



1 **PET**  
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15 **DISTRICT COURT**  
16 **CLARK COUNTY, NEVADA**

17 DALE ZUSI, an individual; VICKI  
18 DELATORRE, an individual; and SYDNEY  
19 GORDON, an individual,

20 Plaintiffs,

21 v.

22 BRIAN SANDOVAL, in his capacity of  
23 Governor of the State of Nevada; ADAM  
24 LAXALT, in his capacity as Attorney General  
25 of the State of Nevada,

26 Defendants.

27 CASE NO.: A-17-762975-W  
28 DEPT. NO.: Department 24

**PETITION FOR WRIT OF  
MANDAMUS AND COMPLAINT  
FOR DECLARATORY RELIEF**

**Exempt from Arbitration**

**(Writ Relief Requested, Declaratory Relief  
Requested)**

29 Plaintiffs, DALE ZUSI, an individual, VICKI DELATORRE, an individual, and SYDNEY  
30 GORDON, an individual (“Plaintiffs”) by and through counsel, the law firm Greenberg Traurig,  
31 LLP, hereby submit their Complaint against Defendant BRIAN SANDOVAL, in his capacity as  
32 Governor of the State of Nevada, and Defendant ADAM LAXALT, in his capacity as Attorney  
33 General of the State of Nevada, as follows:

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**INTRODUCTION**

1  
2           1.       This case is about the refusal of the Governor of Nevada to discharge one of his most  
3 fundamental constitutional obligations – to see that the laws of this state are faithfully executed.

4           2.       On November 8, 2016, the Nevada voters adopted Ballot Question 1, the Nevada  
5 Background Check Act, requiring background checks on gun sales by unlicensed sellers, thereby  
6 closing a dangerous loophole that allowed felons, domestic abusers and other people with dangerous  
7 histories to purchase guns from unlicensed sellers without such a check.

8           3.       Passage of the Background Check Act was the culmination of a four-year process,  
9 during which proponents of the law were opposed by Governor Sandoval and Attorney General  
10 Laxalt.

11          4.       The Nevada State Legislature passed legislation in 2013 requiring background  
12 checks on all firearms sales.

13          5.       Governor Sandoval then exercised his constitutional power and vetoed the bill.

14          6.       Blocked by the Governor on the legislative front, the people of Nevada availed  
15 themselves of the State’s initiative process, collecting 247,000 registered Nevada voters’ signatures  
16 and qualifying a background check initiative for the ballot.

17          7.       The Governor and Attorney General publicly opposed the initiative.

18          8.       The initiative – also known as Ballot Question 1 – passed with the support of  
19 558,631 Nevadans – and the Background Check Act became law in Nevada, with an effective date  
20 of January 1, 2017.

21          9.       Regrettably, due to Governor Sandoval’s refusal to act and a flawed and incomplete  
22 opinion from the Attorney General, the Background Check Act has not been enforced and remains  
23 in limbo, contravening the will of the people of Nevada who exercised their constitutional right to  
24 change the law to promote public safety and protect the communities of this state.

25          10.      In fact, while the people of Nevada voted for more background checks on firearms  
26 sales, the current status quo has resulted in the opposite – fewer background checks than before.  
27 This is because, prior to voters approving Question 1, background checks on guns sold by  
28 unlicensed sellers were allowed, but not required. Now, because of the Governor’s refusal to act

1 and the Attorney General’s Opinion, all background checks on guns sold by unlicensed sellers have  
2 been halted – leaving law-abiding citizens who want the assurance of a background check prior to  
3 selling a gun to another citizen without any mechanism to obtain one.

4 11. Plaintiffs accordingly bring this action seeking a writ of mandamus to compel  
5 Governor Sandoval to discharge his constitutional obligation to see that the Background Check Act  
6 is faithfully executed.

7 12. Alternatively, Plaintiffs seek a declaratory judgment to confirm the changes effected  
8 by the Background Check Act or, in the alternative, sever any provisions found to be invalid or  
9 unenforceable so that the primary purpose of the Act – requiring background checks on virtually all  
10 gun sales – can be implemented.

