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7

8 **IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
9 **IN AND FOR CARSON CITY**

10 * * *

11 NevadansCAN, a Nevada non-profit
corporation; MARY ROONEY, as its co-
12 founder and as an individual; JULIE
HEREFORD, as its co-founder and as an
13 individual; JANE DOE, as an individual gun
owner who sues anonymously; and JOHN DOE,
14 as an individual gun owner who sues
anonymously,

15 Plaintiffs,

16 vs.

17 STATE OF NEVADA *ex rel.* STEVE
18 SISOLAK, in his capacity as GOVERNOR OF
NEVADA,

19 Defendant.
20

CASE NO. 1990C00213

DEPT NO. I

HEARING REQUESTED

**MOTION FOR PARTIAL
SUMMARY JUDGMENT AND
MOTION FOR PRELIMINARY
INJUNCTION**

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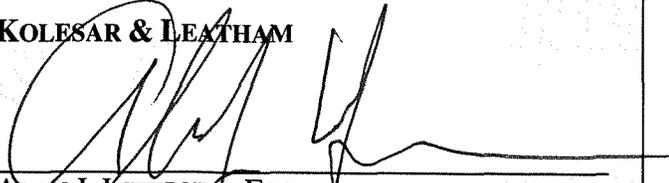
21 Plaintiffs NevadansCAN, MARY ROONEY (“Rooney”), JULIE HEREFORD
22 (“Hereford”), JANE DOE, and JOHN DOE (collectively, “Plaintiffs”), by and through their
23 attorneys Alan J. Lefebvre, Esq. and William D. Schuller, Esq. of the law firm of Kolesar &
24 Leatham, hereby move for 1) summary judgment on their second claim for declaratory judgment
25 – i.e., that a September 12, 2019 Supreme Court of Nevada opinion invalidates core provisions of
26 Assembly Bill 291 (“AB 291”), rendering its “judge centric” implementation impossible; and 2) a
27 preliminary injunction against the unconstitutional enforcement of the red flag law component of
28 AB 291 prior to its effective date.

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This Motion is made and based upon the Constitution of the United States (“U.S. Constitution”) and the Constitution of the State of Nevada (“Nevada Constitution”), FJDCR 15, NRCR 56, NRCR 65, the following Memorandum of Points and Authorities, the pleadings and papers on file herein, and any argument presented at the time of hearing on this matter.

DATED this 20th day of December, 2019.

KOLESAR & LEATHAM

By 

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Nevada should not enforce the “red flag” law component of AB 291 when it becomes effective on January 1, 2020 because it creates a new crime, coupling a legislatively determined prohibited act with the penal discipline of deprivation of Second Amendment rights. Nevada Supreme Court precedent announced on September 12, 2019 held that the deprivation of Second Amendment protections requires that a jury decide whether to impose such a punishment, in accordance with the Sixth Amendment of the United States Constitution (and its coextensive protections found in the Nevada Constitution). Applying that holding to the procedures AB 291 authorizes to effect the deprivation of Second Amendment rights, AB 291’s red flag law cannot be enforced in a manner which is constitutionally valid. The red flag law should not be enforced and this suit seeks such a ruling from this Court, and an injunction to give effect to the Court’s finding of constitutional invalidity.

II. PROCEDURAL HISTORY

On December 4, 2019, Plaintiffs filed their Complaint for Declaratory Relief and Injunctive Relief (“Complaint”), which seeks a declaratory judgment regarding infringement of the right to keep and bear arms, **a declaratory judgment regarding intervening Nevada Supreme Court precedent, and injunctive relief against administering and enforcing the Red Flag Law.** The second cause of action for declaratory relief concerns the holding in *Andersen v. Eighth Judicial Dist. Court in & for Cty. of Clark*, 135 Nev. Adv. Op. 42, 448 P.3d 1120 (2019) – i.e., that first-offense domestic battery was a serious offense to which right to jury trial attached. *See* Complaint at ¶¶ 133-148. And the third cause of action for injunctive relief concerns enforcement of the red flag component of AB 291 prior to its effective date. *See* Complaint at ¶¶ 149-155. Plaintiffs served the Complaint on the Attorney General on December 9, 2019. *See* Summons, filed December 16, 2019.

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

2 1. As amended, AB 291 concerns the following:

3 AN ACT relating to public safety; **establishing provisions**
4 **governing certain orders for protection against high-risk**
5 **behavior; defining certain terms relating to the issuance of such**
6 **orders; prescribing certain conduct and acts that constitute**
7 **high-risk behavior; authorizing certain persons to apply for ex**
8 **parte and extended orders for protection against high-risk**
9 **behavior under certain circumstances; providing for the**
10 **issuance and enforcement of such orders; prohibiting a person**
11 **against whom such an order is issued from possessing or having**
12 **under his or her custody or control, or purchasing or otherwise**
13 **acquiring, any firearm during the period in which the order is**
14 **in effect; establishing certain other procedures relating to such**
15 **orders; prohibiting the filing of an application for such orders**
16 **under certain circumstances; making it a crime to violate such**
17 **orders; prohibiting certain acts relating to the modification of a**
18 **semiautomatic firearm; reducing the concentration of alcohol that**
19 **may be present in the blood or breath of a person while in possession**
20 **of a firearm; making it a crime to negligently store or leave a firearm**
21 **under certain circumstances; providing penalties; and providing**
22 **other matters properly relating thereto.**

23 *See* Text of AB 291 As Enrolled, a true and correct copy of which is attached hereto as **Exhibit 1**
24 (emphasis added).

25 2. On June 14, 2019, Governor Sisolak signed AB 291 into law, to become effective
26 January 1, 2020. *See* <https://www.leg.state.nv.us/App/NELIS/REL/80th2019/Bill/6530/Overview>
27 (last accessed December 16, 2019).

28 3. NevadansCAN is a domestic nonprofit cooperative corporation formed on
December 20, 2017 and is in good standing with the Nevada Secretary of State. *See* Nevada eSOS
Entity Information, a true and correct copy of which is attached hereto as **Exhibit 2**.

4. Rooney is a co-founder and officer of NevadansCAN. *See* Ex. 2.

5. Hereford is a co-founder and officer of NevadansCAN. *See* Ex. 2.

6. NevadansCAN's mission is straightforward: "to defend and protect the United
States Constitution, the Nevada State Constitution, and traditional American values by promoting
grassroots activism in the legislative process." *See* <https://nevadanscan.com/our-mission/> (last
accessed December 16, 2019).

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1 7. The Nevada Supreme Court issued its opinion in *Andersen* on September 12, 2019.
2 135 Nev. Adv. Op. 42, 448 P.3d 1120 (2019).

3 8. As of 2019, approximately 37.50% of Nevada’s population own guns – i.e., over
4 1.15 million people. See <http://worldpopulationreview.com/states/gun-ownership-by-state/> (last
5 accessed December 16, 2019).

6 **IV. LEGAL ARGUMENT**

7 **A. Motion for Partial Summary Judgment**

8 1. *Summary Judgment Standard*

9 A court must enter summary judgment when, “after a review of the record viewed in a light
10 most favorable to the non-moving party, no genuine issues of material fact remain, and the moving
11 party is entitled to judgment as a matter of law.” *Fire Ins. Exch. v. Cornell*, 120 Nev. 303, 305,
12 90 P.3d 978, 979 (2004) (citation omitted); NRCP 56(a). In *Wood v. Safeway, Inc.*, Nevada
13 rejected the “slightest doubt” standard, which discouraged summary judgment, and adopted the
14 U.S. Supreme Court’s standard as set forth in the *Celotex* trilogy,¹ which encourages the use of
15 summary judgment to timely resolve litigation. 121 Nev. 724, 731, 121 P.3d 1026, 1031 (2005).
16 Indeed, the *Wood* Court noted that summary judgment is an *integral part* of the rules of civil
17 procedure, “which are designed to secure the just, speedy and inexpensive determination of every
18 action.” 121 Nev. at 730, 121 P.3d at 1030 (internal quotations omitted); *see also* NRCP 1.

19 The moving party is entitled to summary judgment pursuant to NRCP 56 when the
20 pleadings, depositions, answers to interrogatories, admissions, and affidavits on file show that
21 there exists no genuine issue as to any material fact. *Pegasus v. Reno Newspapers, Inc.*, 118 Nev.
22 706, 713, 57 P.3d 82, 87 (2002) (additional citation omitted). Conversely, to defeat a motion for
23 summary judgment, the non-moving party must rely on admissible evidence, and not “on the
24 gossamer threads of whimsy, speculation and conjecture.” *Id.*, 118 Nev. at 713-14, 57 P.3d at 87
25 *quoting Posadas v. City of Reno*, 109 Nev. 448, 452, 851 P.2d 438, 442 (1993). To effectuate the

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¹ *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242 (1986); and *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574 (1986).

1 purpose of NRCP 56, the proper inquiry focuses on two key terms: *material* and *genuine*. “The
2 substantive law controls which factual disputes are *material* and will preclude summary judgment;
3 other factual disputes are irrelevant. A factual dispute is *genuine* when the evidence is such that a
4 rational trier of fact could return a verdict for the nonmoving party.” *Wood*, 121 Nev. 731, 121
5 P.3d at 1031 (emphasis added) (citations omitted).

6 2. Declaratory Relief

7 Pursuant to NRS 30.040(1), “[a]ny person interested under a deed, written contract or
8 other writings constituting a contract, or **whose rights, status or other legal relations are affected**
9 **by a statute**, municipal ordinance, contract or franchise, **may have determined any question of**
10 **construction or validity arising under the instrument, statute, ordinance, contract or franchise**
11 and obtain a declaration of rights, status or other legal relations thereunder” (emphasis added).
12 Such a declaratory judgment is appropriate when it will “terminate the uncertainty or controversy
13 giving rise to the proceeding.” NRS 30.080. Under Nevada law, a court may grant declaratory
14 relief only if: (1) a justiciable controversy exists between persons with adverse interests; (2) the
15 party seeking declaratory relief has a legally protectable interest in the controversy; and (3) the
16 issue is ripe for judicial determination. *Cty. of Clark, ex rel. Univ. Med. Ctr. v. Upchurch*, 114
17 Nev. 749, 752, 961 P.2d 754, 756 (1998) citing *Knittle v. Progressive Cas. Ins. Co.*, 112 Nev. 8,
18 10, 908 P.2d 724, 725 (1996). The proper determination in an action for declaratory judgment is
19 a matter for the district court’s discretion and will not be disturbed on appeal unless the district
20 court abused that discretion. *Upchurch*, 114 Nev. at 752, 961 P.2d at 756 citing *El Capitan Club*
21 *v. Fireman's Fund Ins. Co.*, 89 Nev. 65, 68, 506 P.2d 426, 428 (1973).

22 Here, as Plaintiffs’ Second Amendment rights are affected by AB 291, they may have the
23 Court determine the question of the Red Flag Law’s validity under AB 291. Such a declaratory
24 judgment will eliminate the uncertainty surrounding the Red Flag Law, which is the gravamen of
25 the Complaint. A justiciable controversy exists between Plaintiffs and the State, who have adverse
26 interests regarding enforcing AB 291. Plaintiffs have a legally protectable interest in the instant
27 lawsuit (i.e., their constitutional rights). And the issue is ripe for judicial determination as AB 291
28 has already been passed and takes effect January 1, 2020.

