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15 **UNITED STATES DISTRICT COURT**

16 **DISTRICT OF NEVADA**

17 LISA MCALLISTER, an individual; and
18 BRANDON SUMMERS, an individual,

19 Plaintiffs,

20 vs.

21 CLARK COUNTY, a political subdivision of the
22 state of Nevada,

23 Defendant.

Case No.: 2:24-cv-00334

**MOTION FOR PRELIMINARY
INJUNCTION**

24 Plaintiffs LISA MCALLISTER and BRANDON SUMMERS, (collectively referred to as
25 “Plaintiffs”), respectfully move this Court, pursuant to Fed. R. Civ. P. 65 and based upon the
26 Complaint and the Memorandum of Points and Authorities included herein, for a Preliminary
27

Injunction enjoining Defendant, CLARK COUNTY, from enforcing Section 16.13.030 of the Clark County Code (“CCC”).

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Emergency relief is necessary to prevent Defendant from infringing upon the rights of Plaintiffs and the public. Plaintiffs seek injunctive relief prohibiting Defendant from enforcing CCC 16.13.030. As these actions are ongoing, a preliminary injunction is necessary to allow Plaintiffs the opportunity to litigate these claims before additional violations occur. Plaintiffs meet the standard for emergency injunctive relief enjoining enforcement of CCC 16.13.030, Clark County’s recent broad ordinance that bizarrely seeks to criminalize standing or stopping anywhere on the pedestrian bridges on the Las Vegas Strip for any purpose other than to wait for an escalator or elevator (the “Ordinance”). The Ordinance violates the First Amendment and the Americans with Disabilities Act (“ADA”); it is also unconstitutionally vague. Indeed, statements by Clark County and the Las Vegas Metropolitan Police Department (“LVMPD”) following the Ordinance’s passage only heighten the Ordinance’s constitutional problems because they make it more confusing and invite discriminatory enforcement.

On its face CCC 16.13.030 criminalizes stopping, standing, or convincing someone else to do so while in a pedestrian flow zone on the pedestrian bridges on the Las Vegas Strip for any purpose other than to wait for an escalator or elevator. This ban effectively prohibits a vast array of common activities such as tying shoelaces, taking selfies, or taking in the view of the Las Vegas Strip along with activities undisputably protected by the First Amendment such as street performing, soliciting, and leafleting.

Clark County has stated that activities that necessarily require stopping or standing but are not exempt from the plain language on CCC 16.13.030, such as taking photographs or waiting for picketers, will not be prosecuted under CCC 16.13.030, but that only adds to the confusion and risk of discriminatory enforcement. And the stated interpretation means that the terms “stop” and “stand” as used in CCC 16.13.030 differ from their common definitions. In any case, because CCC

1 16.13.030 does not define “stop” or “stand,” and prohibits either action, without exception, it
2 remains entirely unclear what conduct is prohibited in a pedestrian flow zone. Furthermore, both
3 Clark County and LVMPD have promised to enforce CCC 16.13.030 in a discriminatory manner
4 by targeting an undefined category of “chronic individuals” while allowing tourists to stop to take
5 pictures. CCC 16.13.030’s broad scope, indeterminate language, and potential for discriminatory
6 enforcement necessarily render CCC 16.13.030 unconstitutionally vague under the Due Process
7 Clauses of the United States and Nevada Constitutions.

8 Even if the ordinance was not unconstitutionally vague, CCC 16.13.030 is not a reasonable
9 time, place, and manner restriction that is narrowly tailored to a significant government interest
10 and allows ample alternative channels of communication. Thus, CCC 16.13.030 and Clark
11 County’s proposed enforcement of the ordinance violates the federal and Nevada state
12 constitutional rights to free speech and expression.

13 Finally, CCC 16.13.030 further necessarily discriminates against people that cannot cross
14 the entire pedestrian flow zone without stopping or standing due to disability as it does not exempt
15 stopping or standing under such circumstances from criminal prosecution and thus violates Title
16 II of the ADA. Indeed, some disabled people will be essentially banned from the pedestrian bridges
17 due to the operation of the Ordinance.

18 Plaintiffs are likely to succeed on the merits in light of the Ordinance’s patent infirmities.
19 The balance of hardships also weighs in their favor: Plaintiffs and the public at large will suffer
20 ongoing violations of their rights provided by the United States Constitution, Nevada Constitution,
21 and ADA. In contrast, Defendants will not suffer any injury; they are already free to criminalize
22 actual obstruction on the pedestrian bridges and other criminal conduct. They do not need a
23 shortcut to do so, and they are not entitled to a tool designed to exclude First Amendment activity.

24 **II. FACTUAL BACKGROUND**

25 CCC 16.13.030 states that “it is unlawful for any person to (1) stop or stand within any
26 Pedestrian Flow Zone, or (2) engage in any activity while within a Pedestrian Flow Zone with the
27 intent of causing another person who is within a Pedestrian Flow Zone to stop or stand.” CCC

1 16.13.030. A pedestrian flow zone encompasses the pedestrian bridge and up to 20 feet
 2 surrounding the “touchdown structure,” which includes the escalators, elevators, and stairs leading
 3 to the pedestrian bridge. CCC 16.13.020. The pedestrian bridges in the resort corridor are “part of
 4 the sidewalk system of the Las Vegas Strip and were created for the purpose of separating
 5 pedestrian traffic from vehicular traffic to facilitate pedestrians crossing in those locations.” CCC
 6 16.13.010. CCC 16.13.030 includes only one exception for people that “stop or stand while
 7 waiting for access to an elevator or escalator for purposes of entering or exiting a Pedestrian Flow
 8 Zone.” CCC 16.13.030. Those in violation of CCC 16.13.030 are guilty of a misdemeanor. CCC
 9 16.13.050. The ordinance specifies that “people must continue to move, whether engaged in First
 10 Amendment activity or not.” 16.13.010.

