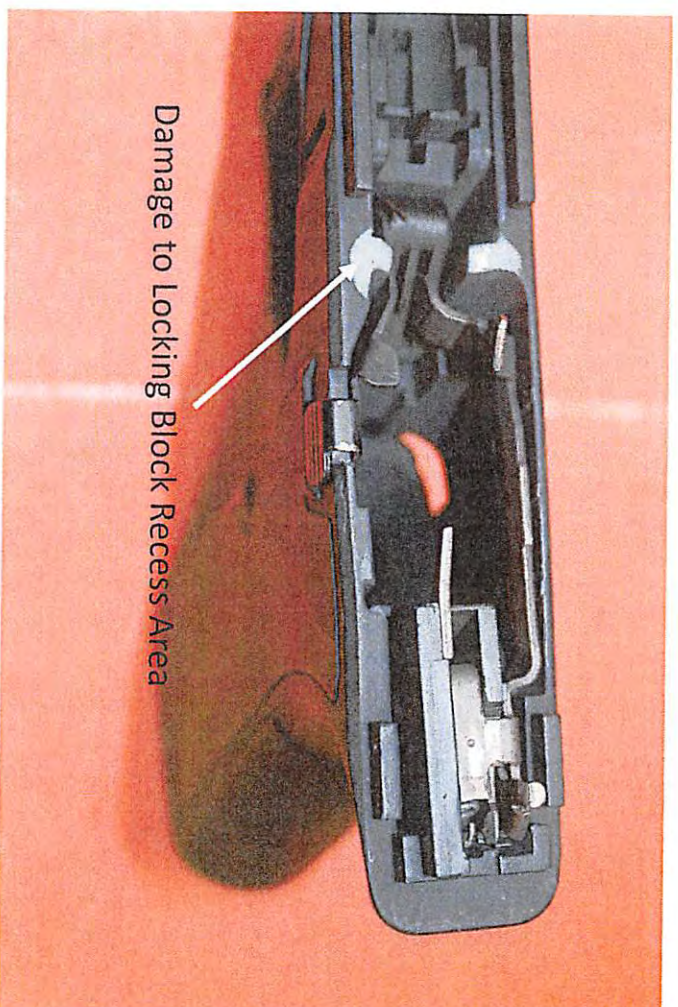
PF940C Blank, Submitted 10/6/16



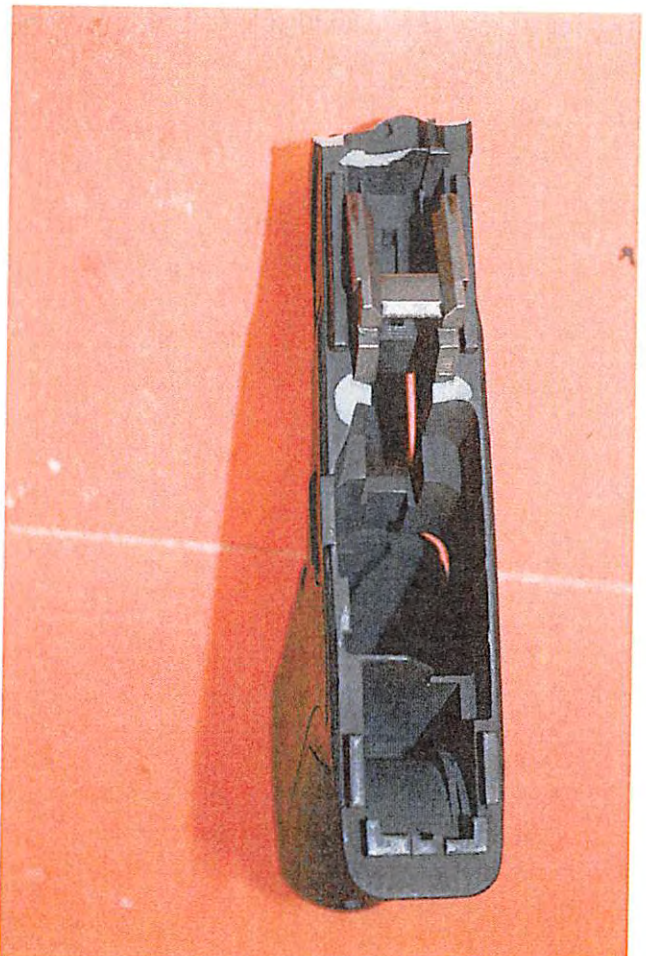
PF940C Blank, Dust Cover Area Damaged



PF940C Blank, With Trigger Mechanism Housing and Slide Stop Lever



PF940C Blank, Incapable of Accepting Glock Locking Block





U.S. Department of Justice

Bureau of Alcohol, Tobacco,
Firearms and Explosives

Martinsburg, WV
25405

www.atf.gov

907010:AG
3311/302663

FLB 3 115

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

Dear Mr. Davis,

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

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

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

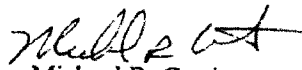
The submitted item was cut into several pieces in order to observe the internal configuration. This operation revealed that the submitted item incorporates a solid fire control cavity area, and was cast in a homogenous manner.

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

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

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

Sincerely yours,

A handwritten signature in black ink, appearing to read "Michael R. Curtis", with a stylized flourish at the end.

Michael R. Curtis

Acting Chief, Firearms Technology Industry Services Branch

Attachment



U.S. Department of Justice

Bureau of Alcohol, Tobacco,
Firearms and Explosives

Martinsburg, WV 25405

www.atf.gov

907010:WJS
3311/303738

NOV 02 2015

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

Mr. Davis:

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

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

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

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

Mr. Jason Davis

- *The submitted WarrHogg .308 blank lower receiver blank is a solid core unibody design made out of a single casting without any core strengthening inserts. Moreover, it is void of any indicators that designate or provide guidance in the completion of the firearm. This submitted item incorporates a solid fire control cavity area, and was cast in a homogenous manner using a "single shot of molten material."*

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

Also, 27 CFR § 478.11 defines "**firearm frame or receiver**." *That part of a firearm which provides housing for the hammer, bolt or breechblock, and firing mechanism, and which is usually threaded at its forward portion to receive the barrel.*

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

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

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

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

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

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

Mr. Jason Davis

Machining operations or design features not yet present or completed:

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

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

Left Side

- 308
- POLYMER80

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

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

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

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

- *The submitted GC9 blank is a solid core unibody design made out of a single casting without any core strengthening inserts. Moreover, it is void of any indicators that designate or provide guidance in the completion of the firearm.*

Mr. Jason Davis

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

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

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

Machining operations or design features not yet present or completed:

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

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

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

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

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

Mr. Jason Davis

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

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

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

Sincerely yours,

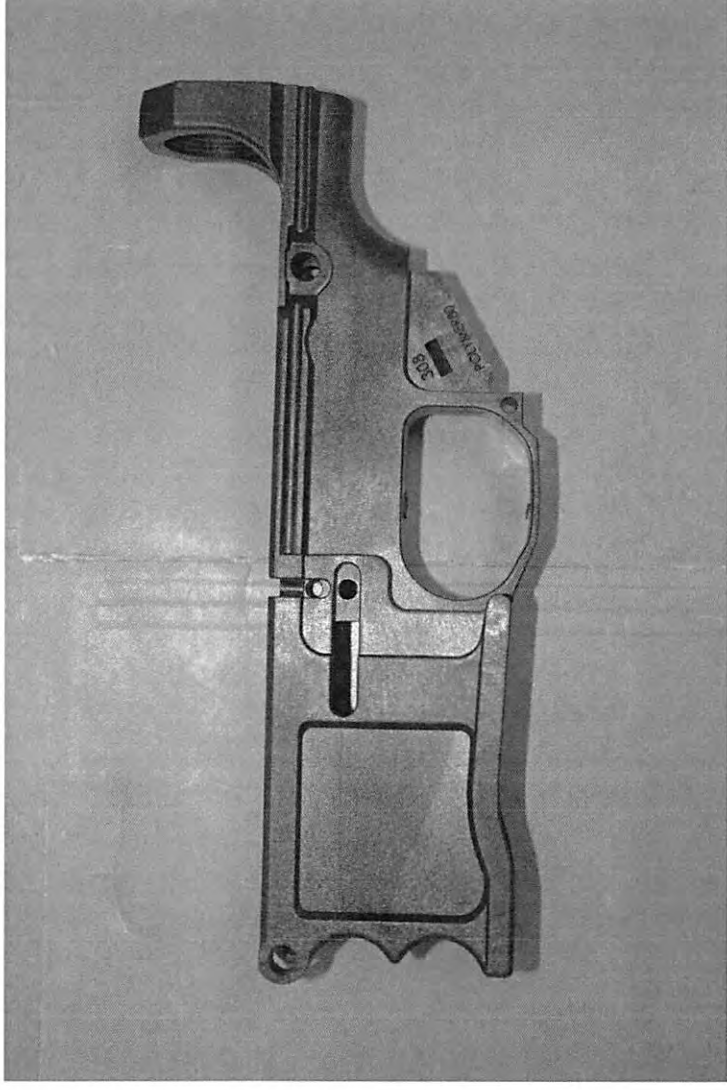
~~MA~~

A handwritten signature in black ink, appearing to read "Michael R. Curtis", with a stylized flourish at the end.