1 3. *Partial Summary Judgment on Declaratory Relief re: Andersen*

2 a. AB 291's Architecture

3 As passed and presented to the Governor to become law, AB 291 consists of 28 sections
4 (not all fully codified into the Nevada Revised Statutes yet). Sections 25, 27, and 28 were
5 contained within the original legislation as introduced early in the 80th Legislative Session. Section
6 25 addresses "bump stocks"; Section 27 altered the prohibited level of alcohol allowable while in
7 possession of a weapon; and Section 28 prohibits so-called negligent firearm storage.

8 Sections 2-22 establish procedures for the issuance of *ex parte* orders (temporary orders
9 effective for seven days) or extended orders (in effect for up to a year) for protection when a gun
10 owner is accessed through hearsay, as posing a risk of personal injury to himself or herself or
11 another person under certain circumstances. *See* Ex. 1 at pp. 3-12. Those sections were added to
12 the legislation during the twilight of the 80th Session's end. *See* Complaint at ¶¶ 31-43. They are
13 the subject of this Motion. In common parlance they are known as a "red flag" law, permitting the
14 entry of Extreme Risk Protection Orders (ERPOs) for gun confiscation and prohibiting a person's
15 gun possession while an order is in effect, as if the gun owner stands *convicted of a crime*.

16 Sections 4-9 set forth certain definitions relating to such orders. *See* Ex. 1 at p. 3. Section
17 10 proscribes certain acts and conduct which constitute high-risk behavior for the purposes of the
18 issuance of such orders. *Id.* at pp. 3-4. Section 11 authorizes a family or household member or a
19 law enforcement officer to file a verified application to obtain an *ex parte* or extended order against
20 a person who poses a risk of causing personal injury to himself or herself or another person by
21 possessing or having under his or her custody or control or by purchasing or otherwise acquiring
22 any firearm. *Id.* at pp. 4-5. Section 14 requires the adverse party against whom an *ex parte* or
23 extended order is issued to surrender any firearm in his or her possession or under his or her
24 custody or control and prohibits the party from possessing or having under his or her custody or
25 control any firearm while the order is in effect. *Id.* at pp. 6-7. Section 14 reads in its entirety as
26 follows:

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1 **Sec. 14.** Each *ex parte* or extended order issued pursuant to section
2 12 or 13 of this act must:

3 1. Require the adverse party to surrender any firearm in his or her
4 possession or under his or her custody or control in the manner set
5 forth in section 15 of this act.

6 2. Prohibit the adverse party from possessing or having under his or
7 her custody or control any firearm while the order is in effect.

8 3. Include a provision ordering any law enforcement officer to arrest
9 the adverse party with a warrant, or without a warrant if the officer
10 has probable cause to believe that the person has been served with a
11 copy of the order and has violated a provision of the order.

12 4. State the reasons for the issuance of the order.

13 5. Include instructions for surrendering any firearm as ordered by
14 the court.

15 6. State the time and date on which the order expires.

16 7. Require the adverse party to surrender any permit issued pursuant
17 to NRS 202.3657.

18 8. Include the following statement:

19 **WARNING**

20 This is an official court order. If you disobey this order, you may
21 be arrested and prosecuted for the crime of violating an *ex parte* or
22 extended order and any other crime that you may have committed in
23 disobeying this order.

24 *Id.* (emphasis added).

25 Sections 15-18 establish additional procedures related to: (1) the issuance and enforcement
26 of such *ex parte* and extended orders; and (2) the surrender and return of the firearms of the adverse
27 party. *See Ex. 1* at pp. 7-10. Section 19 provides that orders issued pursuant to the bill are effective
28 as follows: (1) for an *ex parte* order, a period of seven days; and (2) for an extended order, a period
29 of one year. *Id.* at pp. 10-11.

30 Sections 14 and 22 provide that a person who violates an *ex parte* or extended order is
31 guilty of a misdemeanor. *See Ex. 1* at pp. 6-7, 12. Existing law already provides that a person
32 who commits certain crimes punishable as a felony in violation of certain orders for protection is
33 subject to an additional penalty. NRS 193.166. Section 24 includes a felony committed in
34 violation of an *ex parte* or extended order, as defined in this bill, to the list of violations which
35 result in an additional penalty. *See Ex. 1* at pp. 12-13.

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1 Sections 12 and 13 proscribe the mechanics of the issuance of court orders to effect the
2 seizure of arms. See Ex. 1 at pp. 5-6. Plaintiffs contend these orders violate the U.S. Constitution
3 as the Nevada Supreme Court interpreted in *Andersen*. See Complaint at ¶¶ 133-148. Plaintiffs
4 also contend that the law unduly burdens the exercise of a fundamental right, as an unbridled
5 exercise of the State of Nevada's police powers.

6 b. Proceedings in Which the ERPOs Can Be Procured Via AB 291,
7 Before a Single Judge, Upon Application by Petition

8 In summary, Section 12 of the bill requires a **court** to issue an *ex parte* order pursuant to a
9 verified application if the **court** finds by a preponderance of the evidence:

- 10 (a) That a person poses an imminent risk of causing personal injury
11 to himself or herself or another person by possessing or having
12 under his or her custody or control or by purchasing or otherwise
13 acquiring any firearm;
- 14 (b) The person engaged in high-risk behavior; and
- 15 (c) Less restrictive options have been exhausted or are not effective.

16 See Ex. 1 at p. 5. The remainder of Section 12 reads in its entirety as follows:

17 2. The court may require the person who filed the verified
18 application or the adverse party, or both, to appear before the court
19 before determining whether to issue an *ex parte* order.

20 3. An *ex parte* order may be issued with or without notice to the
21 adverse party.

22 4. Except as otherwise provided in this subsection, a hearing must
23 not be held by telephone. The court shall hold a hearing on the *ex*
24 *parte* order and shall issue or deny the *ex parte* order on the day the
25 verified application is filed or the judicial day immediately
26 following the day the verified application is filed. If the verified
27 application is filed by a law enforcement officer, the court may hold
28 the hearing on the *ex parte* order by telephone, which must be
recorded in the presence of the magistrate or in the immediate
vicinity of the magistrate by a certified court reporter or by
electronic means. Any such recording must be transcribed, certified
by the reporter if the reporter made the recording and certified by
the magistrate. The certified transcript must be filed with the clerk
of the court.

5. A hearing on an application for an *ex parte* order must be held
within 7 calendar days after the date on which the verified
application for the order is filed.

6. In a county whose population is 100,000 or more, the court shall
be available 24 hours a day, 7 days a week, including nonjudicial
days and holidays, to receive communications by telephone and for
the issuance of an *ex parte* order pursuant to subsection 4.

1 7. In a county whose population is less than 100,000, the court may
2 be available 24 hours a day, 7 days a week, including nonjudicial
3 days and holidays, to receive communications by telephone and for
4 the issuance of an ex parte order pursuant to subsection 4.

5 8. The clerk of the court shall inform the applicant and the adverse
6 party upon the successful transfer of information concerning the
7 registration to the Central Repository for Nevada Records of
8 Criminal History as required pursuant to NRS 33.095.

9 *See Ex. 1 at pp. 5-6 (emphasis added).*

10 In summary, Section 13 requires a **court** to issue an extended order pursuant to a verified
11 application if the **court** finds by clear and convincing evidence: (1) that a person poses a risk of
12 causing personal injury to himself or herself or another person by possessing or having under his
13 or her custody or control or by purchasing or otherwise acquiring any firearm; 2) the person has
14 engaged in high-risk behavior; and (3) less restrictive options have been exhausted or are not
15 effective. *See Ex. 1 at p. 6. In haec verba*, the provision sets forth that:

16 1. The court shall issue an extended order if the court finds by clear
17 and convincing evidence from facts shown by a verified application
18 filed pursuant to section 11 of this act:

19 (a) That a person poses a risk of causing personal injury to himself
20 or herself or another person by possessing or having under his or her
21 custody or control or by purchasing or otherwise acquiring any
22 firearm;

(b) The person engaged in high-risk behavior; and

(c) Less restrictive options have been exhausted or are not effective.

2. A hearing on an application for an extended order must be held
within 7 calendar days after the date on which the application for the
extended order is filed.

3. The clerk of the court shall inform the applicant and the adverse
party upon the successful transfer of information concerning the
registration to the Central Repository for Nevada Records of
Criminal History as required pursuant to NRS 33.095.

23 *See Ex. 1 at p. 6.*

24 The Legislative Counsel Bureau's digest indicates that when codification within the
25 Nevada Revised Statutes occurs, Sections 2-22 will be placed within Title 3 – Remedies; Special
26 Actions and Proceedings relating to remedies arising under the civil law of the State of Nevada, as
27 part of NRS Chapter 33 – Injunctions; Protection Orders.

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1 c. Plaintiffs Contend that Andersen's Holding Directly Bears on the
2 Lawfulness of AB 291 Sections 2-22.

3 A citizen against whom an AB 291 ERPO is issued as the adverse party may not have
4 lawful possession of a firearm and is treated just as one who "[h]as been convicted in this State or
5 any other state of a misdemeanor crime of domestic violence, as defined in 18 U.S.C. § 921(a)(33).
6 See NRS 202.260 (1)(a) (which became so as the result of a 2015 legislative enactment, 2015 Nev.
7 Stat., ch. 328, § 3(1)(a), at 1782). Under AB 291's Section 22, a person who violates an *ex parte*
8 or extended ERPO order is guilty of a misdemeanor (*see* Ex. 1 at p. 12), just as a person who is
9 actually convicted of the misdemeanor crime of domestic violence, after a trial by jury.

10 That 2015 legislative enactment came under scrutiny recently in *Andersen*. Petitioner Chris
11 Andersen was charged with domestic battery, which upon conviction would cause the automatic
12 forfeiture of his right to keep and bear arms, as the Nevada Constitution and U.S. Constitution
13 guarantee. 448 P.3d at 1122. Andersen demanded a trial by jury, which the trial judge denied. *Id.*
14 Andersen filed a petition for writ of mandamus with the Nevada Supreme Court to challenge the
15 denial of his right to be tried by a jury of his peers. *Id.* *Andersen* posited the question of whether
16 the elements making out an offense, if proven, was to be decided by a jury as the Sixth Amendment
17 provides, or by a judge as the finder of fact. At stake was Anderson's right to continue to exercise
18 a fundamental constitutional right – i.e., gun possession, which NRS. 202.260 (1)(a) would bar.
19 In the specific scenario presented, if Andersen was found guilty of the crime of domestic violence,
20 then he lost his right to keep and bear arms on the say so of a single judge, after a bench trial, not
21 by trial by jury.

22 On September 12, 2019, the *Andersen* Court announced its decision, holding that first-
23 offense domestic battery was a serious offense to which the right to a jury trial attached. The
24 Nevada Supreme Court's decision in *Anderson* invalidates the process of deprivation of the arms
25 right, unless a jury trial is afforded, and the role of a judge as the finder of facts is replaced by a
26 jury to determine if the arms right is to be forfeited.

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d. Andersen Invalidate's AB 291's Core Mechanism of Decision Making by a Judge (Without a Jury Determining the Facts).

The "red flag law" provides that it is a judge who decides whether arms are to be seized and possession deprived for up to a year. In a "red flag" proceeding, the consequence of what is to be adjudicated is the same as the domestic violence crime in *Andersen* – i.e., the loss of the right to possess arms, the gun "civil right" set forth in both the Bill of Rights and the Nevada Constitution. If the proof adduced is that one poses an "imminent risk of danger" in the law's Stage I, and that the individual poses "a high risk of danger" in the law's Stage II, then one loses the right to keep and bear arms. In both of its Stages, the new "red flag" law consigns to a judge the role of fact finding, which *Andersen* forbids. *Andersen* mandates that the role of "red flag" fact finding be taken from a judge and transferred to a jury, for a trial of the pertinent facts – i.e., whether "an imminent risk of danger" in Stage I or "a high risk of danger" in Stage 2 is posed by the gun owner's continued possession of arms.

