



CLERK OF THE COURT

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PETER BENJAMIN REESE

**DISTRICT COURT
CLARK COUNTY, NEVADA**

PETER BENJAMIN REESE,

Plaintiff

vs.

STATE OF NEVADA ex rel:

Nevada Department of Taxation;

Nevada Department of Public
Safety: General Services
Division [Brady Unit],

Defendants.

CASE NO. A-16-748878-C

DEPT. NO. XXXI

FIRST AMENDED COMPLAINT FOR:

**DECLARATORY RELIEF TO
HOLD NRS 202.254 (2017)
AS VOID FOR VAGUENESS IN
VIOLATION OF THE DUE
PROCESS CLAUSE OF THE
NEVADA CONSTITUTION**

**[DECLARATORY RELIEF: EXEMPT
FROM ARBITRATION]**

COMES NOW, Plaintiff, PETER BENJAMIN REESE, an individual, by and through his attorney DONALD J. GREEN, ESQ. and for his causes of action in his FIRST AMENDED COMPLAINT against the defendants named herein alleges as follows:

1. This action seeks declaratory judgment from the Court with respect to the rights, obligations and duties of Plaintiff PETER BENJAMIN REESE and the identified agencies of the State of Nevada named as the defendants in this matter, to wit:

1 For a Declaratory Judgment that NRS 202.254, commonly known as the
2 Nevada Private Party Background Check Law, is unconstitutionally
3 vague in that:

4 A. This statute, NRS 202.254, creates an unstated taxable event
5 between the unlicensed private party seller/transferor and
6 the unlicensed private party buyer/transferee when a licensed
7 firearms dealer is required to facilitate the non-exempt sale
8 or transfer of any firearm through the mandatory background
9 check process and the mandatory record-keeping requirements;
10 and,

11 B. This statute, NRS 202.254, necessitates the collection of a
12 Nevada State Sales Tax by the licensed firearms dealer
13 because under chapter 372 of the Nevada Revised Statutes, the
14 private party sale is part of the licensed firearms dealer's
15 ordinary course of business generating a taxable event which
16 is not specified in any manner under the current
17 configuration of the Nevada Private Party Background Check
18 Law, NRS 202.254.

19 C. NRS 202.254 contains no provision for the collection of any
20 sales tax, yet establishes criminal sanctions as does Chapter
21 372 of the Nevada Revised Statutes.

22 D. Given the clear creation of a taxable event, REESE faces:
23 (1) Economic damage if his potential buyer or
24 transferee refuses to pay sales tax to the licensed
25 dealer; and/or,
26 (2) Criminal charges for the non-collection of any
27 sales tax pursuant to NRS 372, et seq, by the licensed
28

1 firearms dealer who facilitates the sale at the
2 direction of REESE.

3 E. Despite the apparent unenforceability of the 202.254 as
4 amended as opined by the Office of the Nevada Attorney
5 General on December 28, 2016 concerning the refusal of the
6 Federal Bureau of Investigation to conduct private background
7 checks requested directly from a licensed Nevada gun dealer
8 acting as the intermediary in a private party sale or
9 transfer, the creation of a taxable event cannot be saved by
10 the severability clause in NRS 202.254 (8) due to the fact
11 that the entire statute itself creates the taxable event and
12 cannot be saved by a mere stroke of the pen.

13 2. REESE seeks a judicial determination of his duties,
14 obligations and rights with respect to NRS 202.254 (hereinafter
15 referred to as NRS 202.254 and/or the Background Check Law [BCL], which
16 is the 2016 initiative approved by the Nevada electorate on November
17 8, 2016 also known as the Private Party Mandatory Background Check Law.

18
19 **I. THE PARTIES**

20 3. Plaintiff PETER BENJAMIN REESE (hereinafter referred to as
21 REESE) is an adult resident of the State of Nevada who legally and
22 occasionally sells or transfers legal firearms as a private seller or
23 transferor as defined in NRS 202.254, as amended by the BCL.