11 Clark County enacted CCC 16.13.030 at its January 2, 2024, County Commission
 12 meeting.¹ Counsel for Clark County, who appeared in their official capacity during the meeting,
 13 testified “when [people] are engaging in activity within the pedestrian flow zone, they have to be
 14 intending to cause another person to stop within the pedestrian flow zone [to violate the ordinance].
 15 So, if there is picketing or different activity going on at the street level and somebody stops on the
 16 bridge, that is not covered by the ordinance.”² County Counsel then said that the pedestrian bridges
 17 were made “for incidental and brief views of the Las Vegas Strip.”³ County Counsel affirmed that
 18 First Amendment activity will be impacted by CCC 16.13.030 but claimed that “as the ordinance
 19 is content neutral, it doesn’t have any impact [on street performing] so [street performers] can still
 20 do all of their street performing things down on the street level or if they’re continuing to walk
 21 while they do any First Amendment activity.”⁴ A representative from LVMPD testified in his
 22
 23

24 ¹ Clark County, *Clark County Board of Commissioners on 2024-01-02 9:00 AM*, Granicus, at 1:37:01 (Jan. 2, 2024),
 25 available at
 26 https://clark.granicus.com/player/clip/7626?view_id=28&meta_id=1560080&redirect=true&h=5b266a8fbbb1c483d61adbf851c5457f.

26 ² *Id.* at 1:14:40.

26 ³ *Id.* at 1:04:12.

27 ⁴ *Id.* at 1:15:27.

1 official capacity that “officers will issue a warning and ask folks to move along, and if they refuse
2 officers will have the ability based on this law to issue a citation or make an arrest.”⁵

3 Clark County Commissioner William McCurdy confirmed that the Commission expected
4 CCC 16.13.030 to target street performers and show girls, saying “if there is, for example, a street
5 performer performing and there's a show girl, I expect for both to have the same type of interaction
6 with law enforcement.”⁶ Commissioner McCurdy said that Clark County and law enforcement
7 must “make sure we’re doing [enforcement of CCC 16.13.030] in a manner that’s consistent with
8 our board’s vision.”⁷ Clark County Commissioner James Gibson also discussed enforcement at
9 the meeting, stating law enforcement will “exercise their discretion” in enforcing CCC 16.13.030.⁸
10 The Clark County Commission unanimously voted in favor of CCC 16.13.030.⁹

11 However, after Clark County enacted CCC 16.13.030, Clark County posted to its official
12 government account on the platform “X” (formerly known as Twitter) a statement on how the
13 ordinance would be enforced, saying:

14 [I]t is unlawful for any person to stop, stand, or engage in an activity
15 that causes another person to stop or stand within any Pedestrian
16 Flow Zone. This is not interpreted to mean that tourists and locals
cannot take photos along the Boulevard while on a pedestrian
bridge[.]¹⁰

17 On or about January 17, 2024, the Las Vegas Review-Journal interviewed Clark County Sheriff
18 Kevin McMahon about LVMPD’s enforcement of CCC 16.13.030.¹¹ The Review-Journal quoted
19 Sheriff McMahon as saying:

20 “Are we going to stop people for stopping and taking a picture at
21 all? Absolutely not. But those chronic individuals up there that are

23 ⁵ *Id.* at 1:11:12.

24 ⁶ *Id.* at 1:30:02.

25 ⁷ *Id.* at 1:31:59.

26 ⁸ *Id.* at 1:35:58.

27 ⁹ *Id.* at 1:37:01.

¹⁰ @ClarkCountyNV, X (Jan. 2, 2024, 6:30 PM), available at
<https://twitter.com/ClarkCountyNV/status/1742372938618425611>.

¹¹ Taylor R. Avery, *Police Won’t Stop Photos on Strip Bridges Under New Law, Sheriff Says*, Las Vegas Review-Journal (Jan. 17, 2024), <https://www.reviewjournal.com/local/the-strip/ban-on-stopping-on-strip-pedestrian-bridges-wont-be-enforced-for-weeks-2983573>.

1 preying on our tourists and our locals that are visiting the Strip (are)
2 just not going to have a place to do it anymore.”¹²

3 Neither Clark County nor LVMPD have provided any explanation as to what language in CCC
4 16.13.030 exempts people stopping to take photographs on a pedestrian bridge from enforcement.

5 **A. Facts specific to Plaintiff McAllister**

6 Lisa McAllister has resided in Clark County, Nevada, since 1990. She has been disabled
7 for over 40 years due to a spinal cord injury and is paraplegic. Due to her disability, Ms. McAllister
8 uses a manual wheelchair. Ms. McAllister has previously travelled across the pedestrian bridges
9 on the Las Vegas Strip in her wheelchair.

10 There are times when Ms. McAllister must stop moving due to her disability. When her
11 wheelchair malfunctions, she must stop until the issue is resolved. Because Ms. McAllister uses a
12 manual wheelchair, she must stop to rest when her arms are tired. Ms. McAllister additionally has
13 limited visibility in crowded areas, and when she cannot see sufficiently far ahead she must stop
14 to evaluate where her wheelchair may be able to navigate through crowded areas.

15 **B. Facts specific to Plaintiff Summers**

16 Brandon Summers is a musician and street performer who resides in Clark County, Nevada.
17 He has played the violin on the Las Vegas Strip as a street performer since 2009. Mr. Summers
18 accepts tips and donations for his performances but does not charge a fee. His unique musical style
19 has led to his longstanding success as a street performer on the Las Vegas Strip as well as
20 invitations to perform at private functions, including for Netflix, Ciroc Vodka, Hudson Jeans,
21 Nordstrom, JBL/Harman, and Fossil.