That "red flag" statutory mechanism of judge driven decision making thus violates *Andersen's* premise that gun deprivation requires *fact finding* (upon the critical factual elements) to be determined by a jury of one's peers, as protected by the Sixth Amendment. The "red law" component of the 80th Session's AB 291, as configured and structured by the Legislature, is unconstitutional according to *Andersen*, and cannot take effect on January 1, 2020. Red flagging, according to *Andersen*, cannot be used to deprive gun owners of their right to keep and bear arms, unless a jury is empaneled to be the fact decider, ousting the judicial officer's role in each "red flag" process.

The seating of a jury to be the finder of facts defeats the *sine qua non* of the red flagging ambush, *ex parte* and in violation of due process, and invalidates the "judge centric" mechanism to obtain an ERPO in Nevada, both "*ex parte*" and "extended," come January 1, 2020. Whether the deprivation of arms is for a lifetime, up to a year, for seven days, or a single day, the "red flag" law's infringement is significant to the use of arms "for security and protection," which does not arise at a specific time, place, or manner of the gun owner's choosing when using arms for defensive purposes.

1 **B. Motion for Preliminary Injunction**

2 1. *Legal Standard for Preliminary Injunction*

3 A court may grant an injunction “[w]hen it shall appear by the complaint or affidavit that
4 the commission or continuance of some act, during the litigation, would produce great or
5 irreparable injury to the plaintiff.” NRS 33.010(2). The Nevada Supreme Court reviews a district
6 court’s decision to grant a preliminary injunction for an abuse of discretion and will reverse only
7 if the decision was based on an erroneous legal standard or clearly erroneous findings of fact.
8 *State, Dep’t of Bus. & Indus., Fin. Institutions Div. v. Nevada Ass’n Servs., Inc.*, 128 Nev. 362, 294
9 P.3d 1223 (2012) (citation omitted).

10 An applicant for a preliminary injunction must show: “(1) a likelihood of success on the
11 merits; and (2) a reasonable probability that the non-moving party’s conduct, if allowed to
12 continue, will cause irreparable harm for which compensatory damage is an inadequate remedy.”
13 *Univ. & Cmty. Coll. Sys. of Nevada v. Nevadans for Sound Gov’t*, 120 Nev. 712, 721, 100 P.3d
14 179, 187 (2004) quoting *S.O.C., Inc. v. Mirage Casino-Hotel*, 117 Nev. 403, 408, 23 P.3d 243,
15 246 (2001). In considering a preliminary injunction, a court may also consider two additional
16 factors: (3) the potential hardships to the relative parties; and (4) the public interest. *Nevadans for*
17 *Sound Gov’t*, 120 Nev. at 721, 100 P.3d at 187 citing *Clark Cty. Sch. Dist. v. Buchanan*, 112 Nev.
18 1146, 1150, 924 P.2d 716, 719 (1996). Plaintiffs address each of these factors in turn *infra*.

19 2. *The Court Should Issue a Preliminary Injunction re: AB 291.*

20 a. Likelihood of Success on the Merits

21 The likelihood of success on the merits is the most important factor for consideration and
22 if a movant fails to meet this threshold inquiry, then a court need not consider the other factors.
23 *Disney Enterprises, Inc. v. VidAngel, Inc.*, 869 F.3d 848, 856 (9th Cir. 2017) (citations omitted).
24 Plaintiffs’ likelihood of success on the merits is demonstrated in the preceding section *supra*
25 regarding applying *Andersen’s* holding to AB 291 and is hereby incorporated by reference. In
26 short, Nevada cannot enforce the Red Flag Law component of AB 291 without directly disobeying
27 *Andersen* – an unambiguous Nevada Supreme Court *en banc* opinion issued a mere three months
28 after Governor Sisolak signed off on AB 291.

1 individual who is the subject of an ERPO suffers the imposition of penal discipline, which means
2 he has been summarily adjudged guilty of a crime.

3 Plaintiffs, as gun owners, have a significant interest in avoiding potentially being charged
4 with a crime or labeled a *criminal* for no reason other than exercising their Second Amendment
5 rights. A red flag proceeding to obtain an ERPO is not a civil remedy as it results in the imposition
6 of penal discipline. The proponents of the Red Flag Law mechanism posit that the “remedy” is
7 merely a civil one, not a criminal accusation and accordingly, due process of law and all it
8 implicates can be ignored in favor of summary deprivation of arms upon unreliable testimony and
9 evidence in an *ex parte* fashion, shedding due process of law with abandon. To bolster their
10 contention, the proponents of AB 291 placed the bulk of the law alongside statutes governing the
11 civil law remedy of an “injunction” in NRS Chapter 33 – Injunctions; Protection Orders, nestled
12 within Title 3 – Remedies; Special Actions and Proceedings. A clever thought, but unavailing
13 given the Red Flag Law’s consequences. For while this Red Flag Law is to be placed for the most
14 part within the rubric of NRS Chapter 33 when codified, its enforcement (i.e., the “teeth” of the
15 law) cross references NRS Chapter 193, NRS Chapter 200, and NRS Chapter 202, all found
16 codified under Title 15 – Crimes and Punishments. Indeed, law enforcement officers are charged
17 with effecting the gun retrieval or seizure, and origination and execution of search warrants,
18 utilizing the arrest power on anyone not entirely docile.

19 The Nevada Revised Statutes define *crime* in two places with the definitions reading nearly
20 verbatim. Under NRS Chapter 193 – General Provisions (regarding crimes and punishments), “[a]
21 **crime is an act or omission forbidden by law and punishable upon conviction by death,**
22 **imprisonment, fine or other penal discipline.”** NRS 193.120(1) (emphasis added). Likewise,
23 under NRS Chapter 217 – Aid to Certain Victims of Crime, a crime is “[a]n act or omission
24 committed within this state **which, if committed by an adult, is forbidden by law and punishable**
25 **upon conviction by death, imprisonment, fine or other penal discipline.”** NRS 217.035(1)
26 (emphasis added). Both statutes premise the punishment upon an actual conviction. If Second
27 Amendment rights are deprived, then *Andersen* applies as precedent.

28 ///

1 Here, “penal discipline” is imposed as one against whom an ERPO is issued is punished –
2 as if he or she has been convicted of a crime – via prohibition of the rights of gun ownership,
3 possession, to keep and bear arms, and have weapons available for “defense and protection” as the
4 Nevada Constitution guarantees. Section 22 provides that “[a] person who intentionally violates
5 an ex parte or extended order is, unless a more severe penalty is prescribed by law for the act that
6 constitutes the violation of the order, guilty of a misdemeanor.” See Ex. 1 at p. 12 (emphasis
7 added). Section 14(2) provides that “[e]ach ex parte or extended order issued pursuant to section
8 12 or 13 of this act must: ...Prohibit the adverse party from possessing or having under his or her
9 custody or control any firearm while the order is in effect.” *Id.* at p. 6 (emphasis added).
10 Additionally, pursuant to Section 23, the adverse party is treated as a criminal and record of both
11 the ex parte (temporary order) and the extended order (up to one year) is included in the person’s
12 criminal record in the **Central Repository for Nevada Records of Criminal History.** *Id.* at p.
13 12 (emphasis added). Finally, this falsely described “civil offense” earns one a rung on the ladder
14 to classification as a felon under Section 24 as “a person who commits a crime that is punishable
15 as a felony...in violation of: ...(d) *An ex parte or extended order for protection against high-*
16 *risk behavior issued pursuant to section 12 or 13 of this act;* ...shall, in addition to the term of
17 imprisonment prescribed by statute for the crime, be punished by imprisonment in the state prison,
18 except as otherwise provided in this subsection, for a minimum term of not less than 1 year and a
19 maximum term of not more than 20 years.” See Ex. 1 at pp. 12-13 (emphases in original) amending
20 NRS 193.166(1).

21 Conversely, Defendant stands to face little to no hardship as the Red Flag Law does not
22 concern the administration of any state program or the allocation of any resources to citizens.
23 Defendant will be hard pressed to submit any evidentiary support for a potential hardship because
24 the injunction requested merely requires inaction – preventing the State from enforcing a new,
25 unconstitutional statute.

26 Therefore, weighing the potential hardships to each of the parties, the balance shifts sharply
27 in favor of Plaintiffs.

28 ///

1 d. The Public Interest

2 “The public interest inquiry primarily addresses [the] impact on non-parties rather than
3 parties.” *Saini* at 925 quoting *Sammartano v. First Judicial Dist. Court, in & for Cty. of Carson*
4 *City*, 303 F.3d 959, 974 (9th Cir. 2002). “Generally, public interest concerns are implicated when
5 a constitutional right has been violated, because all citizens have a stake in upholding the
6 Constitution.” *Saini* at 925 quoting *Preminger v. Principi*, 422 F.3d 815, 826 (9th Cir.2005).

7 Here, in addition to the violations of the Second Amendment, Nevada’s citizenry are at
8 imminent risk of losing Sixth Amendment protections. Assuming Red Flag procedures lead to
9 harsher punishments than some criminal convictions, it is fair to test these procedures utilizing
10 Sixth Amendment standards. In addition to requiring a trial by jury, the Sixth Amendment also
11 protects the right of a defendant “to be confronted with the witnesses against him.”² But the Red
12 Flag statute does not require the petitioner or his witnesses to show up for the hearing. Instead,
13 the court may hold the hearing by telephone in some circumstances. This can make it much harder
14 to assess the credibility of those testifying. Even worse, the law does not even require live
15 testimony. The petitioner can present all of his evidence in an affidavit, where the evidence is not
16 subject to cross-examination. By and large, urban area judges today are products of an elite legal
17 culture hostile to firearms ownership, and are likely to have an unconscious bias against a gun
18 owner and view gun owners as second class citizens.

19 The Court must also consider constitutional rights secured under the Nevada Constitution,
20 including the right to a trial by jury in so-called *civil cases*:

21 ///

22 ///

23 ///

24
25
26 ² The Sixth Amendment provides that “[i]n all criminal prosecutions, the accused shall enjoy **the right to a speedy**
27 **and public trial, by an impartial jury** of the State and district wherein the crime shall have been committed, which
28 **district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation;**
to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his
favor, and to have the Assistance of Counsel for his defence” (emphasis added).

1 § 3. Trial by jury; waiver in civil cases

2 **The right of trial by Jury shall be secured to all and remain**
3 **inviolable forever;** but a Jury trial may be waived by the parties in
4 all civil cases in the manner to be prescribed by law; and in civil
5 cases, if three fourths of the Jurors agree upon a verdict it shall stand
6 and have the same force and effect as a verdict by the whole Jury,
7 Provided, the Legislature by a law passed by a two thirds vote of all
8 the members elected to each branch thereof may require a
9 unanimous verdict notwithstanding this Provision.

6 (Nev. Const. art. I, § 3 (emphasis added)) and the right to a trial by jury in criminal cases:

7 § 8. Rights of accused in criminal prosecutions; jeopardy; rights of
8 victims of crime; due process of law; eminent domain

9 1. No person shall be tried for a capital or other infamous crime
10 (except in cases of impeachment, and in cases of the militia when in
11 actual service and the land and naval forces in time of war, or which
12 this state may keep, with the consent of congress, in time of peace,
13 and in cases of petit larceny, under the regulation of the legislature)
14 except on presentment or indictment of the grand jury, or upon
15 information duly filed by a district attorney, or attorney-general of
16 the state, and in any trial, in any court whatever, the party accused
17 shall be allowed to appear and defend in person, and with counsel,
18 as in civil actions. No person shall be subject to be twice put in
19 jeopardy for the same offense; nor shall he be compelled, in any
20 criminal case, to be a witness against himself.