24 4. On or about December 18, 2016 in Clark County, State of Nevada,
25 REESE was advised by one or more officers of the Las Vegas Metropolitan
26 Police Department that REESE would be required to complete and submit
27 a Nevada Private Party Background Check Form for all private party
28 sales or transfers of firearms. REESE was provided with the Nevada

1 Department of Public Safety Form, which is a for which can be submitted
2 to the Nevada Department of Public Safety as a voluntary request for
3 a Private Party Background check for no fee being charged by the State
4 of Nevada. On or about the year 2015, the present configuration of the
5 this form was updated on the website of the Brady Unit of the General
6 Services Division of the Nevada Department of Public Safety.

7 5. REESE conducts his legal and occasional private party firearms
8 sales or transfers in Clark County, Nevada.

9 6. Defendant NEVADA DEPARTMENT OF TAXATION is duly organized as
10 an Administrative Agency under the laws of the State of Nevada and is
11 charged, inter alia, with collecting all defined Nevada taxes and
12 enforcing the tax laws of the State of Nevada.

13 7. Defendant Nevada Department Of Public Safety: General Services
14 Division [Brady Unit] is duly organized as an Administrative Agency
15 under the laws of the State of Nevada and is charged, inter alia, with
16 conducting background checks in connection with firearms sales or
17 transfers conducted or facilitated by licensed firearms dealers in the
18 State of Nevada and, upon request, is charged with conducting free
19 background checks for private individuals until January 1, 2017.

20 8. REESE will seek leave to amend this Complaint for Declaratory
21 Relief in the event that other necessary parties or the permissive
22 joinder of parties is deemed necessary and/or appropriate.

23 24 **II. JURISDICTION AND VENUE**

25 9. REESE repeats, re-alleges and incorporates herein by
26 this reference, paragraphs 1 through 8 as though set forth in full.

27 10. This Court has jurisdiction over this controversy for
28 Declaratory Relief/Judgment pursuant to NRS 30.070, NRS 30.080, NRS

1 30.100, NRS 30.130; and Rules 8 and 57 of the Nevada Rules of Civil
2 Procedure.

3 11. Venue is proper in Clark County, Nevada in that REESE conducts
4 legal and occasional sales and transfers of firearms in the County of
5 Clark, State of Nevada and so conducted legal and occasional sales and
6 transfers of firearms during the year 2016 and REESE will continue to
7 do so in the year 2017 pursuant to any and all valid laws of the State
8 of Nevada.

9
10 **III. STANDING OF PLAINTIFF PETER BENJAMIN REESE**

11 12. REESE repeats, re-alleges and incorporates herein by this
12 reference, paragraphs 1 through 11, as though set forth in full.

13 13. REESE has standing to bring this action for Declaratory Relief
14 in that:

15 A. REESE is threatened with criminal penalties in the
16 event of non-compliance with NRS 202.254 which contains
17 no provision for the collection of a sales tax as the
18 direct result of a taxable event being created under
19 NRS 202.254 when a Nevada Private Seller of a firearm
20 and a Private Buyer of a firearm are required utilize
21 the services of a Nevada Firearms Dealer who holds a
22 valid Federal Firearms License issued by the Department
23 of Alcohol, Tobacco, Firearms and Explosives (ATFE).

24 B. REESE is threatened with economic loss because he
25 cannot conform his lawful business activities to the
26 unconstitutionally vague statute, NRS 202.254, in that
27 this statute is silent on the creation of an obvious
28 taxable event which creates a taxable event which, in

1 turn, triggers the collection of a sales tax by the
2 licensed dealer under circumstances whereby NRS 202.254
3 does not identify a taxable event yet will require
4 REESE as a seller/transferor to strictly comply with
5 the law under penalty of criminal punishment for non-
6 compliance.

7 C. Based upon the December 28, 2016 official Opinion of
8 the Attorney General of the State of Nevada pertaining
9 to the unenforceability of NRS 202.254 as amended,
10 "[u]nder longstanding legal principles, Nevadans are
11 not required to perform the impossible, and are
12 therefore excused from compliance with the Act's
13 background check requirement unless and until the FBI
14 changes its position set forth in its December 14, 2016
15 letter."