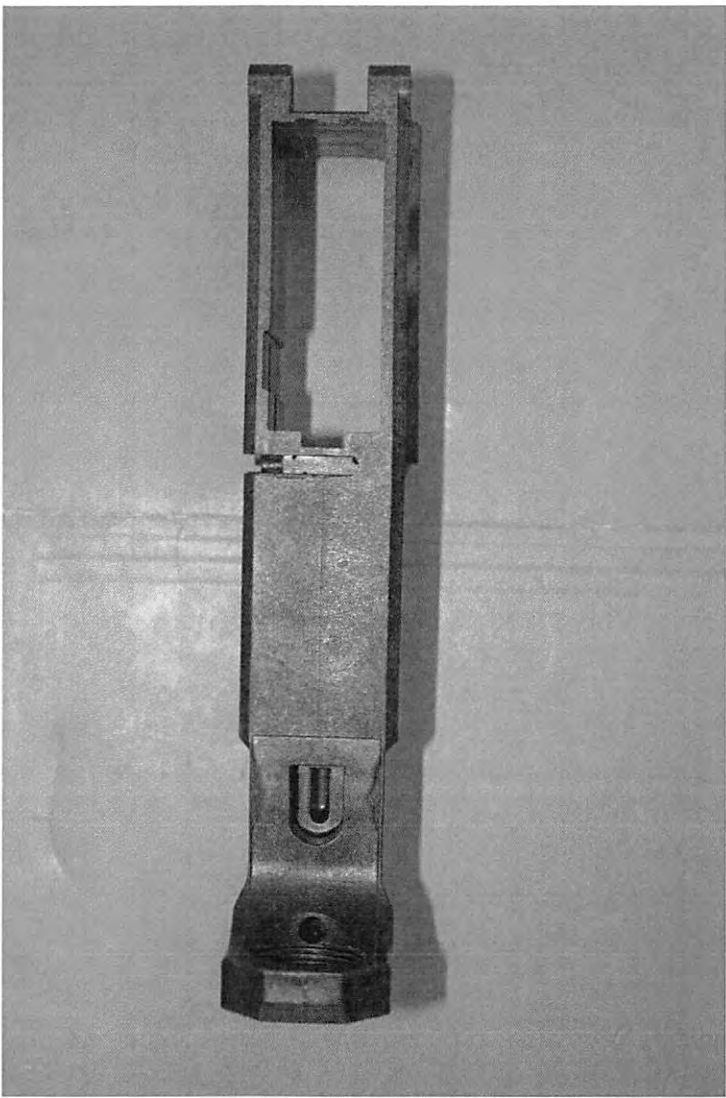
Michael R. Curtis
Chief, Firearms Technology Industry Services Branch

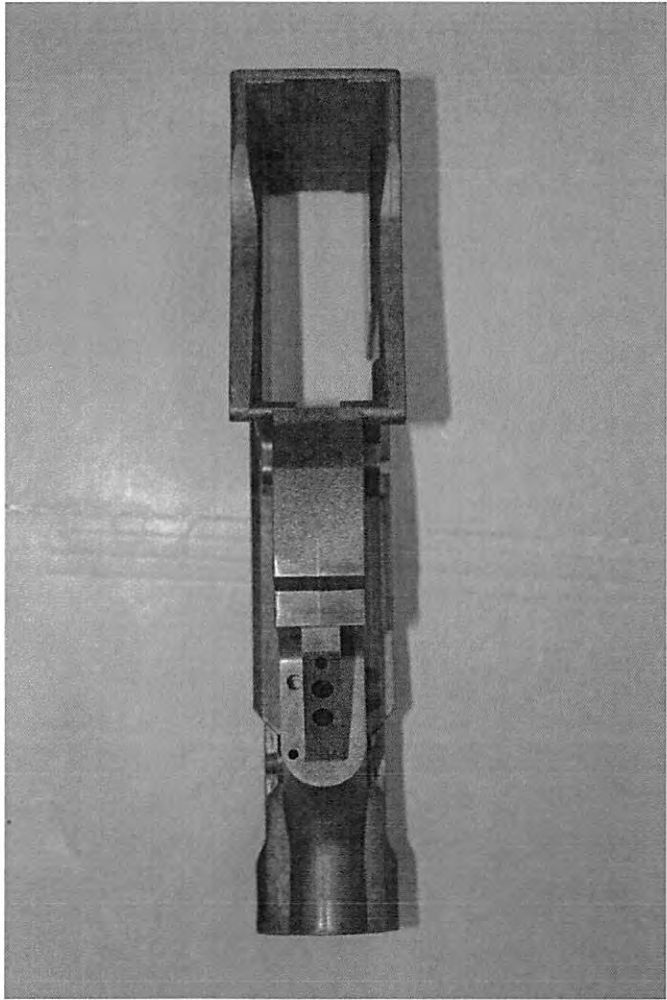
Enclosures

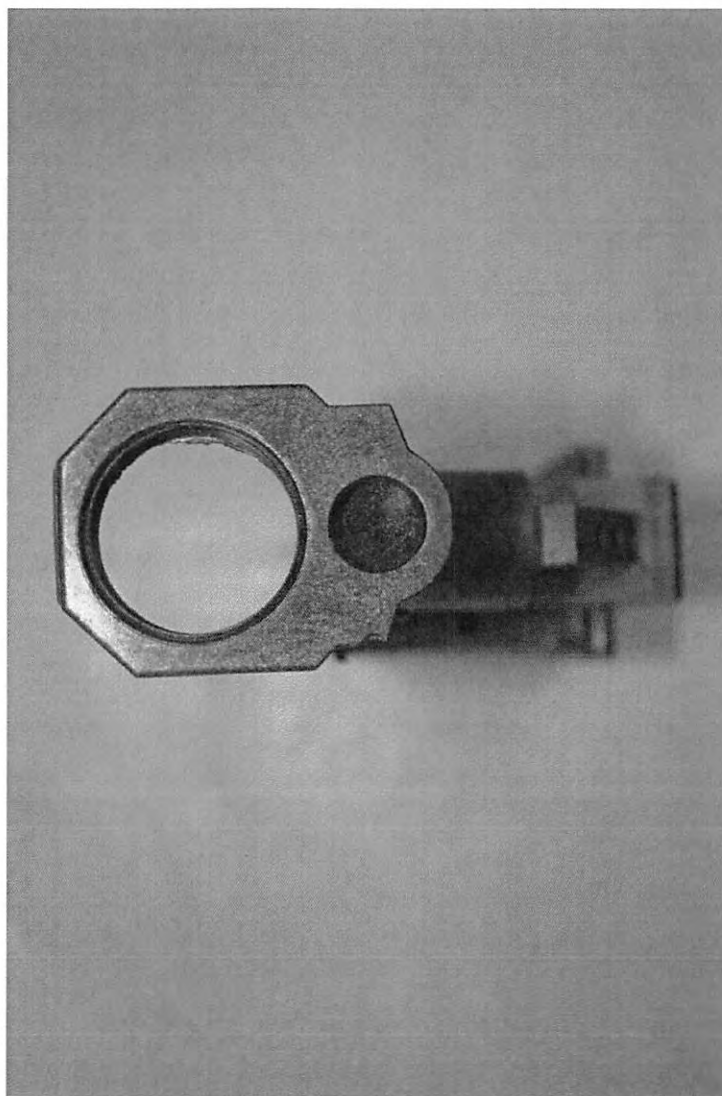
Polymer 80, Inc. WARRHOGG Receiver Blank