21 2. No person shall be deprived of life, liberty, or property, without
22 due process of law.

23 ...

17 (Nev. Const. art. I, § 8 (emphases added)). These constitutional procedural rights are not mere
18 technicalities, but rather the product of literally centuries of experience, both in America and
19 England. They embody not just what is fair, but also what works.

20 Therefore, the public interest weighs in favor of the requested injunctive relief as the Red
21 Flag Law violates the Second Amendment and the Sixth Amendment.

22 3. *A Nominal Bond Provides Adequate Security.*

23 Pursuant to NRCP 65(c), “[t]he court may issue a preliminary injunction or a temporary
24 restraining order only if the movant gives security in an amount that the court considers proper to
25 pay the costs and damages sustained by any party found to have been wrongfully enjoined or
26 restrained.” In other words, the express purpose of posting a security bond is to protect a party
27 from damages incurred as a result of a wrongful injunction. *Am. Bonding Co. v. Roggen*
28 *Enterprises*, 109 Nev. 588, 591, 854 P.2d 868, 870 (1993) (citations omitted). Here, the Court

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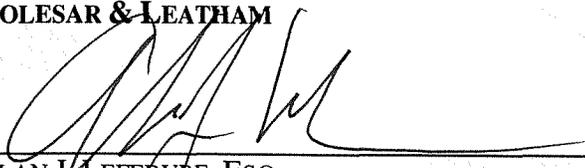
1 should order a nominal bond of \$1,000 or less as Defendant will not sustain any damages as a
2 result of the injunction. See, e.g., *Barahona-Gomez v. Reno*, 167 F.3d 1228, 1237 (9th Cir.
3 1999), *supplemented*, 236 F.3d 1115 (9th Cir. 2001) (district court did not abuse its discretion in
4 requiring aliens to post only a nominal bond of \$1,000 upon seeking preliminary injunction in
5 their class action challenging imposition of annual limitation on number of suspensions of
6 deportation that could be granted by Attorney General). The bond can cover the costs incurred in
7 defending the instant litigation.

8 **V. CONCLUSION**

9 Based on the foregoing, the Court should issue a declaratory judgment that *Anderson's*
10 holding precludes the Red Flag Law as set forth *supra* and issue a preliminary injunction,
11 preventing the unconstitutional enforcement of AB 291 as to the Red Flag Law. A proposed Order
12 Granting Motion for Partial Summary Judgment and Preliminary Injunction is attached hereto as
13 **Exhibit 3**. Deprivation of arms resulting from an ERPO (either *ex parte* for seven days, or for up
14 to a year for extended orders) is penal discipline. If a prohibited "act" is coupled with "penal
15 discipline," then the act is a crime. A person against whom an ERPO is entered is treated as one
16 convicted of a crime. In a criminal prosecution, the Sixth Amendment of the U.S Constitution and
17 Article 1, Section 8 of the Nevada Constitution both apply. These provisions require notice and
18 an opportunity to appear, to put on a defense with sufficient notice, to be made aware of the
19 charges, confront the witnesses and cross-examine with the assistance of counsel, and have a jury
20 decide the case. *Andersen* demands no less. AB 291's red flag law is unconstitutional and thus
21 an order from the Court declaring as much, along with an injunction prohibiting enforcement, is
22 appropriate at this time.

23 DATED this 19 day of December, 2019.

24 **KOLESAR & LEATHAM**

25
26 By 

27 ALAN J. LEFEBVRE, ESQ.
28 WILLIAM D. SCHULLER, ESQ.
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EXHIBIT 1

Assembly Bill No. 291

EXHIBIT 1

Assembly Bill No. 291–Assemblywoman Jauregui

CHAPTER.....

AN ACT relating to public safety; establishing provisions governing certain orders for protection against high-risk behavior; defining certain terms relating to the issuance of such orders; prescribing certain conduct and acts that constitute high-risk behavior; authorizing certain persons to apply for ex parte and extended orders for protection against high-risk behavior under certain circumstances; providing for the issuance and enforcement of such orders; prohibiting a person against whom such an order is issued from possessing or having under his or her custody or control, or purchasing or otherwise acquiring, any firearm during the period in which the order is in effect; establishing certain other procedures relating to such orders; prohibiting the filing of an application for such orders under certain circumstances; making it a crime to violate such orders; prohibiting certain acts relating to the modification of a semiautomatic firearm; reducing the concentration of alcohol that may be present in the blood or breath of a person while in possession of a firearm; making it a crime to negligently store or leave a firearm under certain circumstances; providing penalties; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Existing law authorizes a court to issue certain temporary or extended orders for protection. (NRS 33.020, 33.270, 33.400) **Sections 2-22** of this bill similarly establish procedures for the issuance of ex parte or extended orders when a person poses a risk of personal injury to himself or herself or another person under certain circumstances. **Sections 4-9** of this bill set forth certain definitions relating to such orders. **Section 10** of this bill prescribes certain acts and conduct which constitute high-risk behavior for the purposes of the issuance of such orders.

Section 11 of this bill authorizes a family or household member or a law enforcement officer to file a verified application to obtain an ex parte or extended order against a person who poses a risk of causing personal injury to himself or herself or another person by possessing or having under his or her custody or control or by purchasing or otherwise acquiring any firearm. **Section 12** of this bill requires a court to issue an ex parte order pursuant to a verified application if the court finds by a preponderance of the evidence: (1) that a person poses an imminent risk of causing personal injury to himself or herself or another person by possessing or having under his or her custody or control or by purchasing or otherwise acquiring any firearm; (2) the person has engaged in high-risk behavior; and (3) less restrictive options have been exhausted or are not effective. **Section 13** of this bill requires a court to issue an extended order pursuant to a verified application if the court finds by clear and convincing evidence: (1) that a person poses a risk of causing personal injury to himself or herself or another person by possessing or having under his or her custody or control or by purchasing or otherwise acquiring any firearm; (2) the person has engaged in high-risk behavior; and (3) less



restrictive options have been exhausted or are not effective. **Section 21** of this bill provides that a person who files a verified application for such an order: (1) which he or she knows or has reason to know is false or misleading; or (2) with the intent to harass the adverse party, is guilty of a misdemeanor.

Section 14 of this bill requires the adverse party against whom an ex parte or extended order is issued to surrender any firearm in his or her possession or under his or her custody or control and prohibits the party from possessing or having under his or her custody or control any firearm while the order is in effect. **Sections 15-18** of this bill establish additional procedures related to: (1) the issuance and enforcement of such ex parte and extended orders; and (2) the surrender and return of the firearms of the adverse party. **Section 19** of this bill provides that orders issued pursuant to this bill are effective as follows: (1) for an ex parte order, a period of 7 days; and (2) for an extended order, a period of 1 year.

Section 22 of this bill provides that a person who violates an ex parte or extended order is guilty of a misdemeanor.

Existing law provides that a person who commits certain crimes that are punishable as a felony in violation of certain orders for protection is subject to an additional penalty. (NRS 193.166) **Section 24** of this bill includes a felony committed in violation of an ex parte or extended order, as defined in this bill, to the list of violations which result in an additional penalty.

Section 25 of this bill prohibits a person from importing, selling, manufacturing, transferring, receiving or possessing: (1) any manual, power-driven or electronic device that is designed such that when the device is attached to a semiautomatic firearm, the device eliminates the need for the operator of the semiautomatic firearm to make a separate movement for each individual function of the trigger and materially increases the rate of fire of the semiautomatic firearm or approximates the action or rate of fire of a machine gun; (2) any part or combination of parts that functions to eliminate the need for the operator of the semiautomatic firearm to make a separate movement for each individual function of the trigger and materially increases the rate of fire of the semiautomatic firearm or approximates the action or rate of fire of a machine gun; or (3) any semiautomatic firearm that has been modified in any way that eliminates the need for the operator of the semiautomatic firearm to make a separate movement for each individual function of the trigger and materially increases the rate of fire of the semiautomatic firearm or approximates the action or rate of fire of a machine gun. **Section 25** does not apply to employees of a law enforcement agency or members of the Armed Forces of the United States who are carrying out official duties. **Section 29** of this bill makes a conforming change.

Section 27 of this bill reduces the allowable concentration of alcohol that may be present in the blood or breath of a person who is in possession of a firearm from 0.10 to 0.08. (NRS 202.257)

Existing law prohibits a child under the age of 18 years from handling, possessing or controlling a firearm under certain circumstances. Existing law also prohibits a person from aiding or knowingly permitting a child to handle, possess or control a firearm under certain circumstances and sets forth penalties upon a person who is found guilty of such an offense. A person does not aid or knowingly permit a child to violate such existing law if the firearm was stored in a securely locked container or at a location which a reasonable person would have believed to be secure. (NRS 202.300) **Section 28** of this bill makes it a misdemeanor to negligently store or leave a firearm at a location under his or her control, if a person knows or has reason to know that there is a substantial risk that a child, who is otherwise prohibited from handling, possessing or controlling a firearm, may obtain such a firearm.



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

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

Section 1. Chapter 33 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 22, inclusive, of this act.

Sec. 2. *As used in sections 2 to 22, inclusive, of this act, unless the context otherwise requires, the words and terms defined in sections 4 to 9, inclusive, of this act have the meanings ascribed to them in those sections.*

Sec. 3. (Deleted by amendment.)

Sec. 4. *“Adverse party” means a natural person who is named in an application for an order of protection against high-risk behavior.*

Sec. 5. *“Ex parte order” means an ex parte order for protection against high-risk behavior.*

Sec. 6. *“Extended order” means an extended order for protection against high-risk behavior.*

Secs. 7 and 8. (Deleted by amendment.)

Sec. 9. *“Family or household member” means, with respect to an adverse party, any:*

1. Person related by blood, adoption or marriage to the adverse party within the first degree of consanguinity;

2. Person who has a child in common with the adverse party, regardless of whether the person has been married to the adverse party or has lived together with the adverse party at any time;

3. Domestic partner of the adverse party;

4. Person who has a biological or legal parent and child relationship with the adverse party, including, without limitation, a natural parent, adoptive parent, stepparent, stepchild, grandparent or grandchild;

5. Person who is acting or has acted as a guardian to the adverse party; or

6. Person who is currently in a dating or ongoing intimate relationship with the adverse party.

Sec. 10. 1. *High-risk behavior occurs when a person:*

(a) Uses, attempts to use or threatens the use of physical force against another person;

(b) Communicates a threat of imminent violence toward himself or herself or against another person;



(c) Commits an act of violence directed toward himself or herself or another person;

(d) Engages in a pattern of threats of violence or acts of violence against himself or herself or another person, including, without limitation, threats of violence or acts of violence that have caused another person to be in reasonable fear of physical harm to himself or herself;

(e) Exhibits conduct which a law enforcement officer reasonably determines would present a serious and imminent threat to the safety of the public;

(f) Engages in conduct which presents a danger to himself or herself or another person while:

(1) In possession, custody or control of a firearm; or

(2) Purchasing or otherwise acquiring a firearm;

(g) Abuses a controlled substance or alcohol while engaging in high-risk behavior as described in this section; or

(h) Acquires a firearm or other deadly weapon within the immediately preceding 6 months before the person otherwise engages in high-risk behavior as described in this section.