11 **The Parties**

12 13. Plaintiff Dale Zusi, one of the nation’s first female ROTC scholarship students who  
13 served as a U.S. Army Captain, is a resident and taxpayer of Nevada who worked toward passage  
14 and voted in favor of Ballot Question 1. In furtherance of her support of Question 1, Captain Zusi  
15 worked on phone banks, walked in door-to-door campaigns, spoke in favor of the initiative, and  
16 served as a poll watcher.

17 14. Plaintiff Vicki DeLaTorre is a gun owner, and a resident and taxpayer of Nevada  
18 who worked toward passage and voted in favor of Ballot Question 1. In furtherance of her support  
19 of Question 1, Ms. DeLaTorre worked on phone banks, participated in demonstrations in favor of  
20 the initiative, and helped produce mailings in support of the initiative.

21 15. Plaintiff Sydney Gordon, a Vietnam era veteran of the U.S. Army and gun owner, is  
22 a resident and taxpayer of Clark County, Nevada, who worked toward passage and voted in favor of  
23 Ballot Question 1.

24 16. Defendant Brian Sandoval is the Governor of the State of Nevada.

25 17. Defendant Adam Laxalt is the Attorney General of the State of Nevada.

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**GENERAL ALLEGATIONS**

**Federal Background Checks**

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2  
3 18. The Brady Handgun Violence Prevention Act, 18 U.S.C. § 922(t) (“Brady Act”),  
4 requires that federally licensed firearms dealers (“FFLs”) contact the National Instant Criminal  
5 Background Check System (“NICS”) prior to transferring a firearm to an unlicensed individual, so  
6 that a background check can be performed to determine whether the purchaser is prohibited by  
7 federal or state law from possessing a firearm.

8 19. While the Brady Act contains no such requirement for transfers by unlicensed  
9 sellers, many states have enacted laws supplementing the Brady Act to require background checks  
10 on guns sales by unlicensed sellers. Through passage of the Background Check Act in 2016,  
11 Nevada’s voters added this state to the list of jurisdictions that had acted to close this loophole.

12 20. Under the Brady Act, each state has the option of electing to have the required  
13 background checks performed either: (1) directly by the NICS Section at the FBI using the federal  
14 NICS databases; or (2) by a state Point of Contact (“POC”) that can check state databases as well as  
15 the federal NICS databases.

16 21. The NICS website thus explains that “[e]ach state decides whether the FFLs in its  
17 state call a state POC or the FBI to initiate firearm background checks.”

18 22. The relevant federal regulation, 28 C.F.R. § 25.2, leaves to each state broad  
19 discretion to establish a POC pursuant to state law, defining the term POC as “an agency with  
20 express or implied authority to perform POC duties pursuant to state statute, regulation, or  
21 executive order.”

22 23. Pursuant to 28 C.F.R. § 25.6(a), once a state has chosen whether or not to act as a  
23 POC, federal regulations direct the Bureau of Alcohol, Tobacco, Firearms and Explosives (“ATF”)  
24 to notify FFLs in that state whether to initiate NICS background checks by contacting either the  
25 NICS Section or the state POC.

26 24. According to the ATF website, 33 states/territories have chosen not to participate as  
27 a POC, meaning all gun background checks for those states are done directly by the FBI’s NICS  
28 Section; 12 states have elected full-POC status, meaning all gun background checks in the state are

1 done through the state POC; and nine states have elected partial-POC status, meaning background  
2 checks for certain types of firearm transactions are done through the state POC while checks on  
3 other categories of transactions are done directly through the NICS Section.<sup>1</sup>

#### 4 **Background Checks in Nevada**

5 25. In 1998, through actions authorized by Governor Bob Miller, Nevada elected to do  
6 all required background checks on firearm sales by FFLs through a state POC, specifically, the  
7 Nevada Department of Public Safety (“DPS”) Central Repository (“Central Repository”).