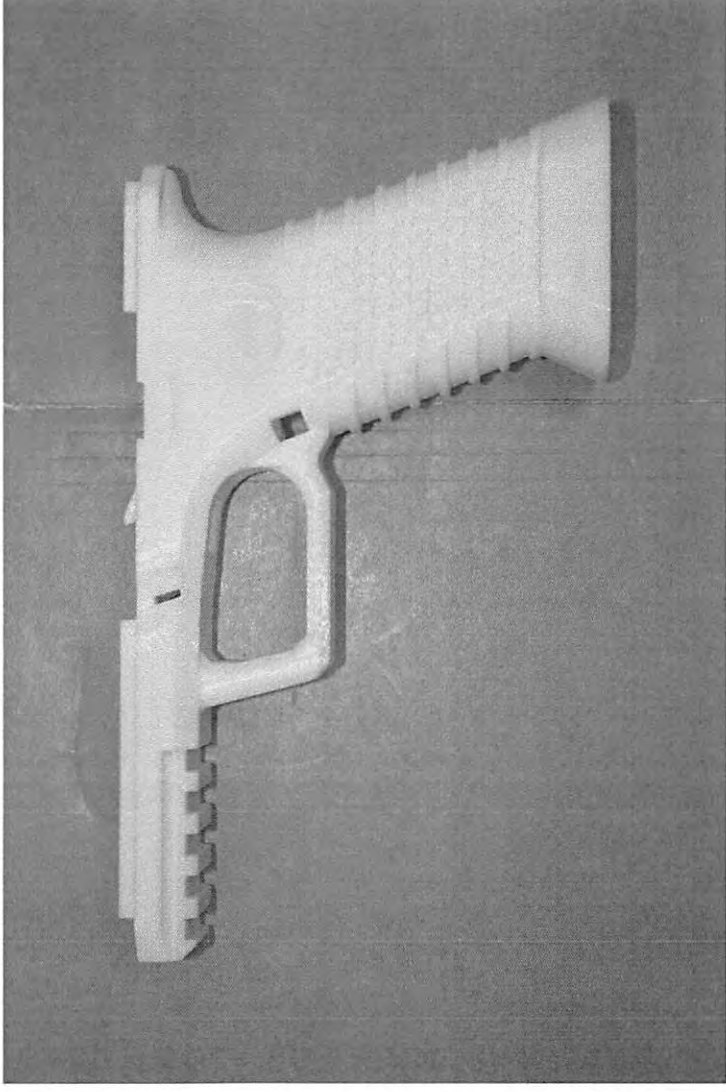


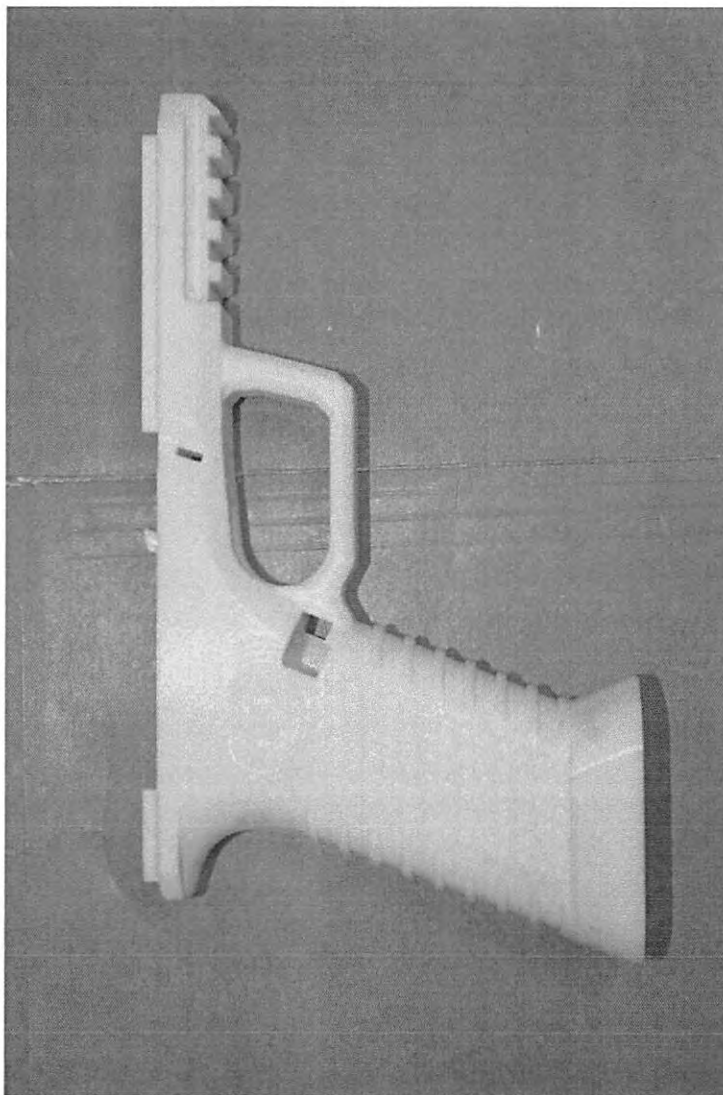


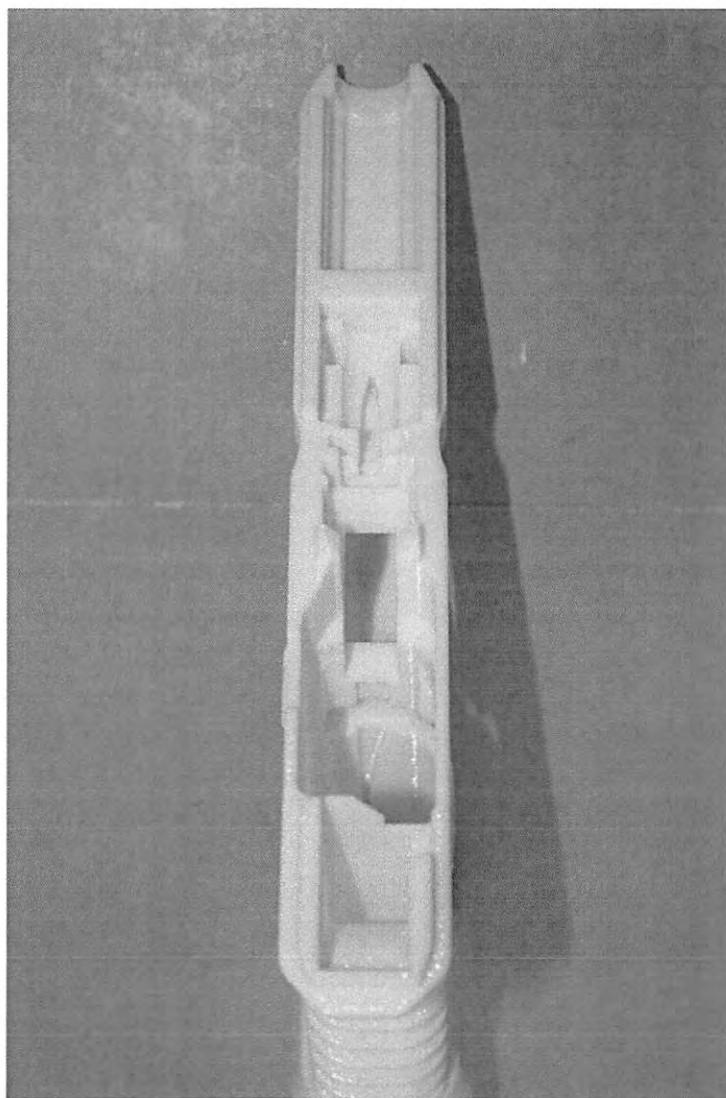


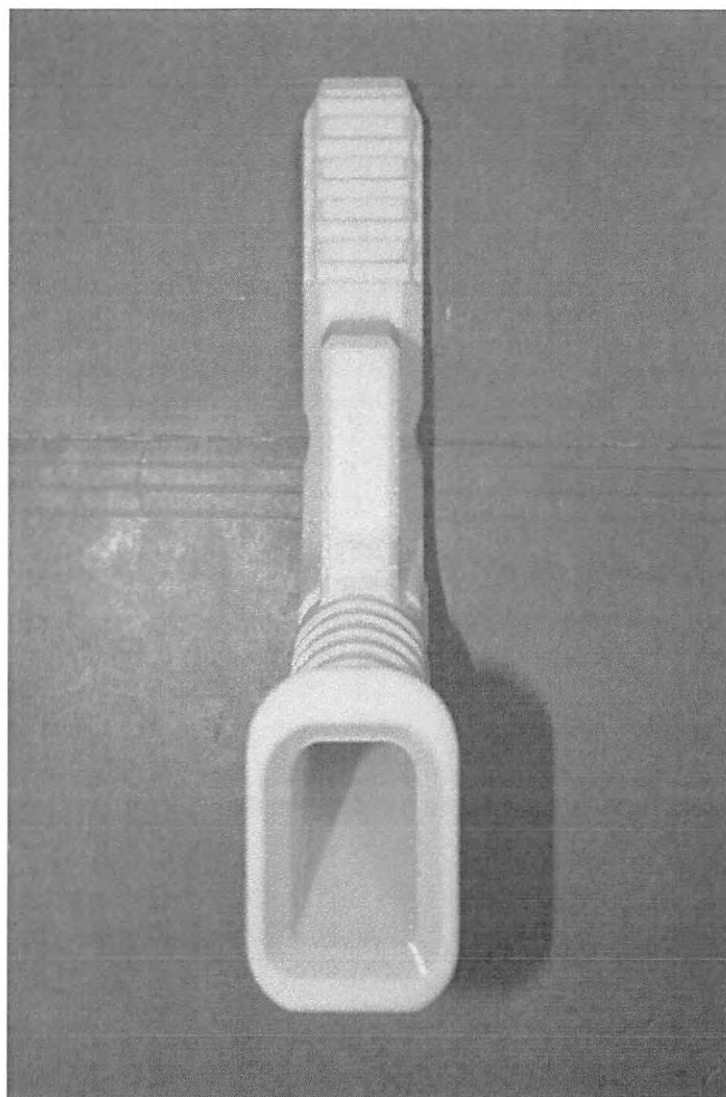


Polymer 80, Inc; GC or CG9 Receiver Blank