22 Mr. Summers has been performing on the Las Vegas Strip pedestrian bridges since 2011.
23 He prefers to perform on the pedestrian bridges because it provides better sound amplification of
24 his music. Mr. Summers typically performs on three pedestrian bridges located within the resort
25 corridor between Bally’s and The Cromwell, between MGM Grand and The Tropicana, and
26

27 ¹² *Id.*

1 between Fashion Show Mall and the Wynn. Mr. Summers does not impede pedestrian traffic
 2 during his performances by standing with his back against the wall of the pedestrian bridge and
 3 condensing his amplifier and backpack to be as compact as possible. He told FOX5 Las Vegas
 4 news that he would not be the musician he is today “if [CCC 16.13.030] went into effect when I
 5 first started performing in 2009, this would have changed my entire life, the entire trajectory of
 6 my life and my career as a musician.”¹³

7 **III. LEGAL STANDARD**

8 In considering whether to grant a preliminary injunction pursuant to Fed. R. Civ. P. 65(a),
 9 a court must consider whether “(1) [the plaintiff] is likely to succeed on the merits, (2) he is likely
 10 to suffer irreparable harm in the absence of preliminary relief, (3) the balance of equities tips in
 11 his favor, and (4) an injunction is in the public interest.” *East Bay Sanctuary Covenant v. Biden*,
 12 993 F.3d 640, 668 (9th Cir. 2021). “When the government is a party, the last two factors (equities
 13 and public interest) merge.” *Id.* “These factors are evaluated on a sliding scale.” *Id.* Courts must
 14 balance the elements of the preliminary injunction test, so that a “stronger showing of one element
 15 may offset a weaker showing of another.” *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127,
 16 1131 (9th Cir. 2011).

17 **IV. LEGAL ARGUMENT**

18 CCC 16.13.030 infringes upon Plaintiffs’ rights in violation of the United States
 19 Constitution, Nevada Constitution, and Title II of the ADA. First, CCC 16.13.030 violates the Due
 20 Process Clauses of the United States and Nevada Constitutions as unconstitutionally vague: (1)
 21 the term “stop and stand” as used in CCC 16.13.030 does not provide a person of ordinary
 22 intelligence fair notice of what conduct is prohibited and (2) CCC 16.13.030 is so broad as to invite
 23 discriminatory enforcement. Second, the ordinance violates the First Amendment of the United
 24 States Constitution and Article 1, Section 9 of Nevada Constitution because CCC 16.13.030
 25 restricts First Amendment activity but is unrelated to a significant government interest, is not
 26

27 ¹³ FOX5 Las Vegas, *Street Performers Question New Clark County Pedestrian Bridge Ordinance*, YouTube, at 1:37
 (Jan. 16, 2024), https://www.youtube.com/watch?v=y_3sW6UFxWk&t=107s.

1 narrowly tailored to any governmental interest, and does not allow ample alternative channels of
 2 communication. Finally, CCC 16.13.030 violates Title II of the ADA because CCC 16.13.030 does
 3 not make any exceptions for Plaintiff McAllister or any other person whose disability may prevent
 4 them from crossing the pedestrian bridges without stopping.

5 Plaintiffs seek injunctive relief to ensure that their constitutional and statutory rights are
 6 protected as this matter progresses. Plaintiffs are likely to succeed on the merits as CCC 16.13.030
 7 facially violates the due process and free speech clauses of the United States and Nevada
 8 Constitutions as well as Title II of the ADA. Because Plaintiffs face a deprivation of their
 9 constitutional rights, the harm is irreparable. *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir.
 10 2012). Further, irreparable harm to Plaintiff McAllister is presumed as Clark County, a public
 11 entity, is violating the ADA, which is a federal statute that provides for injunctive relief. 42 U.S.C.
 12 § 12188(a); *Silver Sage Partners, Ltd. v. City of Desert Hot Springs*, 251 F.3d 814, 827 (9th Cir.
 13 2001). Finally, the balancing of equities and public interest favors the Plaintiffs because the
 14 injunction will not harm Clark County while the enforcement of CCC 16.13.030 will infringe upon
 15 the constitutional and statutory rights of both Plaintiffs and the public at large. As such, the Court
 16 should grant Plaintiffs' request for a preliminary injunction.

17 **A. Plaintiffs are likely to succeed on the merits because CCC 16.13.030 violates the Due**
 18 **Process Clauses of the United States and Nevada Constitutions, the Free Speech**
 19 **Clauses of the United States and Nevada Constitutions, and Title II of the Americans**
 20 **with Disabilities Act.**

21 Plaintiffs do not need to promise a "certainty of success, nor even present a probability of
 22 success, but must involve a 'fair chance of success on the merits.'" *W. Exploration L.L.C. v. U.S.*
 23 *Dep't of the Interior*, No. 3:15-CV-00491-MMD-VPC, 2016 WL 54671, at *2 (D. Nev. Jan. 5,
 24 2016) (quoting *Nat'l Wildlife Fed'n v. Coston*, 773 F.2d 1513, 1517 (9th Cir. 1985)). Plaintiffs
 25 show below that they are likely to succeed on the merits for their due process, free speech, and
 26 ADA claims.

27 ///

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1. CCC 16.13.030 violates the Due Process Clauses of the United States and Nevada Constitutions because it is unconstitutionally vague.

The Fourteenth Amendment to the United States Constitution states that “No State shall [. . .] deprive any person of life, liberty, or property, without due process of law.” U.S. Const. Amend. XIV. Article 1, Section 8(2) of the Nevada Constitution similarly states, “No person shall be deprived of life, liberty, or property, without due process of law.” Nev. Const. art. 1, § 8(2). Nevada’s due process clause is coextensive with the due process clause found in the United States Constitution. *Hernandez v. Bennett-Haron*, 128 Nev. 580, 587, 287 P.3d 305, 310 (2012) (“[T]he similarities between the due process clauses contained in the United States and Nevada Constitutions permit us to look to federal precedent for guidance.”).

“The fundamental rationale underlying the vagueness doctrine is that due process requires a statute to give adequate notice of its scope.” *Botosan v. Paul McNally Realty*, 216 F.3d 827, 836 (9th Cir. 2000) (citing *Grayned v. City of Rockford*, 408 U.S. 104, 108 (1972)). “A statute is vague not when it prohibits conduct according ‘to an imprecise but comprehensible normative standard, but rather in the sense that no standard of conduct is specified at all.’” *Id.* (quoting *Coates v. City of Cincinnati*, 402 U.S. 611, 614, 29 L. Ed. 2d 214, 91 S. Ct. 1686 (1971)). “[V]agueness concerns are more acute when a law implicates First Amendment rights, and, therefore, vagueness scrutiny is more stringent.” *Butcher v. Knudson*, 38 F.4th 1163, 1169 (9th Cir. 2022) (citing *Cal. Teachers Ass’n v. State Bd. of Educ.*, 271 F.3d 1141, 1150 (9th Cir. 2001)).