16 17 18 **IV. THE CONTROVERSY**

19 14. REESE repeats, re-alleges and incorporates herein by this
20 reference, paragraphs 1 through 13 as though set forth in full.

21 15. An actual case and controversy of a justiciable nature exists
22 between Plaintiff REESE and defendant Nevada administrative agencies
23 involving the rights and obligations of REESE and the defendants in
24 that:

25 A. REESE is threatened with criminal penalties in the event of
26 non-compliance with NRS 202.254 which contains no provision
27 for the collection of a sales tax as the direct result of a
28 taxable event being created under NRS 202.254 when a Nevada

1 Private Seller of a firearm and a Private Buyer of a firearm
2 are required utilize the services of a Nevada Firearms Dealer
3 who holds a valid Federal Firearms License issued by the
4 Department of Alcohol, Tobacco, Firearms and Explosives
5 (ATFE).

6 B. This statute, NRS 202.254, creates an unstated taxable event
7 between the unlicensed private party seller/transferor and
8 the unlicensed private party buyer/transferee when a licensed
9 firearms dealer is required to facilitate the non-exempt sale
10 or transfer of any firearm through the mandatory background
11 check process and the mandatory record-keeping requirements;
12 and,

13 C. This statute, NRS 202.254, necessitates the collection of a
14 Nevada State Sales Tax by the licensed firearms dealer
15 because under chapter 372 of the Nevada Revised Statutes, the
16 private party sale is part of the licensed firearms dealer's
17 ordinary course of business generating a taxable event which
18 is not specified in any manner under the current
19 configuration of the Nevada Private Party Background Check
20 Law, NRS 202.254.

21 D. NRS 202.254, itself, contains no provision for the collection
22 of any sales tax. It is therefore unconstitutionally vague
23 and cannot be enforced in its entirety.

24 D. Given the clear creation of a taxable event, REESE faces:
25 (1) Economic damage if his potential buyer or
26 transferee refuses to pay sales tax to the licensed
27 dealer; and/or,
28

1 (2) Criminal charges for the non-collection of any
2 sales tax pursuant to NRS 372, et seq, by the licensed
3 firearms dealer who facilitates the sale at the
4 direction of REESE.

5 E. Despite the apparent unenforceability of the 202.254 as
6 amended as opined by the Office of the Nevada Attorney
7 General on December 28, 2016 concerning the refusal of the
8 Federal Bureau of Investigation to conduct private background
9 checks requested directly from a licensed Nevada gun dealer
10 acting as the intermediary in a private party sale or
11 transfer, the creation of a taxable event cannot be saved by
12 the severability clause in NRS 202.254 (8) due to the fact
13 that the entire statute itself creates the taxable event and
14 cannot be saved by a mere stroke of the pen or by some action
15 to "copy, paste, and send."

16
17 **V. NRS 202.254 IS SILENT ON A SALES TAX BUT THIS STATUTE CREATES**
18 **A TAXABLE EVENT AS DEFINED IN NRS 372.035 ET SEQ.**

19 16. REESE repeats, re-alleges and incorporates herein by this
20 reference, paragraphs 1 through 15 as though set forth in full.

21 **A. The Federal regulatory scheme pertinent to this Complaint for**
22 **Declaratory Relief.**

23 17. Under the statutes, laws and/or regulations of the of the
24 United States of America, only the Bureau of Alcohol, Tobacco, Firearms
25 and Explosives (hereinafter referred to as ATF) is authorized to issue
26 a Federal Firearms License to a person and/or entity which has applied
27 for and has been granted a license to sell or transfer firearms in
28 interstate commerce and/or elsewhere as specifically defined by Federal

1 statutes, laws and/or regulations under Title 18 of the United States
2 Code, Title 21 of the United States Code, Chapter 18 of the Code of
3 Federal Regulations, Title 21 of the Code of Federal Regulations,
4 and/or any other administrative provisions and/or Open Letters issued
5 and/or promulgated by the ATFE pursuant to its federally created
6 administrative authority.