8 26. At that time, and up until January 1, 2017, Nevada did not require, but did allow  
9 background checks on guns sold by unlicensed sellers; these optional checks were performed by the  
10 DPS Central Repository as well.

#### 11 **The Successful Ballot Initiative**

12 27. Ballot Question 1 included the following declaration by the People of Nevada:

13 The People of Nevada do hereby find and declare that:

14 1. To promote public safety, federal law currently prohibits felons,  
15 domestic abusers, the severely mentally ill, and other dangerous people from  
buying or possessing firearms;

16 2. Federally licensed firearms dealers are required to run background  
17 checks on their prospective buyers to ensure they are not prohibited from buying  
or possessing firearms;

18 3. Criminals and other dangerous people can avoid background checks by  
19 buying guns from unlicensed firearms sellers, whom they can easily meet online  
20 or at gun shows and who are not legally required to run background checks before  
selling or transferring firearms;

21 4. Due to this loophole, millions of guns exchange hands each year in the  
22 United States without a background check;

23 5. The background check process is quick and convenient: Over 90% of  
24 federal background checks are completed instantaneously and over 97% of  
Nevadans live within 10 miles of a licensed gun dealer;

25 6. We have the right to bear arms, but with rights come responsibilities,  
26 including the responsibility to keep guns out of the hands of convicted felons and  
domestic abusers;

27  
28 <sup>1</sup> ATF website: “Permanent Brady State Lists” available at <https://www.atf.gov/rules-and-regulations/permanent-brady-state-lists>.

1           7. To promote public safety and protect our communities, and to create a  
2 fair, level playing field for all gun sellers, the people of Nevada find it necessary  
3 to more effectively enforce current law prohibiting dangerous persons from  
4 purchasing and possessing firearms by requiring background checks on all  
firearms sales and transfers, with reasonable exceptions, including for immediate  
family members, hunting, and self-defense.

5 Question 1, §2.

6           28. As stated repeatedly in the informational materials sent to voters by the Secretary of  
7 State in advance of election day, the central purpose of Question 1 was to close the dangerous  
8 loophole posed by sales from unlicensed dealers by “prohibit[ing], except in certain circumstances,  
9 any person who is not a licensed dealer, importer or manufacturer of firearms from selling or  
10 transferring a firearm to another unlicensed person unless a licensed dealer first conducts a  
11 background check on the buyer or transferee.” (Statewide Ballot Questions 2016, at 2-3.)

12           29. Thus, the question appearing on the ballot for voters to decide was similarly framed  
13 as: “Shall Chapter 202 of the Nevada Revised Statutes be amended to prohibit, except in certain  
14 circumstances, a person from selling or transferring a firearm to another person unless a federally-  
15 licensed dealer first conducts a federal background check on the potential buyer or transferee?”

16           30. The ballot initiative informational materials sent to voters included additional  
17 details about the proposed change to the law set out in Question 1, including that the newly-  
18 required background checks on guns sold by unlicensed sellers would be conducted by dealers  
19 contacting the FBI’s NICS Section directly (as opposed to guns sold by licensed dealers, for  
20 which the background checks are done by the dealer contacting the state POC (the DPS Central  
21 Repository)) and that the licensed dealer could charge a reasonable fee for facilitating the transfer  
22 between unlicensed seller and buyer. (*Id.* at 3-4.)

23           31. Voters were also told in these materials that the fiscal impact of Question 1 could  
24 not be determined, because “[t]he Department of Public Safety has indicated that passage of  
25 Question 1 would require a renegotiation of POC status or the development of an alternative  
26 agreement with the FBI in order to accommodate the provisions of the question.” (*Id.* at 9-19  
27 (“Fiscal Note”).)

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1           32.     A majority of Nevada voters voted in favor of Question 1, thereby enacting, in full,  
2 the Background Check Act.

3           33.     By enacting the Background Check Act, Nevada declared its public policy that  
4 background checks on *all* firearms sales and transfers, with reasonable exceptions, are necessary to  
5 promote public safety, to protect Nevada communities, and to create a fair, level-playing field for  
6 all gun sellers.