A criminal regulation is unconstitutionally vague if the regulation “fails to provide a person of ordinary intelligence fair notice of what is prohibited” or is “so standardless that it authorizes or encourages seriously discriminatory enforcement.” *Id.* (quoting *FCC v. Fox Television Stations, Inc.*, 567 U.S. 239, 254, 132 S. Ct. 2307, 183 L. Ed. 2d 234 (2012)). If the regulation fails to satisfy either standard, it is unconstitutional. *Id.* “[C]onstitutional vagueness analysis does *not* treat statutory text as a closed universe”; a court must consider legislative history, historical circumstances, related statutory provisions, and terminology. *State v. Castaneda*, 126 Nev. 478, 483, 245 P.3d 550, 553 (Nev. 2010) (emphasis in original) (finding that courts may look to a

word’s ordinary meaning or a common law definition when conducting a vagueness analysis); *Heppner v. Alyeska Pipeline Service Co.*, 665 F.2d 868, 870–71 (9th Cir. 1981) (finding that courts may look to a word’s plain meaning, legislative history, and circumstances surrounding the passage of the law when conducting a vagueness analysis); *People v. Superior Court (J.C. Penney Corp., Inc.)*, 246 Cal. Rptr. 3d 128, 387–88 (Cal. Dist. Ct. App. 2019) (finding that courts may look to a word’s plain meaning, related statutory provisions, legislative history, and wider historical circumstances around the enactment of the law when conducting a vagueness analysis).

a. CCC 16.13.030 is unconstitutionally vague because the term “stop or stand” does not provide a person of ordinary intelligence fair notice of what conduct is prohibited.

“A fundamental principle in our legal system is that laws which regulate persons or entities must give fair notice of conduct that is forbidden or required.” *Fox Television Stations, Inc.*, 567 U.S. at 253. People “should know what is required of them so they may act accordingly.” *Butcher*, 38 F.4th at 1168 (citing *Fox Television Stations, Inc.*, 567 U.S. at 253). “The terms of a law cannot require ‘wholly subjective judgments without statutory definitions, narrowing context, or settled legal meanings.’” *Tingley v. Ferguson*, 47 F.4th 1055, 1089 (9th Cir. 2022) (quoting *Holder v. Humanitarian L. Project*, 561 U.S. 1, 20, 130 S. Ct. 2705, 177 L. Ed. 2d 355 (2010)).

A person violates CCC 16.13.030 by “stop[ping]” or “stand[ing]” on a pedestrian bridge, but CCC 16.13.030 does not define “stop” or “stand.” When a word has not been defined in the law, courts “consider its ‘ordinary, dictionary meaning.’” *Finnigan v. United States*, 2 F.4th 793, 804 (9th Cir. 2021) (quoting *In re Roman Cath. Archbishop of Portland in Or.*, 661 F.3d 417, 432 (9th Cir. 2011)). According to Merriam-Webster, “stop” is defined as “to cease activity or operation” and “stand” is defined as “to support oneself on the feet in an erect position.” Merriam-Webster, *Stop*, <https://www.merriam-webster.com/dictionary/stop> (last visited Feb. 9, 2024); Merriam-Webster, *Stand*, <https://www.merriam-webster.com/dictionary/stand> (last visited Feb. 9, 2024). Under these ordinary definitions, CCC 16.13.030 would prohibit stopping or standing to:

- Take photographs;

- 1 • Take in views of the Las Vegas Strip;
- 2 • Tie a shoelace;
- 3 • Console a young child;
- 4 • Re-gather as a group that is travelling together;
- 5 • Map your next destination on a cellphone;
- 6 • Stop to ask for directions;
- 7 • Solicit donations from passersby;
- 8 • Engage in artistic performance that does not otherwise obstruct walkways; or
- 9 • Catch your breath due to disability or medical necessity.

10 Of course, this list is not exhaustive.

11 Though the possible innocuous reasons for stopping on a pedestrian overpass are nigh
 12 limitless, the text of CCC 16.13.030 only permits a person to stop or stand “if [a person] stop[s] or
 13 stand[s] while waiting for access to an elevator or escalator for purposes of entering or exiting a
 14 Pedestrian Flow Zone.” CCC 16.13.030. However, Clark County and law enforcement officials
 15 have stated that CCC 16.13.030 does not apply in some circumstances where a person would be
 16 stopping or standing on a pedestrian bridge. Clark County officials have specifically indicated that
 17 CCC 16.13.030 does not apply to people who stop to:

- 18 • Take photographs;
- 19 • Observe the Las Vegas Strip;
- 20 • Wait for picketers and other protests occurring at street level; or
- 21 • Do not intend to cause others to stop or stand on the pedestrian bridge.¹⁴

22 Because CCC 16.13.030 does not identify these exceptions to the prohibition on “stopping”
 23 or “standing,” the terms “stopping” and “standing” as used by Clark County in CCC 16.13.030
 24 cannot comport with the common definitions of these words. As Clark County has stated that

25 ¹⁴ @ClarkCountyNV, X (Jan. 2, 2024, 6:30 PM), <https://twitter.com/ClarkCountyNV/status/1742372938618425611>;
 26 Clark County, *Clark County Board of Commissioners on 2024-01-02 9:00 AM*, Granicus, at 1:04:12, 1:14:48,
 27 https://clark.granicus.com/player/clip/7626?view_id=28&meta_id=1560080&redirect=true&h=5b266a8fbbb1c483d61adbf851c5457f.