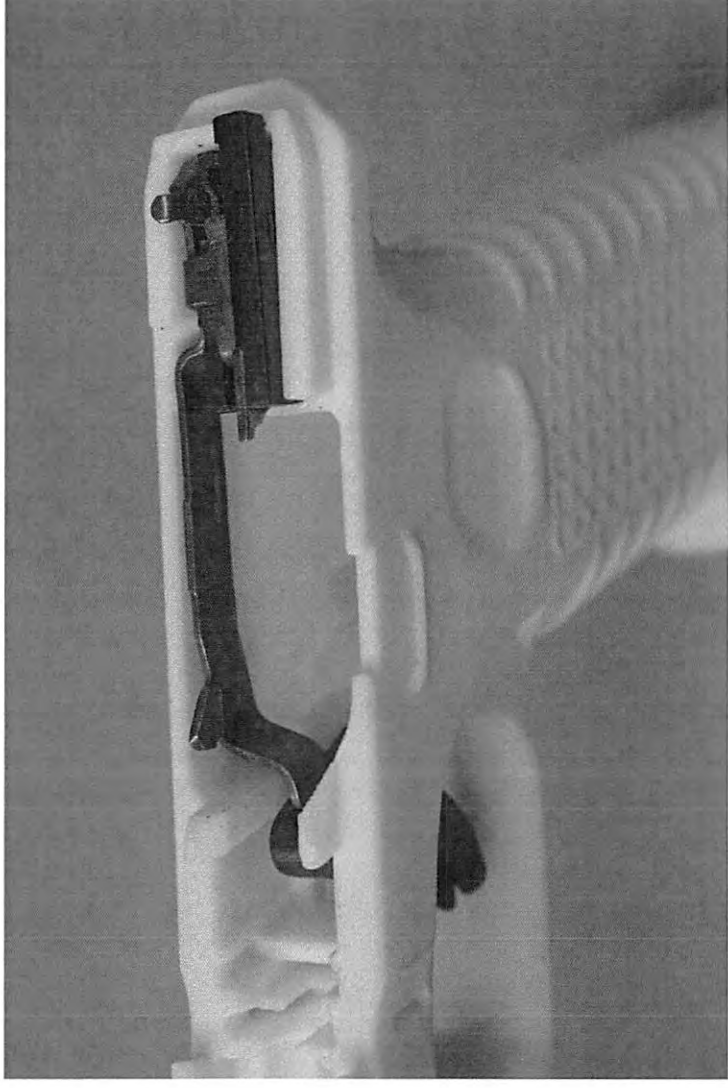




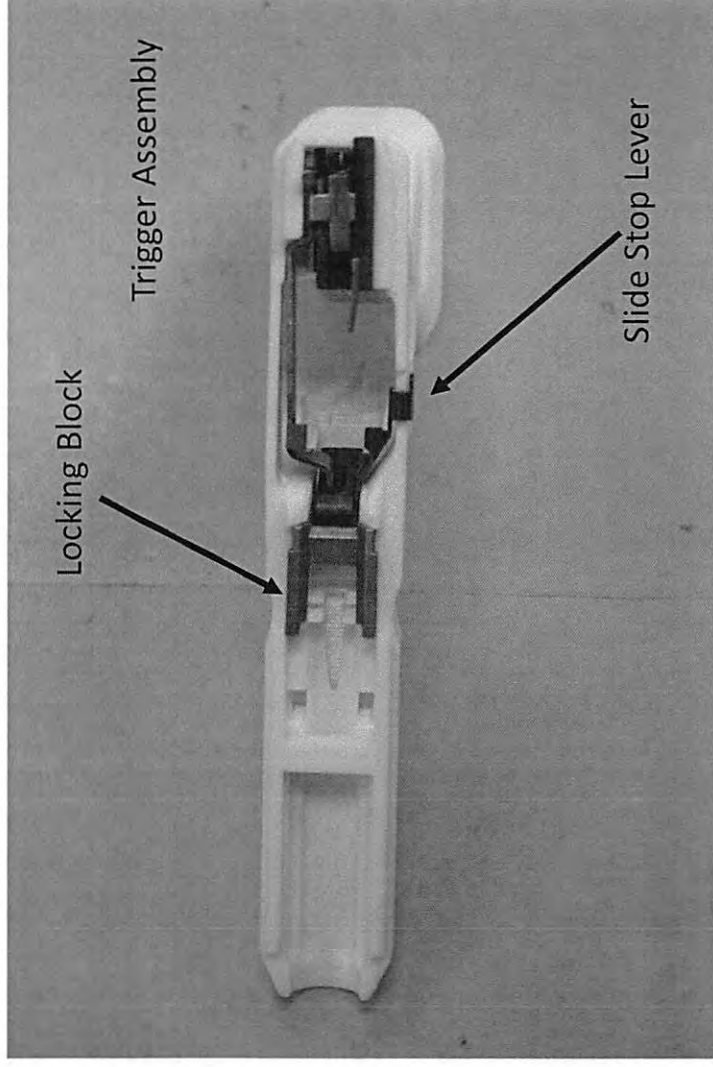




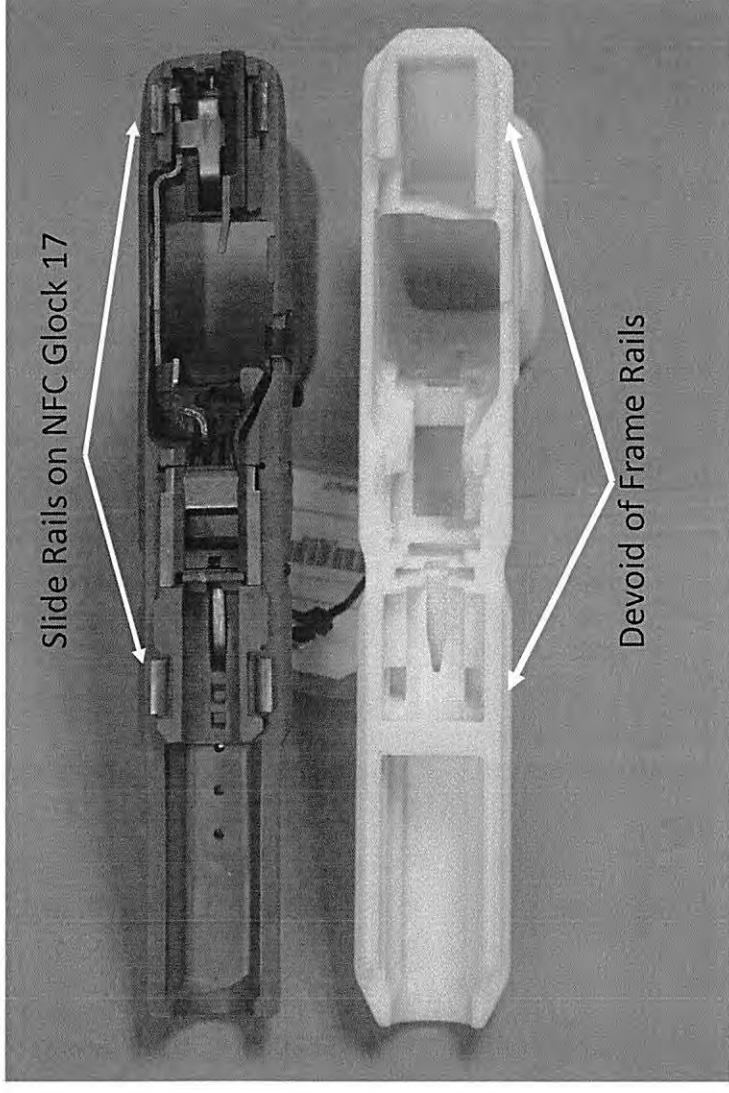
Capable of Accepting Glock 17 Trigger Mechanism and Trigger Bar Assemblies