2. For the purposes of this section, a person shall be deemed to engage in high-risk behavior if he or she has previously been convicted of:

(a) Violating a temporary or extended order for protection against domestic violence issued pursuant to NRS 33.020;

(b) Violating a temporary or extended order for protection against sexual assault issued pursuant to NRS 200.378; or

(c) A crime of violence, as defined in NRS 200.408, punishable as a felony.

Sec. 11. 1. A law enforcement officer who has probable cause to believe that a person poses a risk of causing personal injury to himself or herself or another person by possessing or having under his or her custody or control or by purchasing or otherwise acquiring any firearm may file a verified application for an ex parte or extended order.

2. A family or household member who reasonably believes that a person poses a risk of causing personal injury to himself or herself or another person by possessing or having under his or her custody or control or by purchasing or otherwise acquiring any firearm may file a verified application for an ex parte or extended order.

3. A verified application filed pursuant to this section must include, without limitation:



(a) *The name of the person seeking the order and whether he or she is requesting an ex parte order or an extended order;*

(b) *The name and address, if known, of the person who is alleged to pose a risk pursuant to subsection 1 or 2; and*

(c) *A detailed description of the conduct and acts that constitute high-risk behavior and the dates on which the high-risk behavior occurred.*

4. *Service of an application for an extended order and the notice of hearing thereon must be served upon the adverse party pursuant to the Nevada Rules of Civil Procedure.*

Sec. 12. 1. *The court shall issue an ex parte order if the court finds by a preponderance of the evidence from facts shown by a verified application filed pursuant to section 11 of this act:*

(a) *That a person poses an imminent risk of causing personal injury to himself or herself or another person by possessing or having under his or her custody or control or by purchasing or otherwise acquiring any firearm;*

(b) *The person engaged in high-risk behavior; and*

(c) *Less restrictive options have been exhausted or are not effective.*

2. *The court may require the person who filed the verified application or the adverse party, or both, to appear before the court before determining whether to issue an ex parte order.*

3. *An ex parte order may be issued with or without notice to the adverse party.*

4. *Except as otherwise provided in this subsection, a hearing must not be held by telephone. The court shall hold a hearing on the ex parte order and shall issue or deny the ex parte order on the day the verified application is filed or the judicial day immediately following the day the verified application is filed. If the verified application is filed by a law enforcement officer, the court may hold the hearing on the ex parte order by telephone, which must be recorded in the presence of the magistrate or in the immediate vicinity of the magistrate by a certified court reporter or by electronic means. Any such recording must be transcribed, certified by the reporter if the reporter made the recording and certified by the magistrate. The certified transcript must be filed with the clerk of the court.*

5. *A hearing on an application for an ex parte order must be held within 7 calendar days after the date on which the verified application for the order is filed.*

6. *In a county whose population is 100,000 or more, the court shall be available 24 hours a day, 7 days a week, including*



nonjudicial days and holidays, to receive communications by telephone and for the issuance of an ex parte order pursuant to subsection 4.

7. In a county whose population is less than 100,000, the court may be available 24 hours a day, 7 days a week, including nonjudicial days and holidays, to receive communications by telephone and for the issuance of an ex parte order pursuant to subsection 4.

8. The clerk of the court shall inform the applicant and the adverse party upon the successful transfer of information concerning the registration to the Central Repository for Nevada Records of Criminal History as required pursuant to NRS 33.095.

Sec. 13. 1. *The court shall issue an extended order if the court finds by clear and convincing evidence from facts shown by a verified application filed pursuant to section 11 of this act:*

(a) That a person poses a risk of causing personal injury to himself or herself or another person by possessing or having under his or her custody or control or by purchasing or otherwise acquiring any firearm;

(b) The person engaged in high-risk behavior; and

(c) Less restrictive options have been exhausted or are not effective.

2. A hearing on an application for an extended order must be held within 7 calendar days after the date on which the application for the extended order is filed.

3. The clerk of the court shall inform the applicant and the adverse party upon the successful transfer of information concerning the registration to the Central Repository for Nevada Records of Criminal History as required pursuant to NRS 33.095.

Sec. 14. *Each ex parte or extended order issued pursuant to section 12 or 13 of this act must:*

1. Require the adverse party to surrender any firearm in his or her possession or under his or her custody or control in the manner set forth in section 15 of this act.

2. Prohibit the adverse party from possessing or having under his or her custody or control any firearm while the order is in effect.

3. Include a provision ordering any law enforcement officer to arrest the adverse party with a warrant, or without a warrant if the officer has probable cause to believe that the person has been served with a copy of the order and has violated a provision of the order.

4. State the reasons for the issuance of the order.



5. *Include instructions for surrendering any firearm as ordered by the court.*
6. *State the time and date on which the order expires.*
7. *Require the adverse party to surrender any permit issued pursuant to NRS 202.3657.*
8. *Include the following statement:*

WARNING

This is an official court order. If you disobey this order, you may be arrested and prosecuted for the crime of violating an ex parte or extended order and any other crime that you may have committed in disobeying this order.

Sec. 15. 1. *After a court orders an adverse party to surrender any firearm pursuant to section 14 of this act, the adverse party shall, immediately after service of the order:*

(a) Surrender any firearm in his or her possession or under his or her custody or control to the appropriate law enforcement agency designated by the court in the order; or

(b) Surrender any firearm in his or her possession or under his or her custody or control to a person, other than a person who resides with the adverse party, designated by the court in the order.

2. *If the court orders the adverse party to surrender any firearm to a law enforcement agency pursuant to paragraph (a) of subsection 1, the law enforcement agency shall provide the adverse party with a receipt which includes a description of each firearm surrendered and the adverse party shall, not later than 72 hours or 1 business day, whichever is later, after surrendering any such firearm, provide the original receipt to the court. The law enforcement agency shall store any such firearm or may contract with a licensed firearm dealer to provide storage.*

3. *If the court orders the adverse party to surrender any firearm to a person designated by the court pursuant to paragraph (b) of subsection 1, the adverse party shall, not later than 72 hours or 1 business day, whichever is later, after surrendering any such firearm, provide to the court and the appropriate law enforcement agency the name and address of the person designated in the order and a written description of each firearm surrendered.*

4. *If there is probable cause to believe that the adverse party has not surrendered any firearm in his or her possession or under his or her custody or control within the time set forth in subsections 2 and 3, the court may issue and deliver to any law enforcement officer a search warrant which authorizes the officer*



to enter and search any place where there is probable cause to believe any such firearm is located and seize the firearm.

5. If, while executing a search warrant pursuant to subsection 4, the health or safety of the officer or the adverse party is put at risk because of any action of the adverse party, the law enforcement officer is under no duty to continue to attempt to execute the search warrant and the execution of the warrant shall be deemed unsuccessful. If such execution is unsuccessful, the law enforcement agency shall, as soon as practicable after the risk has subsided, attempt to execute the search warrant until the search warrant is successfully executed.

6. A law enforcement agency shall return any surrendered or seized firearm to the adverse party:

(a) In the manner provided by the policies and procedures of the law enforcement agency;

(b) After confirming that:

(1) The adverse party is eligible to own or possess a firearm under state and federal law; and

(2) Any ex parte or extended order issued pursuant to section 12 or 13 of this act is dissolved or no longer in effect; and

(c) As soon as practicable but not more than 14 days after the dissolution of an ex parte or extended order.

7. If a person other than the adverse party claims title to any firearm surrendered or seized pursuant to this section and he or she is determined by the law enforcement agency to be the lawful owner, the firearm must be returned to him or her, if:

(a) The lawful owner agrees to store the firearm in a manner such that the adverse party does not have access to or control of the firearm; and

(b) The law enforcement agency determines that:

(1) The firearm is not otherwise unlawfully possessed by the lawful owner; and

(2) The person is eligible to own or possess a firearm under state or federal law.

8. As used in this section, "licensed firearm dealer" means a person licensed pursuant to 18 U.S.C. § 923(a).

Sec. 16. 1. The clerk of the court or other person designated by the court shall provide any family or household member who files a verified application pursuant to section 11 of this act or any adverse party, free of cost, with information about the:

(a) Availability of ex parte or extended orders;

(b) Procedures for filing an application for such an order;



(c) Procedures for modifying, dissolving or renewing such an order; and

(d) Right to proceed without counsel.

2. The clerk of the court or other person designated by the court shall assist any person in completing and filing the application, affidavit and any other paper or pleading necessary to initiate or respond to an application for an ex parte or extended order. This assistance does not constitute the practice of law, but the clerk shall not render any advice or service that requires the professional judgment of an attorney.

Sec. 17. 1. *The court shall transmit, by the end of the next business day after an ex parte or extended order is issued or renewed, a copy of the order to the appropriate law enforcement agency.*

2. The court shall order the appropriate law enforcement agency to serve, without charge, the adverse party personally with the ex parte or extended order and file with or mail to the clerk of the court proof of service by the end of the next business day after service is made.

3. If, while attempting to serve the adverse party personally pursuant to subsection 2, the health or safety of the officer or the adverse party is put at risk because of any action of the adverse party, the law enforcement officer is under no duty to continue to attempt to serve the adverse party personally and the service shall be deemed unsuccessful. If such service is unsuccessful, the law enforcement agency shall, as soon as practicable after the risk has subsided, attempt to serve the adverse party personally until the ex parte or extended order is successfully served.

4. A law enforcement agency shall enforce an ex parte or extended order without regard to the county in which the order was issued.

5. The clerk of the court shall issue, without fee, a copy of the ex parte or extended order to any family or household member who files a verified application pursuant to section 11 of this act or the adverse party.

Sec. 18. 1. *Whether or not a violation of an ex parte or extended order occurs in the presence of a law enforcement officer, the officer may arrest and take into custody an adverse party:*

(a) With a warrant; or

(b) Without a warrant if the officer has probable cause to believe that:



(1) *An order has been issued pursuant to section 12 or 13 of this act against the adverse party;*

(2) *The adverse party has been served with a copy of the order; and*

(3) *The adverse party is acting in violation of the order.*

2. *If a law enforcement officer cannot verify that the adverse party was served with a copy of the application and ex parte or extended order, the officer shall:*

(a) *Inform the adverse party of the specific terms and conditions of the order;*

(b) *Inform the adverse party that he or she has notice of the provisions of the order and that a violation of the order will result in his or her arrest;*

(c) *Inform the adverse party of the location of the court that issued the original order and the hours during which the adverse party may obtain a copy of the order; and*

(d) *Inform the adverse party of the date and time set for a hearing on an application for an ex parte or extended order, if any.*

3. *Information concerning the terms and conditions of the ex parte or extended order, the date and time of any notice provided to the adverse party and the name and identifying number of the law enforcement officer who gave the notice must be provided in writing to the applicant and noted in the records of the law enforcement agency and the court.*

Sec. 19. 1. *An ex parte order expires within such time, not to exceed 7 days, as the court fixes. If a verified application for an extended order is filed within the period of an ex parte order or at the same time as an application for an ex parte order pursuant to section 11 of this act, the ex parte order remains in effect until the hearing on the extended order is held.*

2. *An extended order expires within such time, not to exceed 1 year, as the court fixes.*

3. *The family or household member or law enforcement officer who filed the verified application or the adverse party may request in writing to appear and move for the dissolution of an ex parte or extended order. Upon a finding by clear and convincing evidence that the adverse party no longer poses a risk of causing personal injury to himself or herself or another person by possessing or having under his or her custody or control or by purchasing or otherwise acquiring any firearm, the court shall dissolve the order. If the court finds that all parties agree to*



dissolve the order, the court shall dissolve the order upon a finding of good cause.