1 “stop” and “stand” as used in CCC 16.13.030 is not the same as the common definition of those
 2 words, people do not have fair notice as to what conduct is prohibited under CCC 16.13.030. And
 3 because people do not have fair notice of what is prohibited, CCC 16.13.030 violates the Due
 4 Process Clauses of the United States and Nevada Constitutions.

5 **b. CCC 16.13.030 is unconstitutionally vague because it invites seriously**
 6 **discriminatory enforcement.**

7 “[L]aws must provide proper ‘precision and guidance’ to ensure that ‘those enforcing the
 8 law do not act in an arbitrary or discriminatory way.’” *Butcher*, 38 F.4th at 1168 (quoting *Fox*
 9 *Television Stations, Inc.*, 567 U.S. at 253). “A law is void for vagueness if it ‘lack[s] any
 10 ascertainable standard for inclusion and exclusion.’” *Tingley*, 47 F.4th at 1090 (quoting *Kashem*
 11 *v. Barr*, 941 F.3d 358, 374 (9th Cir. 2019)). Vague laws concerning speech in particular pose
 12 “heightened risks of arbitrary enforcement, inviting disparate treatment of less popular speakers
 13 or viewpoints.” *Butcher*, 38 F.4th at 1169 (citing *NAACP v. Button*, 371 U.S. 415, 435, 83 S. Ct.
 14 328, 9 L. Ed. 2d 405 (1963) (“[A] vague and broad statute lends itself to selective enforcement
 15 against unpopular causes.”)). Vague laws must be invalidated to prevent standardless sweeps that
 16 would allow law enforcement, prosecutors, and juries to pursue “personal predilections.” *Williams*
 17 *v. Skolnik*, 2008 U.S. Dist. LEXIS 98777, *10–*11 (D. Nev. Oct. 30, 2008) (quoting *Kolendar v.*
 18 *Lawson*, 461 U.S. 352, 358 (1983)).

19 Clark County officials have represented that CCC 16.13.030 will be enforced in a
 20 discriminatory manner with law enforcement officials “exercis[ing] their discretion” to decide
 21 when people are in violation of CCC 16.13.030.¹⁵ LVMPD’s representative and Clark County
 22 Sheriff McMahon have already confirmed that law enforcement officers will not enforce CCC
 23 16.13.030 against all who stop or stand on the pedestrian bridges. Law enforcement’s intent to use
 24 their discretion as a pretext for censorship can be seen in Sheriff McMahon’s statement in the Las
 25 Vegas Review-Journal, saying: “Are we going to stop people for stopping and taking a picture at
 26

27 ¹⁵ Clark County, *supra* note 1, at 1:35:58.

all? Absolutely not.”¹⁶ Instead, Sheriff McMahon assured that law enforcement will be targeting “those chronic individuals up there that are preying on our tourists and our locals that are visiting the Strip [and they] (are) just not going to have a place to do it anymore.”¹⁷ Further, Commissioner McCurdy confirmed CCC 16.13.030 should be enforced against street performers and show girls.¹⁸ Because CCC 16.13.030 invites seriously discriminatory enforcement, and law enforcement has promised discriminatory enforcement, CCC 16.13.030 violates the Due Process Clauses of the United States and Nevada Constitutions.

2. CCC 16.13.030 violates the Free Speech Clauses of the United States and Nevada Constitutions because it is not narrowly tailored to a significant government interest and does not provide ample alternative channels of communication.

The First Amendment provides that “Congress shall make no law . . . abridging the freedom of speech.” U.S. Const. amend I. “While the First Amendment literally forbids the abridgment only of speech, the Supreme Court has long recognized that its protection does not end at the spoken or written word.” *United States v. Swisher*, 811 F.3d 299, 310 (9th Cir. 2016) (cleaned up) (citation and quotation marks omitted). “Indeed, ‘we have never seriously questioned that the processes of writing words down on paper, painting a picture, and playing an instrument are purely expressive activities entitled to full First Amendment protection.’” *Project Veritas v. Schmidt*, 72 F.4th 1043, 1054 (9th Cir. 2023) (quoting *Anderson v. City of Hermosa Beach*, 621 F.3d 1051, 1062 (9th Cir. 2010)). Article 1, Section 9 of the Nevada Constitution similarly protects expressive activity, providing: “Every citizen may freely speak, write and publish his sentiments on all subjects being responsible for the abuse of that right; and no law shall be passed to restrain or abridge the liberty of speech or of the press.” Nev. Const. art. 1, § 9. The protections offered by Article 1, Section 9 are “co-extensive to” those offered by the First Amendment of the United States Constitution. *S.O.C., Inc. v. Mirage Casino-Hotel*, 117 Nev. 403, 415, 23 P.3d 243, 251 (2001).

¹⁶ Avery, *supra* note 11.

¹⁷ *Id.*

¹⁸ Clark County, *supra* note 1, at 1:30:02.

1 “The sidewalks along the Las Vegas Strip dedicated to public use are public fora.”
2 *Santopietro v. Howell*, 73 F.4th 1016, 1024 (9th Cir. 2023). In 2010, LVMPD agreed to a
3 Memorandum of Understanding with two street performers conceding “that the sidewalks and
4 pedestrian bridges along the Strip constitute a traditional public forum.” *Id.* at 1021. “The
5 protections afforded by the First Amendment are nowhere stronger than in streets and parks, both
6 categorized for First Amendment purposes as traditional public fora.” *Berger v. City of Seattle*,
7 569 F.3d 1029, 1035–36 (9th Cir. 2009) (citations omitted). “Sidewalks, of course, are among
8 those areas of public property that traditionally have been held open to the public for expressive
9 activities and are clearly within those areas of public property that may be considered, generally
10 without further inquiry, to be public forum property.” *United States v. Grace*, 461 U.S. 171, 179
11 (1983). “A thoroughfare sidewalk, seamlessly connected to public sidewalks at either end and
12 intended for general public use” is “a public sidewalk, and consequently, a traditional public forum
13 from which [private owners] have no right to exclude members of the public.” *Perez-Morciglio v.*
14 *Las Vegas Metro. Police Dep’t*, 820 F. Supp. 2d 1100, 1111 (D. Nev. 2011) (citing *Venetian*
15 *Casino Resort, L.L.C. v. Loc. Joint Exec. Bd. of Las Vegas*, 45 F. Supp. 2d 1027, 1036 (D. Nev.
16 1999)). “[T]he intent of a government to create a nonpublic forum has no direct bearing upon
17 traditional public forum status.” *Am. C.L. Union of Nev. v. City of Las Vegas*, 333 F.3d 1092, 1104
18 (9th Cir. 2003). The government bears “an extraordinarily heavy burden” when it seeks to regulate
19 free speech in a traditional public forum. *Id.* at 1098 (internal quotation marks omitted).