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



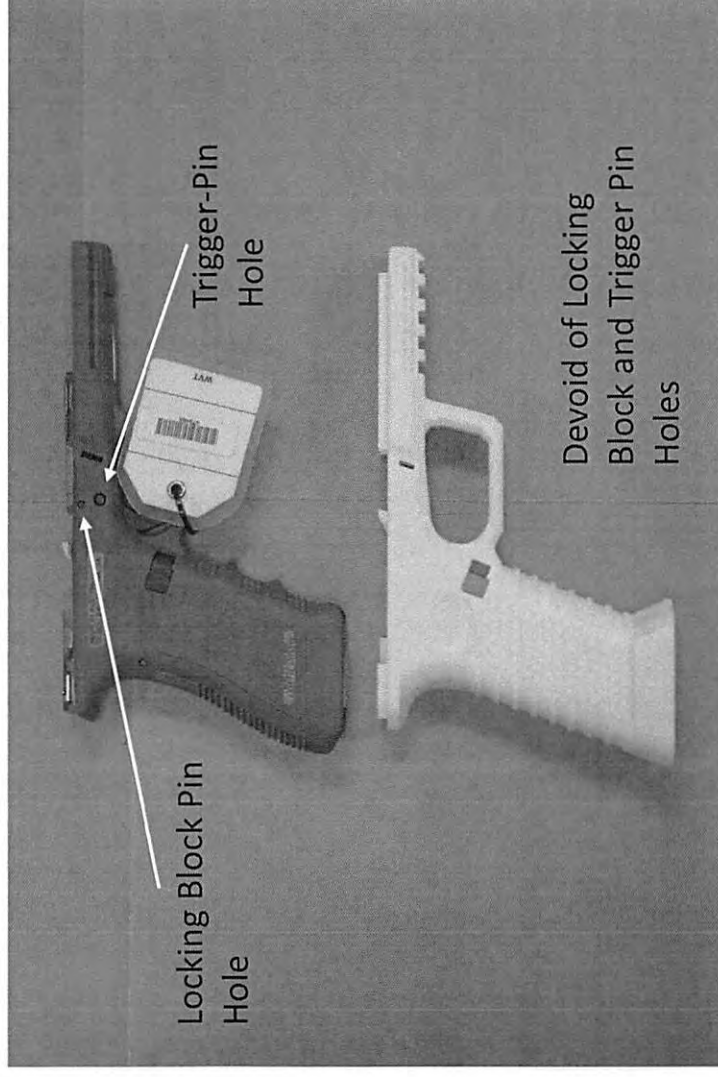
Internal Frame Comparison to NFC Glock 17



Frame Comparison to NFC Glock 17



Frame Comparison to NFC Glock 17



IN THE COMMONWEALTH COURT OF PENNSYLVANIA

LANDMARK FIREARMS	:	
LLC, <i>et al.</i>	:	
Petitioners	:	
v.	:	
	:	
ROBERT EVANCHICK	:	
COMMISSIONER OF THE	:	
PENNSYLVANIA STATE	:	
POLICE	:	Docket No.
Respondent	:	

DECLARATION OF BRANDON COMBS

I, Brandon Combs, am competent to state and declare the following based on my personal knowledge:

1. I am the President of Firearms Policy Coalition, Inc. (“FPC”).
2. FPC is a 501(c)(4) non-profit organization incorporated under the laws of Delaware, with its principal place of business in Sacramento, California. The purposes of FPC include defending and promoting the People’s rights—especially the fundamental, individual Second Amendment right to keep and bear arms—advancing individual liberty, and restoring freedom. FPC serves its members and the public through legislative advocacy, grassroots advocacy, litigation and legal efforts, research, education, outreach, and other programs. FPC has members and supporters,

who have all the indicia of membership, both within and outside of the State of Pennsylvania.

3. As used herein, whenever I use the term “non-firearm object” or its plural form, it is referring to a piece of matter (i.e., any substance that has mass and takes up space by having volume), such as an object made of metal or plastic that is not a firearm pursuant to federal law, but that Respondent and his Pennsylvania State Police calls a “partially-manufactured (often referred to as 80%) frames and receivers and kits which include the same,” or also “80% receivers,” “80% frames,” or “unfinished receivers.”
4. FPC has a law-abiding, non-prohibited member located in the State of Pennsylvania who, prior to the Attorney General issuing his Legal Opinion, dated December 16, 2019, which has now seemingly classified non-firearm objects as “firearms” under Pennsylvania law, ordered several non-firearm objects.
5. Upon learning about the Attorney General’s Legal Opinion that seemingly classified non-firearm objects as “firearms” under Pennsylvania law, the FPC member attempted to cancel his order with the retailer.

6. The FPC member was informed by the retailer that it was too late to cancel the order.
7. The FPC member attempted to contact the common-carrier responsible for the transportation of the non-firearm objects in an effort to have the shipment returned.
8. Due to the manner in which the common-carrier was transporting the non-firearm objects, return of the shipment was impossible.
9. To date, the shipment has not yet been received by the FPC member.
10. As the federal Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) has declared,

80% receiver,” “80% finished,” “80% complete,” “unfinished receiver” are all terms referring to an item that ... has not yet reached a stage of manufacture that meets the definition of firearm frame or receiver found in the Gun Control Act of 1968 (GCA).

See <https://www.atf.gov/firearms/qa/what-%E2%80%9C80%E2%80%9D-or-%E2%80%9Cunfinished-receiver>

11. Additionally, the FPC member is unsure as to what the Legal Opinion of Attorney General Joshua Shapiro or Respondent’s rule is applicable to, as it lacks specificity or any guidance that would

allow a person of ordinary intelligence to determine what is being regulated or enforced, or against whom.

12. The Attorney General's Legal Opinion, upon which Respondent's rule and enforcement practice is believed to be based, readily acknowledges that the State's Uniform Firearms Act "does not provide statutory definitions of ['designed' or 'may readily be converted']; yet, it rambles on to provide a number of factors [for someone – who?] to consider, none of which are dispositive, as to what constitutes "designed" and "may be readily converted."
13. To date, the FPC member has not received any formal contact from the Pennsylvania Attorney General or the Pennsylvania State Police which would provide guidance to them on what, exactly, the State now considers to be a firearm.
14. Further, the member is unsure of what "the Attorney General's binding opinion and applicable requirements within the UFA" is applicable to, as it lacks specificity or any guidance that would allow a person of ordinary intelligence to determine what is being regulated or enforced.
15. Additionally, this confusion is amplified since the pertinent portions of the definition of firearm under federal law is identical

to the pertinent portions of the definition of firearm under state law and ATF has concluded that an “80% receiver” (i.e., a non-firearm object) is not a firearm under the identical statutory language.

Compare 18 U.S.C. § 921(a)(3) (“The term ‘firearm’ means (A) any weapon (including a starter gun) which will or is designed to or may readily be converted to expel a projectile by the action of an explosive; (B) the frame or receiver of any such weapon...”)) with 18 Pa.C.S. § 6105(i) (“the term ‘firearm’ shall include any weapons which are designed to or may readily be converted to expel any projectile by the action of an explosive or the frame or receiver of any such weapon.”))

16. Respondent’s “Instant Check System” Web site

(<https://epics.pa.gov/Pics/>) was modified to indicate that the FPC member may be subject to the Attorney General’s “binding opinion” in the following new message:

As of 12-16-19, the sale of partially-manufactured (often referred to as 80%) frames and receivers and kits which include the same, requires a background check through the Pennsylvania Instant Check System, in accordance with the Attorney General's binding opinion and applicable requirements within the UFA. No sales may occur by a licensed firearms dealer without such a check. PSP is not yet ready to process such checks and is working diligently to have a process in place as soon as possible within the next thirty days to allow these checks to occur in a lawful manner.