7 18. In this action for Declaratory Relief, the person or entity
8 which is required to facilitate the sale or transfer of a firearm
9 pursuant to the BCL (NRS 202.254) will be collectively referred to
10 herein as the licensed person, licensed business and/or Federal
11 Firearms Licensee (FFL).

12 **B. The Nevada Private Party Background Check Initiative [NRS**
13 **202.254]**

14 19. On November 8, 2016 during the General Election, the Nevada
15 electorate approved what was then known as PROPOSITION 1, the Nevada
16 Private Party Background Check initiative [BCL] which mandates an FBI
17 background check for the purchaser of a firearm in all non-exempt
18 private party sales or transfers. Other than the specifically
19 identified exempt persons or entities, there are no other exceptions
20 to NRS 202.254, which will be come effective on January 1, 2017.

21 20. The BCL requires that an unlicensed person, such as REESE,
22 shall not sell or transfer a firearm to another unlicensed person
23 unless a licensed dealer (FFL) first conducts a background check on the
24 buyer or transferee in compliance with NRS 202.254 (1)-(5). Under this
25 scheme:

26 ...

27 ...

28 ...

1 A. The seller or transferor shall appear jointly with the
2 firearm and request that a licensed dealer holding a FFL
3 conduct a background check on the buyer or transferee.

4 [NRS 202.254 (2)].

5 B. A licensed dealer (the FFL) who agrees to conduct the
6 background check shall take possession of the firearm and
7 comply with all requirements federal and state law as though
8 licensed dealer were selling or transferring the firearm from
9 his or her own inventory, including, but not limited to, all
10 record keeping requirements, except that:

11 (1) the licensed dealer must contact the National
12 Instant Background Check System, as described in 18
13 U.S.C. Section 922(t), and not the Central Repository,
14 to determine whether the buyer or transferor is
15 eligible to purchase and possess firearms under state
16 and federal law; and

17 (2) the seller or transferor may remove the firearm
18 from the business premises while the background check
19 is being conducted, provided that before seller or
20 transferor sells or transfers firearm buyer or
21 transferee, the seller or transferor and the buyer or
22 transferee shall return to the licensed dealer who
23 shall again take possession of firearm prior to the
24 completion of the sale or transfer. [NRS 202.254 (3)].

25
26 C. A licensed dealer who agrees to conduct a background check
27 this section shall inform the seller or transferor and the
28 buyer or transferee of the response of the National Instant

1 Criminal Background Check System. If the response indicates
2 that the buyer or transferee is ineligible to purchase or
3 possess the firearm, the licensed dealer shall return the
4 firearm to the seller or transferor and the seller or
5 transferor shall not sell or transfer firearm to the buyer
6 or transferee. [NRS 202.254 (4)]

7 E. A licensed dealer may charge a reasonable fee for conducting
8 a background check and facilitating firearm transfer between
9 unlicensed persons pursuant to this section.
10 [NRS 202.254 (5)].

11
12 21. The BCL mandates severe penalties for any non-compliance with
13 any provision of NRS 202.254 et seq. These penalties are specified in
14 Section 7 of NRS 202.254:

15 "1. An unlicensed person who sells or voluntarily transfers
16 one or more firearms to another unlicensed violation of NRS 202.254:

17 (a) For a first violation involving the sale or
18 transfer of one or more firearms, is guilty of gross
19 misdemeanor and shall be punished as provided in NRS
20 193.140; and,

21 (b) For a second or subsequent conviction involving
22 the sale or transfer of one or more firearms, is guilty
23 of a category C felony and shall be punished as
24 provided in NRS 193.130(2)©). [NRS 202.254 (7)].