20 Clark County has admitted that activities protected by the First Amendment are impacted
21 by CCC 16.13.030. The First Amendment protects several activities in traditional public forums
22 that are prohibited under CCC 16.13.030. The First Amendment protects performances by street
23 performers and show girls. *Santopietro*, 73 F.4th at 1023. The First Amendment protects the
24 solicitation of tips. *Id.* The First Amendment protects leafleting. *Giebel v. Sylvester*, 244 F.3d 1182,
25 1189 (9th Cir. 2001). Clark County has prohibited stopping or standing to engage in any of these
26 activities that receive the highest protections under the First Amendment.
27

Even if CCC 16.13.030 does not expressly restrict First Amendment activity, content neutral restrictions on speech in traditional public forums are only permissible when they are a reasonable restriction of the time, place, and manner of speech. *Ward v. Rock Against Racism*, 491 U.S. 781, 791 (1989). To impose such a restriction, the government must satisfy intermediate scrutiny by showing that the restriction (1) serves a significant government interest, (2) is narrowly tailored to that interest, and (3) leaves open ample alternative channels for communication. *Id.*; *Pac. Coast Horseshoeing Sch., Inc. v. Kirchmeyer*, 961 F.3d 1062, 1068 (9th Cir. 2020). All three factors must be satisfied for the restriction to survive. *Ward*, 491 U.S. at 791. CCC 16.13.030 does not satisfy intermediate scrutiny.

First, CCC 16.13.030 does not serve a significant government interest. “[The government] is not free to foreclose expressive activity in public areas on mere speculation about danger.” *Bay Area Peace Navy v. United States*, 914 F.2d 1224, 1227 (9th Cir. 1990). The government cannot provide speculative or hypothetical concerns as a basis for infringing upon rights. *Id.*; *Carachuri-Rosendo v. Holder*, 560 U.S. 563, 581 (2010) (rejecting the government’s reasoning to deport a lawful resident as “hypothetical,” “misleading,” and “speculative”); *Pub. Employees’ Ret. Sys. v. Reno Newspapers, Inc.*, 129 Nev. 833, 839 (2013) (finding that the government may not withhold public records based on “hypothetical and speculative” concerns); *Craven v. Univ. of Colo. Hosp. Auth.*, 260 F.3d 1218, 1227–28 (10th Cir. 2001) (reiterating that the government must “articulate specific concerns” and not “rely on purely speculative allegations” when regulating an employee’s speech); *United States v. Lymon*, 2016 U.S. Dist. LEXIS 170816, *6–*7 (D.N.M. Dec. 9, 2016) (holding the government cannot delay sentencing of a defendant by relying on a “remote possibility”). Because Clark County relies on speculative and hypothetical dangers that have not occurred since the first pedestrian bridges were constructed in 1995,¹⁹ CCC 16.13.030 cannot serve a significant government interest.

¹⁹ *New Pedestrian Bridge Opens on Las Vegas Strip; 17th So Far*, Associated Press (Dec. 23, 2019, 1:33 PM), <https://apnews.com/general-news-f3faa9c119259acbdfff1b23b7ed84e2>.

1 If CCC 16.13.030 does serve a significant government interest, it is not narrowly tailored
 2 as it bans all “stop[ping]” and “stand[ing]” on the pedestrian bridges for any purpose other than
 3 waiting for the escalator or elevator. Concurrently, Clark County and law enforcement officials
 4 have admitted that not all stopping and standing are prohibited under CCC 16.13.030, for example
 5 to take photographs, in conflict with the plain text of CCC 16.13.030. Because CCC 16.13.030 is
 6 both facially overbroad by banning all stopping and vague as to what activity is prohibited, CCC
 7 16.13.030 cannot be narrowly tailored.

8 Even if CCC 16.13.030 was narrowly tailored to serve a significant government interest, it
 9 still does not leave open ample alternative channels for communication because the only
 10 alternatives for people wanting to engage in protected activity is in less visible and more dangerous
 11 areas of the resort corridor. Because the pedestrian bridges are raised above the Las Vegas Strip,
 12 the pedestrian bridges provide people engaging in protected activities visibility to those passing
 13 by on the pedestrian bridge, on the grade level sidewalks, and driving underneath the bridge.
 14 Engaging in protected activities on the grade level sidewalks would not reach the same audience.
 15 The pedestrian bridges also provide people engaging in protected activities or watching protected
 16 activities a safe space by keeping them away from the Las Vegas Strip traffic right next to the
 17 grade level sidewalks.

18 **3. CCC 16.13.030 violates Title II of the Americans with Disabilities Act because**
 19 **people with disabilities that cannot cross a pedestrian bridge without stopping**
 20 **will not have an accessible path to travel in the resort corridor.**

21 The ADA “provide[s] clear, strong, consistent, enforceable standards [for] addressing
 22 discrimination against individuals with disabilities.” 42 U.S.C. § 12101(b)(2). Title II of the ADA
 23 provides that “no qualified individual with a disability shall, by reason of such disability, be
 24 excluded from participation in or be denied the benefits of the services, programs, or activities of
 25 a public entity, or be subjected to discrimination by any such entity.” 42 U.S.C. § 12132. “A city
 26 sidewalk is . . . a ‘service, program, or activity’ of a public entity within the meaning of Title II.”
 27

1 *Cohen v. City of Culver City*, 754 F.3d 690, 694 (9th Cir. 2014) (quoting *Barden v. City of*
2 *Sacramento*, 292 F.3d 1073, 1076 (9th Cir. 2002)).