17. According to the Respondent's Website, Respondent and his PSP are enforcing a rule, policy, practice, and/or custom that mandates all sales "of partially-manufactured (often referred to as 80%) frames and receivers and kits which include the same, requires a background check through the Pennsylvania Instant Check System, in accordance with the Attorney General's binding opinion and applicable requirements within the UFA." Further, the Respondent and his PSP are enforcing a rule, policy, practice, and/or custom that bans all sales of non-firearm objects "by a licensed firearms dealer without such a check." But because the Respondent and his PSP are enforcing a rule, policy, practice, and Respondent and his "PSP [are] not yet ready to process such checks," no sales can take place, thus both declaring a new law by fiat and enforcing it without any promulgated rules, guidance, or systems in place.
18. Even more confusing, since Respondent and his PSP's use of the term "partially-manufactured (often referred to as 80%) frames and receivers" refers to something that is not a firearm, it has no legal meaning and would seemingly encompass everything from bare

materials up to the point in time it becomes a firearm under federal law.

19. Because of the Respondents actions and, *inter alia*, his PSP's Web site announcing the enforcement of the new rule, policy, practice, and/or custom, because the Attorney General's Legal Opinion contains a number of factors to consider, none of which are dispositive, and because Respondent and his PSP's enforced rule is unclear and vague as to what constitutes a firearm, FPC members inside and outside of Pennsylvania fear prosecution and seizure/penalty for transactions and conduct regarding non-firearm objects (e.g., sale, importation, receipt, possession, transportation) that may trigger a law with criminal, civil, monetary, or other penalties.

The FPC member, and other FPC members, and others similarly situated to them wish to continue to be able to lawfully buy, import acquire, possess, transfer, transport, give, and sell non-firearm objects in Pennsylvania; yet, they fear prosecution and seizure person and property as a result of the Respondent's new rule, policy, practice, and/or custom and his PSP's enforcement of it.

I, Brandon Combs, President of Firearms Policy Coalition, Inc., verify that Firearms Policy Coalition, Inc. is a Plaintiff named in the foregoing and all the information contained therein is true and correct to the best of my information, knowledge and belief. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 relating to unsworn falsification to authorities.

Dated: December 20, 2019



Brandon Combs

Exhibit A



COMMONWEALTH OF PENNSYLVANIA
OFFICE OF ATTORNEY GENERAL
HARRISBURG, PA 17120

JOSH SHAPIRO
ATTORNEY GENERAL

16TH FLOOR
STRAWBERRY SQUARE
HARRISBURG, PA 17120
(717) 787-3391

December 16, 2019

Colonel Robert Evanchick
Commissioner
Pennsylvania State Police
1800 Elmerton Avenue
Harrisburg, PA 17110

Dear Commissioner Evanchick:

You requested legal advice¹ on behalf of the Pennsylvania State Police (“PSP”) concerning the stage of manufacture at which a receiver meets the definition of “firearm” contained in the following sections of the Uniform Firearms Act² (“UFA”):

- 18 Pa. C.S. § 6105(i),
- 18 Pa. C.S. § 6105.2(i),
- 18 Pa. C.S. § 6106(e)(1),
- 18 Pa. C.S. § 6107(c),
- 18 Pa. C.S. § 6110.2(c),
- 18 Pa. C.S. § 6111(f)(1),
- 18 Pa. C.S. § 6111.1(k),
- 18 Pa. C.S. § 6111.2(d),
- 18 Pa. C.S. § 6111.4,
- 18 Pa. C.S. § 6113(d),
- 18 Pa. C.S. § 6117(a),
- 18 Pa. C.S. § 6120(b), and
- 18 Pa. C.S. § 6128(f) (collectively, “the Applicable Sections”).³

The definition of firearm contained in the Applicable Sections includes any weapon which is “designed to or may readily be converted to expel any projectile by the action of an explosive; or the frame or receiver of any such weapon.”⁴ While a fully manufactured

¹ See Section 204 of the Commonwealth Attorneys Act, 71 P.S. § 732-204(a).

² 18 Pa. C.S. § 6101 *et. seq.*

³ The analysis of this Opinion does not apply to the definition of “firearm” as it appears in 18Pa. C.S. § 6102. Furthermore, although PSP did not specifically request advice on interpreting the “firearm” definitions applicable in 18 Pa. C.S. §§ 6111.2(d) and 6117(a), these sections are addressed because the same analysis impacts all sections of the UFA in which this definition appears.

⁴ In the interest of clarity, the Applicable Sections do not all use the same exact language; however, these slight variations in punctuation and word choice do not affect the analysis.

receiver clearly meets this definition, your question seeks guidance on when a receiver that is not fully manufactured becomes a “firearm” as defined under the Applicable Sections.

After careful review, we conclude a receiver, that is: 1) “designed” to expel or 2) “may readily be converted” to expel a projectile by the action of an explosive, is a firearm as defined in the Applicable Sections. As explained below, under the plain language of the UFA, a partially-manufactured receiver is a firearm as defined in the Applicable Sections if it is either “designed” or “may readily be converted” into a completed receiver with the capability to expel any projectile by the action of an explosive. The UFA does not provide a definition for either of these phrases. In order to aid the PSP, the agency charged with administering and enforcing the UFA,⁵ this Opinion provides the legal framework essential to PSP’s analysis when taking any enforcement action or providing any interpretive guidance involving the Applicable Sections.

Unquestionably, the object of all interpretation and construction of statutes is to ascertain and effectuate the intention of the General Assembly. 1 Pa. C.S. § 1921(a). If possible, a statute must be construed to give effect to all of its provisions. *Id.* Furthermore, when enacting legislation, the General Assembly enjoys a presumption that it does not intend a result that is absurd, impossible of execution, or unreasonable. 1 Pa. C.S. § 1922(1). Words and phrases in a statute shall be construed according to rules of grammar and their common and approved usage. 1 Pa. C.S. § 1903(a). Here, the word “designed” and the phrase “may readily be converted” must be analyzed within this framework.

I. A partially-manufactured receiver is a firearm because it is “designed” to expel a projectile by the action of an explosive.

In *Commonwealth v. Zortman*, 611 Pa. 22 (2011), the Pennsylvania Supreme Court interpreted a largely identical definition of “firearm” previously contained in 42 Pa. C.S. § 9712.1(f) (relating to sentencing enhancements for certain crimes committed with firearms).⁶ This section defined “firearm” as “any weapon, including a starter gun, which will or is designed to or may readily be converted to expel a projectile by the action of an explosive or the expansion of gas therein.” Using the rules of statutory construction, the Court construed the meaning of “designed to . . . expel a projectile by action of an explosive.” The Court held the definition of “firearm” was clear and unambiguous in requiring “only that the weapon be capable of firing a bullet (‘will’), easily rendered capable of firing a bullet (‘may readily be converted’) or . . . ‘designed’ to fire a bullet.” 611 Pa. at 33. This definition applied equally to weapons that are “functional, defectively manufactured, or temporarily inoperable for some other reason.” *Id.*

⁵ See 18 Pa. C.S. § 6111.1(a).

⁶ The Pennsylvania Superior Court in *Commonwealth v. Watley*, 81 A.3d 108 (2013) found 42 Pa. C.S. § 9712.1 unconstitutional for violating a defendant’s right to a jury trial because it permitted the trial court, not the jury, to increase the length of a minimum sentence based on the possession of a firearm without requiring proof of that fact as an element of the crime. The basis for that ruling did not involve interpreting the definition of a “firearm”; therefore, Pennsylvania Supreme Court’s analysis of the “firearm” definition in *Zortman* remains good law.

Of particular importance, the statute at issue in *Zortman* clearly differentiated between firearms that “will” fire a projectile and those merely “designed” to do so. *Id.* In the UFA, the firearm definition at issue in this Opinion mirrors the language from former 42 Pa. C.S. § 9712.1, with one exception; the General Assembly chose to focus upon firearms that are “designed” to expel a projectile, rather than those that “will.” Therefore, under the plain language of the UFA a weapon *designed* to fire a projectile is a firearm regardless of whether it *will* actually fire a projectile. Since the UFA definition of “firearm” in the Applicable Sections also considers the frame or receiver of a weapon “designed to . . . expel any projectile by the action of an explosive” a firearm, it follows that these same principles apply. In order to be a “firearm,” a receiver need not be capable of firing a projectile; it needs only to be designed to do so.