4. Not less than 3 months before the expiration of an extended order and upon petition by a family or household member or law enforcement officer, the court may, after notice and a hearing, renew an extended order upon a finding by clear and convincing evidence. Such an order expires within a period, not to exceed 1 year, as the court fixes.

Sec. 20. *1. Any time that a court issues an ex parte or extended order or renews an extended order and any time that a person serves such an order or receives any information or takes any other action pursuant to sections 2 to 22, inclusive, of this act, the person shall, by the end of the next business day:*

(a) Cause to be transmitted, in the manner prescribed by the Central Repository for Nevada Records of Criminal History, any information required by the Central Repository in a manner which ensures that the information is received by the Central Repository; and

(b) Transmit a copy of the order to the Attorney General.

2. If the Central Repository for Nevada Records of Criminal History receives any information described in subsection 1, the adverse party may petition the court for an order declaring that the basis for the information transmitted no longer exists.

3. A petition brought pursuant to subsection 2 must be filed in the court which issued the ex parte or extended order.

4. The court shall grant the petition and issue the order described in subsection 2 if the court finds that the basis for the ex parte or extended order no longer exists.

5. The court, upon granting the petition and entering an order pursuant to this section, shall cause, on a form prescribed by the Department of Public Safety, a record of the order to be transmitted to the Central Repository for Nevada Records of Criminal History.

6. Within 5 business days after receiving a record of an order transmitted pursuant to subsection 5, the Central Repository for Nevada Records of Criminal History shall take reasonable steps to ensure that the information concerning the adverse party is removed from the Central Repository.

7. If the Central Repository for Nevada Records of Criminal History fails to remove the information as provided in subsection 6, the adverse party may bring an action to compel the removal of the information. If the adverse party prevails in the action, the



court may award the adverse party reasonable attorney's fees and costs incurred in bringing the action.

8. If a petition brought pursuant to subsection 2 is denied, the adverse party may petition for a rehearing not sooner than 2 years after the date of the denial of the petition.

Sec. 21. *1. A person shall not file a verified application for an ex parte or extended order:*

(a) Which he or she knows or has reason to know is false or misleading; or

(b) With the intent to harass the adverse party.

2. A person who violates the provisions of subsection 1 is guilty of a misdemeanor.

Sec. 22. *A person who intentionally violates an ex parte or extended order is, unless a more severe penalty is prescribed by law for the act that constitutes the violation of the order, guilty of a misdemeanor.*

Sec. 23. NRS 33.095 is hereby amended to read as follows:

33.095 1. Any time that a court issues a temporary or extended order and any time that a person serves such an order, registers such an order, registers a Canadian domestic-violence protection order or receives any information or takes any other action pursuant to NRS 33.017 to 33.100, inclusive, or NRS 33.110 to 33.158, inclusive, the person shall cause to be transmitted, in the manner prescribed by the Central Repository for Nevada Records of Criminal History, any information required by the Central Repository in a manner which ensures that the information is received by the Central Repository by the end of the next business day.

2. Any time that a court issues an ex parte or extended order pursuant to section 12 or 13 of this act, the court shall cause to be transmitted, in the manner prescribed by the Central Repository for Nevada Records of Criminal History, any information required by the Central Repository in a manner which ensures that the information is received by the Central Repository by the end of the next business day.

3. As used in this section, "Canadian domestic-violence protection order" has the meaning ascribed to it in NRS 33.119.

Sec. 24. NRS 193.166 is hereby amended to read as follows:

193.166 1. Except as otherwise provided in NRS 193.169, a person who commits a crime that is punishable as a felony, other than a crime that is punishable as a felony pursuant to subsection 6 of NRS 33.400, subsection 5 of NRS 200.378 or subsection 5 of NRS 200.591, in violation of:



(a) A temporary or extended order for protection against domestic violence issued pursuant to NRS 33.020;

(b) An order for protection against harassment in the workplace issued pursuant to NRS 33.270;

(c) A temporary or extended order for the protection of a child issued pursuant to NRS 33.400;

(d) *An ex parte or extended order for protection against high-risk behavior issued pursuant to section 12 or 13 of this act;*

(e) An order for protection against domestic violence issued in an action or proceeding brought pursuant to title 11 of NRS;

~~(e)~~ (f) A temporary or extended order issued pursuant to NRS 200.378; or

~~(f)~~ (g) A temporary or extended order issued pursuant to NRS 200.591,

↪ shall, in addition to the term of imprisonment prescribed by statute for the crime, be punished by imprisonment in the state prison, except as otherwise provided in this subsection, for a minimum term of not less than 1 year and a maximum term of not more than 20 years. If the crime committed by the person is punishable as a category A felony or category B felony, in addition to the term of imprisonment prescribed by statute for that crime, the person shall be punished by imprisonment in the state prison for a minimum term of not less than 1 year and a maximum term of not more than 5 years.

2. In determining the length of the additional penalty imposed pursuant to this section, the court shall consider the following information:

(a) The facts and circumstances of the crime;

(b) The criminal history of the person;

(c) The impact of the crime on any victim;

(d) Any mitigating factors presented by the person; and

(e) Any other relevant information.

↪ The court shall state on the record that it has considered the information described in paragraphs (a) to (e), inclusive, in determining the length of the additional penalty imposed.

3. The sentence prescribed by this section:

(a) Must not exceed the sentence imposed for the crime; and

(b) Runs concurrently or consecutively with the sentence prescribed by statute for the crime, as ordered by the court.

4. The court shall not grant probation to or suspend the sentence of any person convicted of attempted murder, battery which involves the use of a deadly weapon, battery which results in substantial bodily harm or battery which is committed by



strangulation as described in NRS 200.481 or 200.485 if an additional term of imprisonment may be imposed for that primary offense pursuant to this section.

5. This section does not create a separate offense but provides an additional penalty for the primary offense, whose imposition is contingent upon the finding of the prescribed fact.

Sec. 25. Chapter 202 of NRS is hereby amended by adding thereto a new section to read as follows:

1. Except as otherwise provided in subsection 3, a person shall not import, sell, manufacture, transfer, receive or possess:

(a) Any manual, power-driven or electronic device that is designed such that when the device is attached to a semiautomatic firearm, the device eliminates the need for the operator of a semiautomatic firearm to make a separate movement for each individual function of the trigger and:

(1) Materially increases the rate of fire of the semiautomatic firearm; or

(2) Approximates the action or rate of fire of a machine gun;

(b) Any part or combination of parts that is designed and functions to eliminate the need for the operator of a semiautomatic firearm to make a separate movement for each individual function of the trigger and:

(1) Materially increases the rate of fire of a semiautomatic firearm; or

(2) Approximates the action or rate of fire of a machine gun; or

(c) Any semiautomatic firearm that has been modified in any way that eliminates the need for the operator of the semiautomatic firearm to make a separate movement for each individual function of the trigger and:

(1) Materially increases the rate of fire of the semiautomatic firearm; or

(2) Approximates the action or rate of fire of a machine gun.

2. A person who violates any provision of this section is guilty of a category D felony and shall be punished as provided in NRS 193.130.

3. This section does not apply to:

(a) Any employee of a federal, state or local law enforcement agency carrying out official duties.

(b) Any member of the Armed Forces of the United States carrying out official duties.



Sec. 26. NRS 202.253 is hereby amended to read as follows:

202.253 As used in NRS 202.253 to 202.369, inclusive ~~††~~ ,
and section 25 of this act:

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

2. "Firearm" means any device designed to be used as a weapon from which a projectile may be expelled through the barrel by the force of any explosion or other form of combustion.

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

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

5. "Motor vehicle" means every vehicle that is self-propelled.

6. "*Semiautomatic firearm*" means any firearm that:

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

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

(c) *Is not a machine gun.*

Sec. 27. NRS 202.257 is hereby amended to read as follows:

202.257 1. It is unlawful for a person who:

(a) Has a concentration of alcohol of ~~†0.10†~~ *0.08* or more in his or her blood or breath; or

(b) Is under the influence of any controlled substance, or is under the combined influence of intoxicating liquor and a controlled substance, or any person who inhales, ingests, applies or otherwise uses any chemical, poison or organic solvent, or any compound or combination of any of these, to a degree which renders him or her incapable of safely exercising actual physical control of a firearm,
↳ to have in his or her actual physical possession any firearm. This prohibition does not apply to the actual physical possession of a firearm by a person who was within the person's personal residence and had the firearm in his or her possession solely for self-defense.

2. Any evidentiary test to determine whether a person has violated the provisions of subsection 1 must be administered in the same manner as an evidentiary test that is administered pursuant to NRS 484C.160 to 484C.250, inclusive, except that submission to the evidentiary test is required of any person who is requested by a



police officer to submit to the test. If a person to be tested fails to submit to a required test as requested by a police officer, the officer may apply for a warrant or court order directing that reasonable force be used to the extent necessary to obtain the samples of blood from the person to be tested, if the officer has reasonable cause to believe that the person to be tested was in violation of this section.

3. Any person who violates the provisions of subsection 1 is guilty of a misdemeanor.

4. A firearm is subject to forfeiture pursuant to NRS 179.1156 to 179.1205, inclusive, only if, during the violation of subsection 1, the firearm is brandished, aimed or otherwise handled by the person in a manner which endangered others.

5. As used in this section, the phrase "concentration of alcohol of ~~{0.10}~~ 0.08 or more in his or her blood or breath" means ~~{0.10}~~ 0.08 gram or more of alcohol per 100 milliliters of the blood of a person or per 210 liters of his or her breath.

Sec. 28. NRS 202.300 is hereby amended to read as follows:

202.300 1. Except as otherwise provided in this section, a child under the age of 18 years shall not handle or have in his or her possession or under his or her control, except while accompanied by or under the immediate charge of his or her parent or guardian or an adult person authorized by his or her parent or guardian to have control or custody of the child, any firearm of any kind for hunting or target practice or for other purposes. A child who violates this subsection commits a delinquent act and the court may order the detention of the child in the same manner as if the child had committed an act that would have been a felony if committed by an adult.

2. A person who aids or knowingly permits a child to violate subsection 1:

(a) Except as otherwise provided in paragraph (b), for the first offense, is guilty of a misdemeanor.

(b) For a first offense, if the person knows or has reason to know that there is a substantial risk that the child will use the firearm to commit a violent act, is guilty of a category C felony and shall be punished as provided in NRS 193.130.

(c) For a second or any subsequent offense, is guilty of a category B felony and shall be punished by imprisonment in the state prison for a minimum term of not less than 1 year and a maximum term of not more than 6 years, and may be further punished by a fine of not more than \$5,000.

3. A person does not aid or knowingly permit a child to violate subsection 1 if:



(a) The firearm was stored in a securely locked container or at a location which a reasonable person would have believed to be secure;

(b) The child obtained the firearm as a result of an unlawful entry by any person in or upon the premises where the firearm was stored;

(c) The injury or death resulted from an accident which was incident to target shooting, sport shooting or hunting; or

(d) The child gained possession of the firearm from a member of the military or a law enforcement officer, while the member or officer was performing his or her official duties.