7           34.     The ATF similarly recognizes that background checks on firearms sold by  
8 unlicensed sellers (like background checks on guns sold by licensed dealers) “can enhance public  
9 safety, assist law enforcement, and help ensure firearms end up only in the hands of those who are  
10 legally allowed to possess them.”<sup>2</sup>

11          35.     The Background Check Act amended NRS 202.254, which now reads, in pertinent part:

12                 1. Except as otherwise provided in section 5 of this act, an unlicensed  
13 person shall not sell or transfer a firearm to another unlicensed person unless a  
14 licensed dealer first conducts a background check on the buyer or transferee in  
15 compliance with this section.

16                 2. The seller or transferor and buyer or transferee shall appear jointly with  
17 the firearm and request that a licensed dealer conduct a background check on the  
18 buyer or transferee.

19                 3. A licensed dealer who agrees to conduct a background check pursuant  
20 to this section shall take possession of the firearm and comply with all  
21 requirements of federal and state law as though the licensed dealer were selling or  
22 transferring the firearm from his or her own inventory to the buyer or transferee,  
23 including, but not limited to, all recordkeeping requirements, except that:

24                         (a) The licensed dealer must contact the National Instant Criminal  
25 Background Check System, as described in 18 U.S.C. § 922(t), and not the  
26 Central Repository, to determine whether the buyer or transferee is eligible to  
27 purchase and possess firearms under state and federal law; and

28                         (b) The seller or transferor may remove the firearm from the business  
premises while the background check is being conducted, provided that before the  
seller or transferor sells or transfers the firearm to the buyer or transferee, the seller  
or transferor and the buyer or transferee shall return to the licensed dealer who shall  
again take possession of the firearm prior to the completion of the sale or transfer.

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<sup>2</sup> ATF Proc. 2013-1, “Recordkeeping and background check procedures for facilitation of private party firearms transfers;” ATF, “Facilitating Private Sales: A Federal Firearms Licensee Guide,” at 2.





1           42.     Notably, the Attorney General’s Opinion accepted the FBI’s position regarding  
2 Nevada’s POC status without attempting any analysis of whether that position was justified,  
3 including a failure to consider whether the passage of the Background Check Law in 2016 had  
4 changed Nevada from a full- to a partial-POC state and the role of the Nevada state executive  
5 branch in communicating, confirming, and implementing such a change.

6           43.     While the opinion does expressly acknowledge the possibility that the FBI could  
7 change its mind, there is no discussion of what Nevada officials could do to effectuate such a  
8 change so that the Background Check Law could be implemented. Nor is there any  
9 acknowledgment in the Attorney General Opinion that DPS expected that passage of Question 1  
10 would “require a renegotiation of POC status or the development of an alternative arrangement with  
11 the FBI in order to accommodate the provisions of the question” (as voters were told would be  
12 necessary) or any recommendation that the Governor and/or DPS engage in such renegotiation.

13           44.     The Attorney General’s Opinion is not a mere “advisory” opinion, but is instead a  
14 statement that, while not binding on courts or government agencies, must be regarded as having a  
15 quasi-judicial character.

16           45.     Upon information and belief, due to its reliance on the Attorney General Opinion, the  
17 Nevada Department of Public Safety and other law enforcement agencies in Nevada have declined  
18 to enforce the requirement of NRS 202.254, as amended by the Background Check Act, that there  
19 be a background check on all private firearm sales (with certain limited exceptions).

20           46.     Upon information and belief, but for the existence of the Attorney General Opinion,  
21 law enforcement agencies in Nevada would presume NRS 202.254 as amended by the Background  
22 Check Act to be constitutional and would enforce it – or at least take all reasonable steps to do so –  
23 as they do other valid statutory provisions.

24           **Public Records Requests and The Governor’s Failure to Act to Enforce Nevada’s Laws**

25           47.     Following the issuance of the Attorney General Opinion, in February 2017, the  
26 sponsors of Question 1, Nevadans for Background Checks, issued public records requests to the  
27 various Nevada government agencies referenced above, seeking, among other things, information  
28

1 about what steps (if any) the State had taken to implement the new law. Responses to these requests  
2 and supplemental requests were exchanged through April 2017.