25 22. Although NRS 202.254 is totally silent on a sales tax
26 requirement and although NRS 202.254 does not specifically exclude any
27 regulated firearms sale or transfer from taxation, the BCL effectively
28 creates a taxable event as defined in Chapter 372 of the Nevada Revised

1 Statutes, with which REESE and his seller must comply with under
2 penalty of administrative and/or criminal sanctions imposed by Chapter
3 372 of the Nevada Revised Statutes:

4 A. Under the current vague scheme in NRS 202.254, the sale or
5 transfer of any firearm between non-exempt, unlicensed
6 individuals, the sale or transfer generates a taxable event
7 as defined in NRS 372.035 and NRS 372.060.

8 B. Under the current vague scheme in NRS 202.254, the sale or
9 transfer of any firearm between non-exempt, unlicensed
10 individuals, the licensed party (FFL) is a "person" and
11 "seller" defined in NRS 372.040.

12 C. Under the current vague scheme in NRS 202.254, the sale or
13 transfer of any firearm between non-exempt, unlicensed
14 individuals, the sale or transfer generates a purchase as a
15 taxable event as defined in NRS 372.045.

16 D. Under the current vague scheme in NRS 202.254, the sale or
17 transfer of any firearm between non-exempt, unlicensed
18 individuals, the sale or transfer generates a retail sale as
19 a taxable event as defined in NRS 372.045, because the FFL
20 is acting in the ordinary course of business as defined in
21 NRS 373.050(1)-(2) and the FFL is a retailer as defined in
22 NRS 373.055(1)(a)-(c).

23
24 **VI. NRS 202.254 IS UNCONSTITUTIONALLY VAGUE IN ITS ENTIRETY AND**
25 **ITS SEVERANCE CLAUSE CANNOT CHANGE THE TAXATION ASPECTS OF**
26 **PRIVATE PARTY GUNS SALES, SO THIS STATUTE CANNOT BE ENFORCED.**

27 23. REESE repeats, re-alleges and incorporates herein by this
28 reference, paragraphs 1 through 22 as though set forth in full.

1 24. In American constitutional law, a statute is void for
2 vagueness and unenforceable if it is too vague for the average
3 citizen to understand. There are several reasons a statute may be
4 considered vague; in general, a statute might be called void for
5 vagueness reasons when an average citizen cannot generally determine
6 what persons are regulated, what conduct is prohibited, or what
7 punishment may be imposed.
8
9

10 25. Criminal laws which do not state explicitly and definitely
11 what conduct is punishable for example are void for vagueness. To
12 summarize the contents of the doctrine which is recognized in
13 Nevada, the substantive law establishes specific criteria which all
14 legislation must meet, to qualify as constitutional: the Law must
15 state explicitly what it mandates, and what is enforceable.
16 Definitions of potentially vague terms are to be provided. There are
17 no such defined tax provisions in NRS 202.254.
18
19
20

21 A. This statute, NRS 202.254, creates an unstated taxable
22 event between the unlicensed private party
23 seller/transferor and the unlicensed private party
24 buyer/transferee when a licensed firearms dealer is
25 required to facilitate the non-exempt sale or transfer of
26 any firearm through the mandatory background check process
27 and the mandatory record-keeping requirements; and,
28

1 B. This statute, NRS 202.254, necessitates the collection of
2 a Nevada State Sales Tax by the licensed firearms dealer
3 because under chapter 372 of the Nevada Revised Statutes,
4 the private party sale is part of the licensed firearms
5 dealer's ordinary course of business generating a taxable
6 event which is not specified in any manner under the
7 current configuration of the Nevada Private Party
8 Background Check Law, NRS 202.254.