3 “Congress enacted the ADA because discrimination against people with disabilities is
4 ‘most often the product, not of invidious animus, but rather of thoughtlessness and indifference—
5 of benign neglect.’” *Id.* (quoting *Alexander v. Choate*, 469 U.S. 287, 295, 105 S. Ct. 712, 83 L.
6 Ed. 2d 661 (1985)). “[T]he ADA proscribes not only ‘obviously exclusionary conduct,’ but also
7 ‘more subtle forms of discrimination—such as difficult-to-navigate restrooms and hard-to-open
8 doors—that interfere with disabled individuals’ full and equal enjoyment’ of public places and
9 accommodations.” *Id.* (quoting *Chapman v. Pier 1 Imps. (U.S.) Inc.*, 631 F.3d 939, 945 (9th Cir.
10 2011) (en banc) (internal quotation marks omitted)).

11 “To prevail under Title II, the plaintiff must show that: (1) he is a qualified individual with
12 a disability; (2) he was either excluded from participation in or denied the benefits of a public
13 entity's services, programs, or activities, or was otherwise discriminated against by the public
14 entity; and (3) this exclusion, denial, or discrimination was by reason of his disability.” *Id.* at 695.
15 The term “disability” as used in the ADA is defined as “a physical or mental impairment that
16 substantially limits one or more major life activities of such individual.” 42 U.S.C. § 12102(1)(A).
17 The term “major life activities” as used in the ADA includes “walking” and “standing.” 42 U.S.C.
18 § 12102(2)(A). “An individual is excluded from participation in or denied the benefits of a public
19 program if ‘a public entity's facilities are inaccessible to or unusable by individuals with
20 disabilities.’” *Daubert v. Lindsay Unified Sch. Dist.*, 760 F.3d 982, 985 (9th Cir. 2014) (quoting
21 28 C.F.R. § 35.149).

22 First, Plaintiff McAllister is a qualified individual with a disability. She is paraplegic due
23 to a spinal cord injury. She uses a wheelchair to travel because she cannot walk or stand due to her
24 disability. Plaintiff McAllister is qualified under the ADA because walking and standing constitute
25 major life activities and her ability to walk and stand is substantially limited.

26 Second, Clark County is the public entity responsible for the pedestrian bridges that are
27 part of the public sidewalk system in the resort corridor. Plaintiff McAllister cannot always cross

1 a pedestrian bridge without stopping due to her disability. Under Title II of the ADA, Clark
 2 County, as the public entity responsible for the public sidewalk system, has effectively denied
 3 Plaintiff McAllister and other people with disabilities from travelling across the pedestrian bridges
 4 without violating CCC 16.13.030. On its face, people who stop or stand on a pedestrian bridge due
 5 to disability are in violation of CCC 16.13.030 and may be fined or arrested. At times, however,
 6 Plaintiff McAllister has no choice but to stop due to her disability. People with disabilities that
 7 are physically unable to travel across the pedestrian bridges without stopping no longer have an
 8 accessible path to travel in the resort corridor in violation of Title II of the ADA.

9 Third, Clark County has denied Plaintiff McAllister the use of the pedestrian bridges
 10 because of her disability. She only risks violating CCC 16.13.030 because of her need to stop due
 11 to her disability. The only way for Plaintiff McAllister to certainly avoid prosecution under CCC
 12 16.13.030 is to avoid using the pedestrian bridges.

13 **B. Plaintiffs will be irreparably harmed by the ongoing violation of their constitutional**
 14 **and statutory rights.**

15 Irreparable harm is “harm for which there is no adequate legal remedy, such as an award
 16 for damages.” *East Bay Sanctuary Covenant*, 993 F.3d at 677. Intangible injuries may qualify as
 17 irreparable harm because such injuries generally lack an adequate legal remedy. *Id.* (quotation
 18 omitted). “Irreparable injury may inhere in ‘the consequent emotional stress, depression and
 19 reduced sense of well-being’ brought on by a constitutional violation.” *Norbert v. San Francisco*
 20 *Sheriff’s Dep’t*, 2020 U.S. Dist. LEXIS 251031, *85 (N.D. Cal. Jan. 31, 2020) (quoting *Chalk v.*
 21 *U.S. Dist. Ct. Cent. Dist. of Cal.*, 840 F.2d 701, 709 (9th Cir. 1988)). “[T]he deprivation of
 22 constitutional rights ‘unquestionably constitutes irreparable injury.’” *Melendres*, 695 F.3d at 1002
 23 (quoting *Elrod v. Burns*, 427 U.S. 347, 373, 96 S.Ct. 2673, 49 L.Ed.2d 547 (1976)). “The Ninth
 24 Circuit has held that ‘an alleged constitutional infringement will often alone constitute irreparable
 25 harm.’” *Lavan v. City of L.A.*, 2011 U.S. Dist. LEXIS 46030, *12–13 (C.D. Cal. Apr. 11, 2011)
 26 (quoting *Associated Gen. Contractors of Cal., Inc. v. Coalition for Economic Equity*, 950 F.2d
 27

1 1401, 1412 (9th Cir. 1991)); *see also Citicorp Servs., Inc. v. Gillespie*, 712 F. Supp. 749, 753 (N.D.
 2 Cal. 1989) (“In various cases, courts in the Ninth Circuit have presumed irreparable harm from an
 3 alleged violation of constitutional rights.”). Courts should “presume that a constitutional violation
 4 causes a preliminary injunction movant irreparable harm.” *Baird v. Bonta*, 81 F.4th 1036, 1046
 5 (9th Cir. 2023) (emphasis omitted). Here, the irreparable harm to Plaintiffs is presumed because
 6 CCC 16.13.030 violates Plaintiffs’ federal and state constitutional rights to due process and free
 7 speech.