3 48. In May and June 2017, based in part on records received from these public records  
4 requests, the undersigned counsel for Nevadans for Background Checks met in person with  
5 Governor Sandoval’s then-counsel to urge implementation of the Background Check Act, and  
6 followed up that meeting with preparation of a detailed Legal Memorandum that was submitted to  
7 Governor Sandoval for his review.

8 49. The Legal Memorandum set forth a detailed analysis of why the FBI’s position  
9 regarding Nevada’s current POC status was erroneous and the constitutional duty of the Governor  
10 to inform the FBI that Nevada’s POC status had changed, as described above.

11 50. The Legal Memorandum emphasized that the determination of a state’s POC status  
12 lies wholly within the power and authority of the state, citing 28 C.F.R. § 25.2’s definition of a POC  
13 as “an agency with express or implied authority to perform POC duties pursuant to state statute,  
14 regulation, or executive order.”

15 51. The Legal Memorandum further explained that documents obtained through the  
16 public records requests indicated that – as DPS had anticipated – NICS appeared to be waiting on  
17 some official action from Governor Sandoval before it would consider acting to implement the  
18 change in Nevada’s POC status.

19 52. Additionally, Governor Sandoval was informed that other states have changed their  
20 POC status as follows:

21 a. In 2000, Oregon voters approved a ballot initiative that changed that state’s  
22 POC status from partial to full. Specifically, prior to the approval of the amendment, FFLs in  
23 Oregon were required to contact a state agency for background checks for handgun sales, and the  
24 FBI’s NICS Section for long gun sales. The 2000 initiative directed FFLs to contact the POC for the  
25 sale of both handguns and long guns. Within weeks of voter approval, both the NICS Section and  
26 ATF recognized that through the voter initiative, Oregon had changed from a partial POC to a full  
27 POC state.

28 ///

1           b.       Between 1999 and 2005, South Carolina, Vermont, Arizona, Indiana, and  
2 Georgia all chose to cease operating as POCs and instead to have the NICS Section conduct all  
3 background checks on gun sales in their states. In each case, NICS accepted the change and ATF  
4 promptly notified FFLs in the state that they should begin contacting the NICS Section for  
5 background checks instead of the state POC.

6           c.       Colorado has twice changed its POC status. In March 1999, it ceased its  
7 partial POC operation and became a non-POC state, but shortly thereafter changed course and  
8 resumed operations, this time as a full POC state.

9           53.     Governor Sandoval was further informed that, while DPS had long contemplated  
10 that the kind of change in Nevada law effected by Question 1 might alter Nevada’s POC status  
11 from full to partial (a possibility that was determined would be revenue neutral), following  
12 passage of the Background Check Act in November 2016, DPS only presented the Governor with  
13 a false binary choice: to remain a full POC state or to completely “decommission” the POC  
14 program (such that all Nevada background checks, on both dealer and unlicensed sales, would be  
15 conducted by NICS). The partial POC option, which DPS had discussed with the NICS Section  
16 and which voters were told was a possibility in the Fiscal Note circulated by the Secretary of State  
17 in advance of the vote on Question 1, was not in any way acknowledged or presented for the  
18 Governor’s consideration.

19           54.     However, despite being advised that the FBI continues to believe, erroneously, that  
20 Nevada has maintained its full POC status, and despite being advised that there was a third option  
21 beyond the two choices that DPS had presented to him and that it was his duty as Nevada’s chief  
22 executive to confirm to the FBI Nevada’s change in status so the new law could be implemented,  
23 Governor Sandoval has failed to take any action to confirm Nevada’s change to partial status,  
24 correct the FBI’s inaccurate understanding of the current state of Nevada law, and/or renegotiate  
25 Nevada’s POC status as the voters were told would be necessary.

26           55.     Nor has Governor Sandoval taken any other action to cause the Background Check  
27 Act to be enforced as mandated by Nevada voters.

28     ///