10 C. NRS 202.254, itself, contains no provision for the
11 collection of any sales tax. It is therefore
12 unconstitutionally vague and cannot be enforced in its
13 entirety.
14

15 26. Given the clear creation of an enforceable taxable event as
16 the direct consequence of the enactment of unconstitutionally vague
17 statute (NRS 202.254 et seq.), REESE faces:

- 19 A. Economic damage if his potential buyer or transferee
20 refuses to pay sales tax to the licensed dealer; and/or,
21
- 22 B. Criminal charges for the non-collection of any sales tax
23 pursuant to NRS 372, et seq, by the licensed firearms
24 dealer who facilitates the sale at the direction of REESE.
- 25 C. Criminal charges and punishment for non-compliance with
26 NRS 202.254.
27
28

1 27. Despite the apparent unenforceability of the 202.254 as
2 amended as opined by the Office of the Nevada Attorney General on
3 December 28, 2016 [AGO 2016-12] concerning the refusal of the
4 Federal Bureau of Investigation to conduct private background checks
5 requested directly from a licensed Nevada gun dealer acting as the
6 intermediary in a private party sale or transfer, the creation of a
7 taxable event cannot be saved by the severability clause in NRS
8 202.254 (8) due to the fact that the entire statute itself creates
9 the taxable event and cannot be saved by a mere stroke of the pen or
10 by some action to "copy, paste, and send."
11

12
13 28. The "...Nevada Supreme Court long ago adopted the doctrine
14 that the law does not require impossible acts. When a law imposes a
15 requirement that cannot be performed, a party is relieved of
16 compliance until the obstacle to performance is lifted." [Citations
17 omitted] See, Nevada Attorney General Opinion, 2016-12, p. 4
18 [December 28, 2016].
19
20

21 29. Therefore, based upon his averments in this Complaint for
22 Declaratory Judgment/Relief and as a legal, occasional private party
23 gun seller and as a Nevadan, REESE validly claims that he is excused
24 from compliance with the requirements of the Background Check Law,
25 NRS 202.254. [Attorney General Opinion 2016-12, December 28, 2016].
26

27 ...
28

1 WHEREFORE, plaintiff PETER BENJAMIN REESE respectfully prays
2 for relief as follows:

3 1. For Declaratory Relief/Judgment under the First Cause
4 of Action, to wit: that NRS 202.254 is unconstitutionally vague as
5 specified in the Complaint and is therefore unenforceable as
6 specified in the Complaint.
7

8 2. For attorney's fees, if available;

9 3. For costs of suit, if available;

10 4. For a JURY TRIAL, if available;

11 5. For a priority setting of trial due to the Complaint for
12 Declaratory Relief; and,
13

14 6. For such relief as the Court deems appropriate.
15

16 DATED this 4th day of JANUARY, 2017.
17

18 LAW OFFICES OF DONALD J. GREEN

19 BY /s/ Donald J. Green, Esq

20 DONALD J. GREEN, ESQ.

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22 California Bar No. 112495

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24 Las Vegas, Nevada 89121

25 CrimeLV7777@aol.com

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27 Fax: (855) 459-8472

28 Attorney for PETER BENJAMIN REESE

1 CERTIFICATE OF SERVICE BY FIRST CLASS MAIL
2 TO NEVADA ATTORNEY GENERAL PURSUANT TO NRS 30.130

3 The undersigned does hereby certify that by virtue of the
4 relief seeking to have a Nevada Statute Declared Unconstitutional to
5 wit NRS 202.254, on JANUARY 4, 2017, a true and correct copy of
6 the foregoing FIRST AMENDED COMPLAINT FOR DECLARATORY RELIEF was
7 served on the below listed counsel as indicated, by first class,
8 mail postage pre-paid:

9 Honorable ADAM PAUL LAXALT
10 Attorney General for the State of Nevada
11 100 North Carson Street
12 Carson City, Nevada 89701

13
14 Dated in Las Vegas, Clark County, State of Nevada on this 4th
15 day of JANUARY, 2017.

16 LAW OFFICES OF DONALD J. GREEN
17 _____/s/ Donald J. Green, Esq. 12/29/2016_____

18
19
20
21 AFFIRMATION: Pursuant to NRS 239B, the undersigned states that the
22 foregoing COMPLAINT does not contain the Social Security Number of any
23 person.
24

25 Dated this 4th day of JANUARY, 2017. _/s/ D. Green, Esq.,
26
27
28