4. The provisions of subsection 1 do not apply to a child who is a member of the Armed Forces of the United States.

5. *Unless a greater penalty is provided by law, a person is guilty of a misdemeanor who:*

(a) *Negligently stores or leaves a firearm at a location under his or her control; and*

(b) *Knows or has reason to know that there is a substantial risk that a child prohibited from handling or having in his or her possession or under his or her control any firearm pursuant to this section may obtain such a firearm.*

6. Except as otherwise provided in subsection ~~{8.}~~ 9, a child who is 14 years of age or older, who has in his or her possession a valid license to hunt, may handle or have in his or her possession or under his or her control, without being accompanied by his or her parent or guardian or an adult person authorized by his or her parent or guardian to have control or custody of the child:

(a) A rifle or shotgun that is not a fully automatic firearm, if the child is not otherwise prohibited by law from possessing the rifle or shotgun and the child has the permission of his or her parent or guardian to handle or have in his or her possession or under his or her control the rifle or shotgun; or

(b) A firearm capable of being concealed upon the person, if the child has the written permission of his or her parent or guardian to handle or have in his or her possession or under his or her control such a firearm and the child is not otherwise prohibited by law from possessing such a firearm,

↳ and the child is traveling to the area in which the child will be hunting or returning from that area and the firearm is not loaded, or the child is hunting pursuant to that license.

~~{6.}~~ 7. Except as otherwise provided in subsection ~~{8.}~~ 9, a child who is 14 years of age or older may handle or have in his or her possession or under his or her control a rifle or shotgun that is



not a fully automatic firearm if the child is not otherwise prohibited by law from possessing the rifle or shotgun, without being accompanied by his or her parent or guardian or an adult person authorized by his or her parent or guardian to have control or custody of the child, if the child has the permission of his or her parent or guardian to handle or have in his or her possession or under his or her control the rifle or shotgun and the child is:

- (a) Attending a course of instruction in the responsibilities of hunters or a course of instruction in the safe use of firearms;
- (b) Practicing the use of a firearm at an established firing range or at any other area where the discharge of a firearm is permitted;
- (c) Participating in a lawfully organized competition or performance involving the use of a firearm;
- (d) Within an area in which the discharge of firearms has not been prohibited by local ordinance or regulation and the child is engaging in a lawful hunting activity in accordance with chapter 502 of NRS for which a license is not required;
- (e) Traveling to or from any activity described in paragraph (a), (b), (c) or (d), and the firearm is not loaded;
- (f) On real property that is under the control of an adult, and the child has the permission of that adult to possess the firearm on the real property; or
- (g) At his or her residence.

~~7~~ 8. Except as otherwise provided in subsection ~~8~~ 9, a child who is 14 years of age or older may handle or have in his or her possession or under his or her control, for the purpose of engaging in any of the activities listed in paragraphs (a) to (g), inclusive, of subsection ~~6~~ 7, a firearm capable of being concealed upon the person, without being accompanied by his or her parent or guardian or an adult person authorized by his or her parent or guardian to have control or custody of the child, if the child:

- (a) Has the written permission of his or her parent or guardian to handle or have in his or her possession or under his or her control such a firearm for the purpose of engaging in such an activity; and
- (b) Is not otherwise prohibited by law from possessing such a firearm.

~~8~~ 9. A child shall not handle or have in his or her possession or under his or her control a loaded firearm if the child is:

- (a) An occupant of a motor vehicle;
- (b) Within any residence, including his or her residence, or any building other than a facility licensed for target practice, unless possession of the firearm is necessary for the immediate defense of the child or another person; or



(c) Within an area designated by a county or municipal ordinance as a populated area for the purpose of prohibiting the discharge of weapons, unless the child is within a facility licensed for target practice.

~~19.~~ **10.** For the purposes of this section, a firearm is loaded if:

(a) There is a cartridge in the chamber of the firearm;

(b) There is a cartridge in the cylinder of the firearm, if the firearm is a revolver; or

(c) There is a cartridge in the magazine and the magazine is in the firearm or there is a cartridge in the chamber, if the firearm is a semiautomatic firearm.

Sec. 29. NRS 202.350 is hereby amended to read as follows:

202.350 1. Except as otherwise provided in this section and NRS 202.3653 to 202.369, inclusive, a person within this State shall not:

(a) Manufacture or cause to be manufactured, or import into the State, or keep, offer or expose for sale, or give, lend or possess any instrument or weapon of the kind commonly known as a blackjack, slungshot, billy, sand-club, sandbag or metal knuckles;

(b) Manufacture or cause to be manufactured, or import into the State, or keep, offer or expose for sale, or give, lend, possess or use a machine gun or a silencer, unless authorized by federal law;

(c) With the intent to inflict harm upon the person of another, possess or use a nunchaku or trefoil; or

(d) Carry concealed upon his or her person any:

(1) Explosive substance, other than ammunition or any components thereof;

(2) Machete; or

(3) Pistol, revolver or other firearm, other dangerous or deadly weapon or pneumatic gun.

2. Except as otherwise provided in NRS 202.275 and 212.185, a person who violates any of the provisions of:

(a) Paragraph (a) or (c) of subsection 1 or subparagraph (2) of paragraph (d) of subsection 1 is guilty:

(1) For the first offense, of a gross misdemeanor.

(2) For any subsequent offense, of a category D felony and shall be punished as provided in NRS 193.130.

(b) Paragraph (b) of subsection 1 or subparagraph (1) or (3) of paragraph (d) of subsection 1 is guilty of a category C felony and shall be punished as provided in NRS 193.130.

3. Except as otherwise provided in this subsection, the sheriff of any county may, upon written application by a resident of that county showing the reason or the purpose for which a concealed



weapon is to be carried, issue a permit authorizing the applicant to carry in this State the concealed weapon described in the permit. This subsection does not authorize the sheriff to issue a permit to a person to carry a pistol, revolver or other firearm.

4. Except as otherwise provided in subsection 5, this section does not apply to:

(a) Sheriffs, constables, marshals, peace officers, correctional officers employed by the Department of Corrections, special police officers, police officers of this State, whether active or honorably retired, or other appointed officers.

(b) Any person summoned by any peace officer to assist in making arrests or preserving the peace while the person so summoned is actually engaged in assisting such an officer.

(c) Any full-time paid peace officer of an agency of the United States or another state or political subdivision thereof when carrying out official duties in the State of Nevada.

(d) Members of the Armed Forces of the United States when on duty.

5. The exemptions provided in subsection 4 do not include a former peace officer who is retired for disability unless his or her former employer has approved his or her fitness to carry a concealed weapon.

6. The provisions of paragraph (b) of subsection 1 do not apply to any person who is licensed, authorized or permitted to possess or use a machine gun or silencer pursuant to federal law. The burden of establishing federal licensure, authorization or permission is upon the person possessing the license, authorization or permission.

7. This section shall not be construed to prohibit a qualified law enforcement officer or a qualified retired law enforcement officer from carrying a concealed weapon in this State if he or she is authorized to do so pursuant to 18 U.S.C. § 926B or 926C.

8. As used in this section:

(a) "Concealed weapon" means a weapon described in this section that is carried upon a person in such a manner as not to be discernible by ordinary observation.

(b) "Honorably retired" means retired in Nevada after completion of 10 years of creditable service as a member of the Public Employees' Retirement System. A former peace officer is not "honorably retired" if he or she was discharged for cause or resigned before the final disposition of allegations of serious misconduct.



~~(c) “Machine gun” means any weapon which shoots, is designed to shoot or can be readily restored to shoot more than one shot, without manual reloading, by a single function of the trigger.~~

~~(d)~~ “Nunchaku” means an instrument consisting of two or more sticks, clubs, bars or rods connected by a rope, cord, wire or chain used as a weapon in forms of Oriental combat.

~~(e)~~ *(d)* “Pneumatic gun” has the meaning ascribed to it in NRS 202.265.

~~(f)~~ *(e)* “Qualified law enforcement officer” has the meaning ascribed to it in 18 U.S.C. § 926B(c).

~~(g)~~ *(f)* “Qualified retired law enforcement officer” has the meaning ascribed to it in 18 U.S.C. § 926C(c).

~~(h)~~ *(g)* “Silencer” means any device for silencing, muffling or diminishing the report of a firearm, including any combination of parts, designed or redesigned, and intended for use in assembling or fabricating a silencer or muffler, and any part intended only for use in such assembly or fabrication.

~~(i)~~ *(h)* “Trefoil” means an instrument consisting of a metal plate having three or more radiating points with sharp edges, designed in the shape of a star, cross or other geometric figure and used as a weapon for throwing.

Sec. 30. NRS 202.3657 is hereby amended to read as follows:

202.3657 1. Any person who is a resident of this State may apply to the sheriff of the county in which he or she resides for a permit on a form prescribed by regulation of the Department. Any person who is not a resident of this State may apply to the sheriff of any county in this State for a permit on a form prescribed by regulation of the Department. Application forms for permits must be furnished by the sheriff of each county upon request.

2. A person applying for a permit may submit one application and obtain one permit to carry all handguns owned by the person. The person must not be required to list and identify on the application each handgun owned by the person. A permit is valid for any handgun which is owned or thereafter obtained by the person to whom the permit is issued.

3. Except as otherwise provided in this section, the sheriff shall issue a permit to any person who is qualified to possess a handgun under state and federal law, who submits an application in accordance with the provisions of this section and who:

(a) Is:

(1) Twenty-one years of age or older; or

(2) At least 18 years of age but less than 21 years of age if the person:



(I) Is a member of the Armed Forces of the United States, a reserve component thereof or the National Guard; or

(II) Was discharged or released from service in the Armed Forces of the United States, a reserve component thereof or the National Guard under honorable conditions;

(b) Is not prohibited from possessing a firearm pursuant to NRS 202.360; and

(c) Demonstrates competence with handguns by presenting a certificate or other documentation to the sheriff which shows that the applicant:

(1) Successfully completed a course in firearm safety approved by a sheriff in this State; or

(2) Successfully completed a course in firearm safety offered by a federal, state or local law enforcement agency, community college, university or national organization that certifies instructors in firearm safety.

↳ Such a course must include instruction in the use of handguns and in the laws of this State relating to the use of a firearm. A sheriff may not approve a course in firearm safety pursuant to subparagraph (1) unless the sheriff determines that the course meets any standards that are established by the Nevada Sheriffs' and Chiefs' Association or, if the Nevada Sheriffs' and Chiefs' Association ceases to exist, its legal successor.

4. The sheriff shall deny an application or revoke a permit if the sheriff determines that the applicant or permittee:

(a) Has an outstanding warrant for his or her arrest.

(b) Has been judicially declared incompetent or insane.

(c) Has been voluntarily or involuntarily admitted to a mental health facility during the immediately preceding 5 years.

(d) Has habitually used intoxicating liquor or a controlled substance to the extent that his or her normal faculties are impaired. For the purposes of this paragraph, it is presumed that a person has so used intoxicating liquor or a controlled substance if, during the immediately preceding 5 years, the person has been:

(1) Convicted of violating the provisions of NRS 484C.110;

or

(2) Committed for treatment pursuant to NRS 458.290 to 458.350, inclusive.

(e) Has been convicted of a crime involving the use or threatened use of force or violence punishable as a misdemeanor under the laws of this or any other state, or a territory or possession of the United States at any time during the immediately preceding 3 years.



(f) Has been convicted of a felony in this State or under the laws of any state, territory or possession of the United States.

(g) Has been convicted of a crime involving domestic violence or stalking, or is currently subject to a restraining order, injunction or other order for protection against domestic violence.

(h) *Is currently subject to an ex parte or extended order for protection against high-risk behavior issued pursuant to section 12 or 13 of this act.*

(i) Is currently on parole or probation from a conviction obtained in this State or in any other state or territory or possession of the United States.

~~{(j)}~~ (j) Has, within the immediately preceding 5 years, been subject to any requirements imposed by a court of this State or of any other state or territory or possession of the United States, as a condition to the court's:

(1) Withholding of the entry of judgment for a conviction of a felony; or

(2) Suspension of sentence for the conviction of a felony.