In *Zortman*, the Court used dictionary definitions to interpret the plain meaning of “designed,” concluding that the various definitions meant “that the design itself, or the thing designed, is something planned, intended, purposeful, deliberate, or even ‘schemed’ towards some specific end or outcome.” *Id.* Receivers, even those in a state of partial manufacture, are unequivocally “designed to . . . expel any projectile by the action of an explosive” because they are manufactured with the necessary specifications, intended, and marketed for the purpose of firing a projectile.

II. A partially-manufactured receiver that “may readily be converted” to expel any projectile by the action of an explosive is a firearm.

As a matter of first impression, there is no controlling caselaw providing a definition or standard for applying the phrase “may readily be converted.”⁷ There is, however, caselaw from other jurisdictions interpreting the similar phrase “may readily be restored” as it applies to machine guns—a subset of firearms—in the National Firearms Act.⁸ Although not binding here, decisions from other jurisdictions can provide persuasive authority. *Com. v. Nat’l Bank & Tr. Co. of Cent. Pennsylvania*, 469 Pa. 188, 194, 364 A.2d 1331, 1335 (1976).

The “may readily be restored” standard is analogous to the “may readily be converted” standard as they both embody the essential concept of whether a weapon may be readily transformed into a fully operable firearm. The Sixth Circuit provides the most comprehensive summary of the law surrounding “may readily be restored” in *U.S. v. One TRW Model M14, 7.62 Caliber Rifle from William K. Alverson*, 441 F.3d 416 (2006).

⁷ Similarly, there is no caselaw providing an interpretation of the phrase “may readily be converted” from the Gun Control Act, 18 U.S.C. § 921.

⁸ The National Firearms Act defines a machinegun as “any weapon which shoots, is designed to shoot, or can be readily restored to shoot, automatically more than one shot, without manual reloading, by a single function of the trigger.” 26 U.S.C. § 5845(b). Similar to the Uniform Firearms Act, the National Firearms Act does not define the phrase “can be readily restored.”

When enforcing or interpreting the UFA, implicating the definition in the Applicable Sections, it is essential for the PSP to utilize the framework provided by the court in *One TRW Model* by collectively applying the following factors: time, ease, expertise, necessary equipment, availability, expense, and feasibility of converting an object into something “designed to expel any projectile by the action of an explosive.”⁹ Courts have examined these factors in the following ways:

- **Time:** How long it would take to convert the receiver so that it is capable of firing a projectile has been the factor most commonly emphasized by courts. While there is no clear ceiling on the time requirement, courts in various jurisdictions have found a weapon could be readily converted or restored in as little as two minutes and as long as eight hours.¹⁰
- **Ease:** This factor measures the level of difficulty in converting a receiver so that it is capable of firing a projectile.
- **Expertise:** This weighs the knowledge and skill required to convert the weapon so that it is capable of firing a projectile.¹¹
- **Equipment:** This evaluates the tools necessary to convert a receiver to be capable of firing a projectile. Courts have found this to occur in a variety of circumstances, ranging from the use of basic tools to a properly-equipped machine shop.¹²

⁹ The court also includes “scope” as a factor relating to the extent that a machine gun had been altered, focusing on the “can be readily restored to shoot” aspect of the machine gun definition. While this factor is not instructive for our analysis of whether a receiver “may readily be converted,” it does not prevent us from using the remaining factors articulated in *One TRW Model*.

¹⁰ *E.g., Com. v. Cofoni*, 349 Pa. Super. 407, 415, 503 A.2d 431, 435 (1986) (a Pennsylvania case determined that a starter pistol that could be converted to fire a projectile in approximately 15 minutes with proper tools or in an hour for an unskilled individual with basic tools and limited knowledge was a firearm under the UFA.); *U.S. v. Alverson*, 666 F.2d 341, 345 (9th Cir. 1982) (defined readily as the ability to manufacture required parts in four to six hours with particular machinery or in two to three hours by hand); *U.S. v. Dodson*, 519 F. App'x 344, 347 (6th Cir. 2013) (90 minutes); *U.S. v. Woodlam*, 527 F.2d 608, 609 (6th Cir. 1976) (considering the element of time only readily meant a modification that was capable of being completed in two minutes); *U.S. v. Smith*, 477 F.2d 399, 400 (8th Cir. 1973) (8 hours in a machine shop); *But See, U.S. v. Seven Miscellaneous Firearms*, 503 F. Supp. 565, 577 (D.D.C. 1980) (Not readily restorable if it would require a master gunsmith working in a gun shop, the equipment and tools costing \$65,000, and 13 3/4 hours to make the necessary modifications).

¹¹ *E.g., United States v. Kelly*, 276 F. App'x 261, 267 (4th Cir. 2007) (rejecting the argument that “the statute must be applied not based upon the knowledge and skills of an expert and what an expert may be able to accomplish, but upon the knowledge and skills of an ordinary person”).

¹² *E.g., United States v. Aguilar-Espinosa*, 57 F. Supp. 2d 1359, 1362 (M.D. Fla. 1999) (tools commonly understood by and available to such workers); *Com. v. Cofoni*, 349 Pa. Super. 407, 415, 503 A.2d 431, 435 (1986) (skilled machinist with proper equipment or an unskilled person with basic tools, limited knowledge, and approximately one hour to accomplish the task); *United States v. Smith*, 477 F.2d 399, 400 (8th Cir. 1973).

- **Availability:** This reflects whether the parts necessary to convert a weapon are easily available. For instance, a disassembled machine gun missing only one necessary part was found to be readily restorable where the necessary part was available on the open market.¹³
- **Expense:** Any analysis must also consider the relative cost of the parts and equipment necessary to convert a receiver so that it is capable of firing a projectile.¹⁴
- **Feasibility:** A weapon is not readily convertible where the attempted conversion would damage or destroy the weapon or cause it to malfunction.¹⁵

No single factor is dispositive. The PSP must weigh all the applicable factors together to determine whether a receiver “may readily be converted” to expel any projectile by the action of an explosive. This analysis is dependent on the factual circumstances in each specific case. For instance, a receiver is a “firearm” if it can be converted to expel a projectile by individual with reasonable skill (expertise), basic tools (equipment) available to and understood by such an individual, and commonly available parts (availability) in a reasonable amount of time (time).¹⁶

In contrast, an example where a receiver would not be considered “readily convertible” comes from the District of D.C., where the court considered these factors in determining whether certain weapons were “readily restorable.” In that case, the weapons were held not to be machine guns because it would have taken a master gunsmith (expertise) over 13 hours (time) working with specialized equipment (equipment), required parts that are not commonly available (availability), cost \$65,000 to make the conversion, and the conversion could have damaged or destroyed the firearm as well as caused injury to the shooter upon firing.¹⁷

III. Conclusion.

A receiver does not need to be fully manufactured to be a firearm as defined in the Applicable Sections. A receiver is a firearm under the Applicable Sections if it is: 1) “designed” to expel or 2) “may readily be converted” to expel a projectile by the action of an explosive. Given the UFA does not provide statutory definitions of these terms, PSP shall utilize the legal

¹³ *United States v. Cook*, 1993 WL 243823 (6th Cir. 1993); *United States v. Catanzaro*, 368 F. Supp. 450, 452 (D. Conn. 1973) (replacement parts available from Smith & Wesson plant).

¹⁴ *E.g.*, *United States v. Catanzaro*, 368 F. Supp. 450, 452 (D. Conn. 1973) (readily restored when it only requires a \$15.00 part); *But see*, *United States v. Seven Misc. Firearms*, 503 F.Supp. 565 (D.D.C. 1980) (may not be readily restored when it required \$65,000 worth of specialized equipment and tools).

¹⁵ *E.g.*, *United States v. Seven Misc. Firearms*, 503 F.Supp. 565 (D.D.C. 1980).

¹⁶ A court ruled a machine gun was readily restorable under these circumstances in *United States v. Aguilar-Espinosa*, 57 F. Supp. 2d 1359, 1362 (M.D. Fla. 1999)

¹⁷ A court ruled a machine gun was not readily restorable under these conditions in *United States v. Seven Misc. Firearms*, 503 F.Supp. 565 (D.D.C. 1980).

framework set forth in this Opinion when enforcing or issuing interpretive guidance regarding the Applicable Sections of the UFA.¹⁸ Along with direct enforcement of the UFA, PSP has the ability to issue interpretive rules through internal documents, manuals, or policy statements; while not controlling, these interpretations would be entitled to deference. *Skidmore v. Swift & Co.*, 323 U.S. 134, 140, 65 S. Ct. 161, 164, 89 L. Ed. 124 (1944). Additionally, PSP can further interpret the definitions through formal rulemaking. 18 Pa. C.S. § 6111.5. Any regulation properly promulgated by PSP is entitled to deference, unless clearly erroneous. *Harkness v. UCBR*, 591 Pa. 543, 920 A.2d 162.