8 In addition, Clark County has an obligation under the ADA to ensure it does not
 9 disproportionately burden people with disabilities because “the continuing existence of unfair and
 10 unnecessary discrimination and prejudice denies people with disabilities the opportunity to
 11 compete on an equal basis and to pursue those opportunities for which our free society is justifiably
 12 famous.” 42 U.S.C. § 12101(a)(9). Irreparable harm to Plaintiff McAllister may be presumed when
 13 Clark County engages in conduct prohibited by federal statute that provides for injunctive relief,
 14 such as the ADA. 42 U.S.C. § 12188(a); *Silver Sage Partners, Ltd.*, 251 F.3d at 827 (“[W]here a
 15 defendant has violated a civil rights statute, we will presume that the plaintiff has suffered
 16 irreparable injury from the fact of the defendant's violation.”); *Smallwood v. National Can Co.*,
 17 583 F.2d 419, 420 (9th Cir. 1978) (“[T]his is an injunction issued in response to a statutory
 18 provision, and irreparable harm is presumed from the fact of the violation of the Act.”). CCC
 19 16.13.030 discriminates against people with disabilities by criminalizing the act of stopping due
 20 to disability on the pedestrian bridges. Because Clark County has discriminated against people
 21 with disabilities in violation of the ADA, which provides for injunctive relief, irreparable harm to
 22 Plaintiff McAllister must be presumed. *Burlington Northern R.R. Co. v. Wash., Dep’t of Revenue*,
 23 934 F.2d 1064, 1074 (9th Cir. 1991) (“When the evidence shows that the defendants are engaged
 24 in, or about to be engaged in, the act or practices prohibited by a statute which provides for
 25 injunctive relief to prevent such violations, irreparable harm to the plaintiffs need not be shown.”
 26 (internal citations omitted)).
 27

C. The balance of equities favors Plaintiffs as Clark County will not be harmed if a preliminary injunction is granted, but Plaintiffs and the public will suffer ongoing constitutional and statutory harm from the enforcement of CCC 16.13.030.

“When the government is a party, the last two factors (equities and public interest) merge.” *East Bay Sanctuary Covenant*, 993 F.3d at 668. “[P]reventing a constitutional violation is in the public interest.” *Baird*, 81 F.4th at 1046. In particular, “[v]indicating First Amendment freedoms is clearly in the public interest.” *Pac. Frontier v. Pleasant Grove City*, 414 F.3d 1221, 1237 (10th Cir. 2005). Here, the balance of equities tips in Plaintiffs’ favor and an injunction is in the public interest because CCC 16.13.030 infringes upon due process and free speech rights provided by the United States and Nevada Constitutions. Additionally, in the context of preliminary injunctions pursuant to the ADA, courts have held “the public interest is more clearly served by ensuring that those individuals Congress has sought to protect are, in fact, protected.” *Enyart v. Nat’l Conf. of Bar Examiners*, 2010 U.S. Dist. LEXIS 69613, *13 (N.D. Cal. June 22, 2010) (citing *Jones v. City of Monroe, MI*, 341 F.3d 474, 490 (6th Cir. 2003) (“The public interest is clearly served by eliminating the discrimination Congress sought to prevent in passing the ADA.”)).

Clark County would not be harmed by a preliminary injunction. Clark County has other options to regulate the pedestrian bridges without imposing a complete prohibition on stopping and standing but for a single exception as it has since 1995 when the first pedestrian bridges were built.²⁰ Indeed, existing ordinances already provide Clark County ample means to protect its interests in avoiding actual obstruction of passageways while giving the public notice of what conduct is prohibited, and where. *See* CCC 16.11.020(e) (defining “obstructive use”). Rather than employing existing law to give civilians notice that “obstructive use” of pedestrian bridges is prohibited, CCC 16.13.030 instead gives unfettered discretion to police officers to curtail civilians’ First Amendment rights on pedestrian bridges for any number of insidious reasons—or no reason at all. In contrast, allowing the enforcement of CCC 16.13.030 will substantially impair Plaintiffs by violating their federal and state constitutional rights to due process and free speech as well as violating Plaintiff McAllister’s rights pursuant to the ADA.

²⁰ *New Pedestrian Bridge Opens on Las Vegas Strip; 17th So Far*, *supra* note 19.

1 Moreover, the harm here has a broader impact beyond Plaintiffs. There are many other
2 people besides Plaintiffs that stop and stand on the pedestrian bridges ranging from locals to
3 tourists. People may stop or stand on a pedestrian bridge for a variety of reasons, including
4 necessity due to disability and engaging in protected First Amendment activity. All of these people
5 suffer the same irreparable harm as Plaintiffs. CCC 16.13.030 violates the constitutional rights of
6 every person that passes through a pedestrian flow zone on a pedestrian bridge by creating
7 confusion as to what conduct is actually prohibited, inviting law enforcement to pick and choose
8 who in fact will be in violation, and suppressing the ability to engage in protected expressive
9 activity.

1 **V. CONCLUSION**

2 Plaintiffs have shown a strong likelihood of success on the merits, irreparable harm through
 3 Clark County's infringement upon Plaintiffs' rights, that the balance of equities is in Plaintiffs
 4 favor, and there is a clear public interest in protecting constitutional and statutory rights. Plaintiffs
 5 respectfully request that this Honorable Court grant this Motion for Preliminary Injunction and
 6 further award Plaintiffs costs and expenses, attorneys' fees, and all other relief to which Plaintiffs
 7 are entitled.

8
 9 DATED this 22nd day of February, 2024.

10
 11 /s/ Tatiana R. Smith

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LR 5-1 PROOF OF SERVICE

I HEREBY CERTIFY that on the 22 day of February, 2024

I served: Clark County c/o Clark County Clerk

☐ EM/ECF;

☐ Electronic mail; or

☒ US Mail or Hand Delivered

Upon: Clark County Clerk, 500 S. Grand Central Parkway, 1st Floor, Las Vegas, NV 89155

/s/Suzanne Lara

An employee of the ACLU of Nevada