~~{(k)}~~ (k) Has made a false statement on any application for a permit or for the renewal of a permit.

~~{(l)}~~ (l) Has been discharged or released from service in the Armed Forces of the United States, a reserve component thereof or the National Guard under conditions other than honorable conditions and is less than 21 years of age.

5. The sheriff may deny an application or revoke a permit if the sheriff receives a sworn affidavit stating articulable facts based upon personal knowledge from any natural person who is 18 years of age or older that the applicant or permittee has or may have committed an offense or engaged in any other activity specified in subsection 4 which would preclude the issuance of a permit to the applicant or require the revocation of a permit pursuant to this section.

6. If the sheriff receives notification submitted by a court or law enforcement agency of this or any other state, the United States or a territory or possession of the United States that a permittee or an applicant for a permit has been charged with a crime involving the use or threatened use of force or violence, the conviction for which would require the revocation of a permit or preclude the issuance of a permit to the applicant pursuant to this section, the sheriff shall suspend the person's permit or the processing of the person's application until the final disposition of the charges against the person. If a permittee is acquitted of the charges, or if the charges are dropped, the sheriff shall restore his or her permit without imposing a fee.



7. An application submitted pursuant to this section must be completed and signed under oath by the applicant. The applicant's signature must be witnessed by an employee of the sheriff or notarized by a notary public. The application must include:

(a) The name, address, place and date of birth, social security number, occupation and employer of the applicant and any other names used by the applicant;

(b) A complete set of the applicant's fingerprints taken by the sheriff or his or her agent;

(c) A front-view colored photograph of the applicant taken by the sheriff or his or her agent;

(d) If the applicant is a resident of this State, the driver's license number or identification card number of the applicant issued by the Department of Motor Vehicles;

(e) If the applicant is not a resident of this State, the driver's license number or identification card number of the applicant issued by another state or jurisdiction;

(f) If the applicant is a person described in subparagraph (2) of paragraph (a) of subsection 3, proof that the applicant:

(1) Is a member of the Armed Forces of the United States, a reserve component thereof or the National Guard, as evidenced by his or her current military identification card; or

(2) Was discharged or released from service in the Armed Forces of the United States, a reserve component thereof or the National Guard under honorable conditions, as evidenced by his or her DD Form 214, "Certificate of Release or Discharge from Active Duty," or other document of honorable separation issued by the United States Department of Defense;

(g) A nonrefundable fee equal to the nonvolunteer rate charged by the Central Repository for Nevada Records of Criminal History and the Federal Bureau of Investigation to obtain the reports required pursuant to subsection 1 of NRS 202.366; and

(h) A nonrefundable fee set by the sheriff not to exceed \$60.

Sec. 31. NRS 502.010 is hereby amended to read as follows:

502.010 1. A person who hunts or fishes any wildlife without having first procured a license or permit to do so, as provided in this title, is guilty of a misdemeanor, except that:

(a) A license to hunt or fish is not required of a resident of this State who is under 12 years of age, unless required for the issuance of tags as prescribed in this title or by the regulations of the Commission.

(b) A license to fish is not required of a nonresident of this State who is under 12 years of age, but the number of fish taken by the



nonresident must not exceed 50 percent of the daily creel and possession limits as provided by law.

(c) Except as otherwise provided in subsection ~~{5 or}~~ 6 *or* 7 of NRS 202.300 and NRS 502.066, it is unlawful for any child who is under 18 years of age to hunt any wildlife with any firearm, unless the child is accompanied at all times by the child's parent or guardian or is accompanied at all times by an adult person authorized by the child's parent or guardian to have control or custody of the child to hunt if the authorized person is also licensed to hunt.

(d) A child under 12 years of age, whether accompanied by a qualified person or not, shall not hunt big game in the State of Nevada. This section does not prohibit any child from accompanying an adult licensed to hunt.

(e) The Commission may adopt regulations setting forth:

(1) The species of wildlife which may be hunted or trapped without a license or permit; or

(2) The circumstances under which a person may fish without a license, permit or stamp in a lake or pond that is located entirely on private property and is stocked with lawfully acquired fish.

(f) The Commission may declare 1 day per year as a day upon which persons may fish without a license to do so.

2. This section does not apply to the protection of persons or property from unprotected wildlife on or in the immediate vicinity of home or ranch premises.

Sec. 32. 1. This section and sections 25 to 28, inclusive, and 31 of this act become effective upon passage and approval.

2. Sections 1 to 24, inclusive, 29 and 30 of this act become effective on January 1, 2020.



EXHIBIT 2

Nevada eSOS Entity Information

EXHIBIT 2

ENTITY INFORMATION**ENTITY INFORMATION****Entity Name:**

NEVADANS CAN

Entity Number:

E0596502017-2

Entity Type:

Domestic Nonprofit Cooperative Corporation Without Stock (81)

Entity Status:

Active

Formation Date:

12/20/2017

NV Business ID:

NV20171824499

Termination Date:

Perpetual

Annual Report Due Date:

12/31/2019

REGISTERED AGENT INFORMATION**Name of Individual or Legal Entity:**

Nevadans Can/ secretary

Status:

Active

CRA Agent Entity Type:

Registered Agent Type:

Non-Commercial Registered Agent

NV Business ID:

Office or Position:

Jurisdiction:

Street Address:

2846 Carracci Ct , Henderson, NV, 89052, USA

Email Address:

Mailing Address:

Individual with Authority to Act:

Contact Phone Number:

Fictitious Website or Domain Name:

PRINCIPAL OFFICE ADDRESS

Address:

Mailing Address:

OFFICER INFORMATION

VIEW HISTORICAL DATA

Title	Name	Address	Last Updated	Status
Secretary	MARY ROONEY	2846 CARRAECI CR, HENDERSON, NV, 89052, USA	12/14/2018	Active
President	ROBERT FRANK	2374 SANDSTONE CLIFFS DR, HENDERSON, NV, 89044, USA	12/26/2017	Active
Treasurer	JULIE HEREFORD	11311 WINTER COTTAGE PL, LAS VEGAS, NV, 89135, USA	12/26/2017	Active
Director	LINDA CANNON	10564 RIVA GRANDE CT, LAS VEGAS, NV, 89135, USA	12/26/2017	Active

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Class/Series	Type	Share Number	Value
No records to view.			
Number of No Par Value Shares:			
0			
Total Authorized Capital:			
Filing History		Name History	Mergers/Conversions

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EXHIBIT 3

Proposed Order Granting Motion for Partial
Summary Judgment and Preliminary Injunction

EXHIBIT 3

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400 S. Rampart Boulevard, Suite 400
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Tel: (702) 362-7800 / Fax: (702) 362-9472

1 ALAN J. LEFEBVRE, ESQ.
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2 WILLIAM D. SCHULLER, ESQ.
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3 **KOLESAR & LEATHAM**
400 South Rampart Boulevard, Suite 400
4 Las Vegas, Nevada 89145
Telephone: (702) 362-7800
5 E-Mail: alefebvre@klnevada.com
wschuller@klnevada.com
6 Attorneys for Plaintiffs

7
8 **IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
9 **IN AND FOR CARSON CITY**

10 * * *

11 NevadansCAN, a Nevada non-profit
corporation; MARY ROONEY, as its co-
12 founder and as an individual; JULIE
HEREFORD, as its co-founder and as an
13 individual; JANE DOE, as an individual gun
owner who sues anonymously; and JOHN DOE,
14 as an individual gun owner who sues
anonymously,

15 Plaintiffs,

16 vs.

17 STATE OF NEVADA *ex rel.* STEVE
18 SISOLAK, in his capacity as GOVERNOR OF
NEVADA,

19 Defendant.
20

CASE NO. 19OC002131B

DEPT NO. I

**ORDER GRANTING MOTION
FOR PARTIAL SUMMARY
JUDGMENT AND MOTION FOR
PRELIMINARY INJUNCTION**

21 This matter came before the Court at 9:00 a.m. on January ____, 2020 on Plaintiffs' Motion
22 for Partial Summary Judgment and Motion for Preliminary Injunction ("Motion"). Alan J.
23 Lefebvre, Esq. and William D. Schuller, Esq. of Kolesar & Leatham appeared on behalf of
24 Plaintiffs and Aaron D. Ford, Esq. appeared on behalf of Defendant STATE OF NEVADA.

25 The Court, having considered oral argument on the Motion, being fully advised in the
26 premises and good cause appearing therefor, hereby finds and orders as follows:

27 ///

28 ///

1 IT IS HEREBY ORDERED that the Motion is GRANTED. The Court enters partial
2 summary judgment in favor of Plaintiffs and against Defendant on Plaintiffs' Second Cause of
3 Action for Declaratory Judgment re: Intervening Nevada Supreme Court Precedent. The Court
4 also issues an injunction pursuant to Plaintiffs' Third Cause of Action for Injunctive Relief –
5 Against Administering and Enforcing the Red Flag Law.

6 IT IS HEREBY FURTHER ORDERED that the rule of law set forth in *Andersen v. Eighth*
7 *Judicial Dist. Court in & for Cty. of Clark*, 135 Nev. Adv. Op. 42, 448 P.3d 1120 (2019) applies
8 to Assembly Bill 291 (“AB 291”) and as such, the “red flag” component of AB 291 cannot be
9 implemented as the 80th Session of the Nevada Legislature enacted it.

10 IT IS HEREBY FURTHER ORDERED that applying *Andersen's* holding to the red flag
11 component of AB 291 does not permit severance of the unconstitutional processes from the
12 remaining procedure to enable any practical use of the red flag law.

13 IT IS HEREBY FURTHER ORDERED that AB 291's deprivation of the right to a jury
14 determination of all facts to be adduced in a red flag proceeding renders the statute
15 unconstitutionally defective, and thus, unenforceable upon its effective date of January 1, 2020.

16 IT IS HEREBY FURTHER ORDERED that this Preliminary Injunction is being issued
17 because the red flag law is unconstitutional as it violates the Second Amendment to the
18 Constitution of the United States and the Constitution of the State of Nevada.

19 IT IS HEREBY FURTHER ORDERED that Defendant is enjoined from administering or
20 enforcing the red flag components of AB 291 and must instruct Nevada's political subdivisions
21 and agencies to consider the red flag law void, unconstitutional, and of no effect such that
22 sovereign immunity would not shield an individual attempting to enforce the red flag law.

23 IT IS HEREBY FURTHER ORDERED that no Extreme Risk Protection Orders (ERPOs)
24 and/or search warrants be issued in enforcing AB 291, nor any arrests made, nor any court hearings
25 (whether in person or via telephone) held on applications for *ex parte* orders pursuant to Section
26 12 of AB 291, regardless of whether submitted by civilians or law enforcement officers.

27 ///

28 ///

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IT IS HEREBY FURTHER ORDERED that, pursuant to NRCP 65(d)(2), this Order binds the State of Nevada and its officers, agents, servants, employees, and attorneys, as well as all other persons who are in active concert or participation with the State of Nevada in regards to AB 291's red flag law provisions.

IT IS HEREBY FURTHER ORDERED that Plaintiffs post a \$1,000.00 bond with the Court pending the resolution of the instant lawsuit.

DATED this ____ day of January, 2020.

DISTRICT JUDGE

Respectfully submitted by:

KOLESAR & LEATHAM

By _____
ALAN J. LEFEBVRE, ESQ.
Nevada Bar No. 000848
WILLIAM D. SCHULLER, ESQ.
Nevada Bar No. 011271
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Attorneys for Plaintiffs