You are further advised that in accordance with Section 204(a)(1) of the Commonwealth Attorneys Act, 71 P.S. § 732-204(a)(1), PSP shall follow the advice contained in this Opinion and will not in any way be liable for doing so.

All the best,



JOSH SHAPIRO

cc: Gregory G. Schwab, General Counsel
Nolan B. Meeks, Acting Chief Counsel
Keli M. Neary, Executive Deputy Attorney General

¹⁸ Nothing in this opinion shall restrict or supersede PSP's discretion in choosing when to enforce or issue interpretive guidance involving the UFA.

Exhibit B



Pennsylvania State Police

TO SEEK JUSTICE, PRESERVE PEACE, AND IMPROVE THE QUALITY OF LIFE FOR ALL

pennsylvania

Instant Check System

As of 12-16-19, the sale of partially-manufactured (often referred to as 80%) frames and receivers and kits which include the same, requires a background check through the Pennsylvania Instant Check System, in accordance with the Attorney General's binding opinion and applicable requirements of the Uniform Firearms Act (UFA). No sales may occur by a licensed firearms dealer without such a check. PSP is not yet ready to process such checks and is working diligently to develop a process in place as soon as possible within the next thirty days to allow these checks to occur in a lawful manner.

User Name*

Password*

Login

WARNING: Web access to the Pennsylvania Instant Check System is for Official use only. E-PICS is not intended for use by Pennsylvania Licensed Firearm Dealers and County Sheriffs to verify an applicant's eligibility to legally purchase/transfer a firearm or obtain a License to Carry.

As provided in 18 Pa. C.S. § 6111(g) (3) of the Pennsylvania Uniform Firearms Act, "...Any person, licensed dealer, licensed manufacturer, licensed importer who knowingly and intentionally requests a criminal history, juvenile delinquency or mental health record check or other confidential information from the Pennsylvania State Police under this chapter for any purpose other than compliance with this chapter or knowingly and intentionally disseminates any criminal history, juvenile delinquency or mental health record or other confidential information to any person other than the subject of the information commits a felony of the third degree."

Flex-Check™ by Tailored Software
Version: 1.0

Exhibit C

Press Release

December 16, 2019 | Topic: [Criminal](#)

HARRISBURG – Amidst a gun violence epidemic, Attorney General Josh Shapiro and Gov. Tom Wolf today outlined a new legal [opinion](#) from the Attorney General’s Office addressing the classification of “80% receivers,” which are most commonly used to make unserialized “ghost guns.” The opinion clarifies that, under the Pennsylvania Uniform Firearms Act, these receivers are properly classified as firearms in Pennsylvania. This opinion was issued to tackle the growing use of untraceable “ghost guns” and to further assist law enforcement officials to protect people and save lives.

A receiver, or frame, is the part of the firearm that houses the internal firing components. A gun cannot function without a receiver. A so-called “80% receiver” is one that is in an incomplete stage of manufacture; however, they can easily be turned into a [functioning firearm](#). 80% receivers are commonly unserialized. Until this opinion, there was uncertainty over whether 80% receivers can be regulated the same way as fully finished receivers. This gap in enforcement made these weapons easily accessible to criminals and those prohibited from purchasing firearms in the Commonwealth, including convicted felons and domestic abusers.

“My Office is taking the initial step of clarifying – through my official, legal opinion – that under Pennsylvania law, 80% receivers are firearms and can be treated, regulated, and enforced as such,” **AG Shapiro** said today during a Capitol news conference with Governor Wolf and the PA State Police. “The proliferation of these untraceable weapons strikes at the heart of our public safety, hindering law enforcement’s ability to protect our communities. Today, we take the first step in addressing this problem.

“If we don’t recognize that 80 percent receivers are firearms under Pennsylvania law, we are creating a giant loophole that allows criminals to skirt our agreed-upon laws that keep people safe,” said **Gov. Wolf**. “Changing this classification will not hurt legal, responsible gun owners – This change will stop criminals, terrorists and other people who can’t pass a background check from acquiring a gun through the loophole.”

Following this legal opinion issuance, the Office of Attorney General and Pennsylvania State Police will now work together on an implementation strategy to ensure that these weapons do not end up in the hands of criminals, convicted felons or prohibited purchasers.

Currently, 80% receivers can be purchased at gun shows, brick-and-mortar vendors and online. The buyer can assemble the weapon soon after purchase and have a live, untraceable gun at their disposal. The Attorney General's office cited felons purchase duffel bags full of these kits are the Oaks Gun Show as well as at gun shows in York and Harrisburg. In Philadelphia alone, over 100 ghost guns have been recovered that started as 80% receivers.

Shapiro issued his opinion today on 80% receivers at the request of the Pennsylvania State Police, who asked for formal guidance on how to classify these products under Pennsylvania's Uniform Firearms Act. Under the Commonwealth Attorney Act, any state agency or the governor can formally request the Office of Attorney General to interpret state law. After an examination of a statute, the expressed opinion is binding on the agency requesting it.

"Under the statute, it doesn't matter that these are not fully finished products," The Attorney General said. "They are receivers and, therefore, they are firearms. Pure and simple."

Shapiro said this opinion does not make any firearm products illegal, and by issuing it, his office is not infringing on lawful gun owners' Second Amendment rights.

"We're here because too many criminals have taken advantage of these loopholes to gain access to guns that they should never have had to begin with. We've read the same headlines, had the same emotional reactions, submitted to the same numbness, rinse and repeat," Shapiro said. "Hopefully, with today's interpretation, we can add onto the wide array of efforts my Office – in partnership with entities like the Pennsylvania State Police and the Governor's Office – have undertaken to save lives."

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Exhibit D



DEPARTMENT OF THE TREASURY
BUREAU OF ALCOHOL, TOBACCO AND FIREARMS

903050:RLB
3311/2003-227

FEB 25 2003

COPY

Mr. Justin Halford
312 Oxford Cove
Jonesboro, Arkansas 72404

Dear Mr. Halford:

This is in response to your letter dated January 21, 2003, to the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF). In your letter you ask about manufacturing 80% complete receivers.

The terms 50%, 80% and 90% complete receivers are commonly used for advertisement purposes. Such terms do not accurately identify the condition of a partially completed or unfinished receiver and have no precise meaning. Further, such terms did not originate with ATF, are not used by ATF and have no legal or technical meaning within ATF.

In order for us to render any opinion regarding the status of a partially finished receiver, we need to physically examine a sample. If you care to submit a sample of the subject receiver, we will be happy to examine it and provide you with an appropriate classification and any related determinations. Upon completion of our examination, the sample will be returned to you. However, you should be aware that if the sample is found to be a machinegun receiver or otherwise subject to the purview of the National Firearms Act, it could not be returned and would have to be abandoned to the government.

COPY

WWW.ATF.TREAS.GOV

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COPY


Mr. Justin Halford

Samples may be forwarded to the below-listed address:

Bureau of Alcohol, Tobacco, Firearms and Explosives
Firearms Technology Branch, Room 6450
650 Massachusetts Avenue, NW
Washington, DC 20226

We regret that we are unable to respond more fully at the present time. If we may be of any further assistance, please contact us.

Sincerely yours,



Curtis H.A. Bartlett
Chief, Firearms Technology Branch

COPY

CERTIFICATE OF SERVICE

I, Joshua Prince, hereby certify that on December 20, 2019, I caused a true and correct copy of the foregoing Petition for Review together with all supporting materials thereto to be served on the entities in the manner specified below:

(via PACFile, Email and Overnight Mail)

Pennsylvania State Police
Office of Chief Counsel
1800 Elmerton Avenue
Harrisburg, PA 17110

alovette@pa.gov (Andrew Lovette, Esq.)

JohnHerman@pa.gov (John Herman, Esq.)

(via PACFile and Overnight Mail)

Pennsylvania Office of the Attorney General
Strawberry Square, 16th Floor
Harrisburg, PA 17120

Date: December 20, 2019


Joshua Prince, Esq.