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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

LISA MCALLISTER, an individual; and BRANDON SUMMERS, an individual, Plaintiffs, vs. CLARK COUNTY, a political subdivision of the state of Nevada, Defendant	Case No.: 2:24-cv-00334-JAD-NJK **OPPOSTION TO DEFENDANT CLARK COUNTY'S MOTION TO STAY DISCOVERY (ECF NO. 37)**

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

In its Motion to Stay, Defendant Clark County takes the extreme position that no discovery is necessary in this case. Not only is Clark County incorrect that discovery can be entirely avoided with regard to Plaintiffs' facial challenges, Clark County ignores that this case

also involves an ADA challenge. To be clear, if Clark County does not want to rely on witnesses or evidence, that is up to Clark County and, if so, the Court should entirely ignore any and all facts asserted by the County (and amicus Nevada Resort Association), including the report submitted by the Nevada Resort Association in support of the County's Motion to Dismiss. But, on the issues where Plaintiffs have the evidentiary burden, Clark County is not free to block Plaintiffs' efforts to seek discovery in this case.

Moreover, Clark County's counsel takes the position that the County will engage in discovery if and only if it does not prevail on its Motion to Dismiss [ECF No. 9]. This position ignores that filing a motion to dismiss—or even a motion to stay discovery—does not automatically warrant a stay. While there is a hearing scheduled for June 5, 2024, on the Motion to Dismiss (*see* ECF No. 33) [1], it is unclear when a decision will issue. In the meantime, the Court has not stayed discovery and should not permit the County to act as if it has. Indeed, the cases the County itself cites stand for the proposition that cases should move more quickly—not slower, as the County imagines—when First Amendment issues are at hand.

II. ARGUMENT

A. The County Misstates the Legal Standard, and Elides its Burden.

The County has the burden on this Motion to Stay Discovery. Motions to dismiss are always decided without discovery as they only test the sufficiently of the pleadings. Fed. R. Civ. P. 12(b)(6). Accordingly, the County's suggestion that the appropriateness of a stay only depends on whether the pending motion to dismiss can be decided without discovery is incorrect. If the County were correct, stays would always be appropriate simply because a defendant filed a motion to dismiss. Instead—omitted from Clark County's discussion of the legal standard—in order to stay discovery pending a motion to dismiss, the County generally must meet a heavy

[1] The hearing will also address Plaintiffs' Motion for Preliminary Injunction [ECF No. 4] and Motion for Temporary Restraining Order [ECF No. 9].

burden: a court may only "stay discovery when it is convinced that the plaintiff will be unable to state a claim for relief." *Wood v. McEwen*, 644 F.2d 797, 801 (9th Cir. 1981). To that end, "district courts in the District of Nevada typically apply the preliminary peek test to determine when discovery may be stayed." *Shahrokhi v. Boutos*, No. 2:23-cv-00671-CDS-DJA, 2023 U.S. Dist. LEXIS 200604, at *4 (D. Nev. Nov. 8, 2023) (citing *Kor Media Group, LLC v. Green*, 294 F.R.D. 579 (D. Nev. 2013)). But that does not end the analysis, despite the County's efforts to have this Court ignore this district's approach. Not only do courts in this district consider "(1) whether the dispositive motion can be decided without further discovery," they also evaluate "(2) whether good cause exists to stay discovery." *Id.* (citing *Gibson v. MGM Resorts Int'l*, No. 2:23-cv-00140-MMD-DJA, 2023 U.S. Dist. LEXIS 118890, 2023 WL 4455726, at *3 (D. Nev. July 11, 2023)). Contrary to the County's suggestion, the burden does not shift to Plaintiffs. Instead,

> Good cause may be established using the preliminary peek test, but it may also be established by other factors **not related to the merits of the dispositive motion**. For example, in many cases, the movant seeks a stay of discovery to prevent "undue burden or expense." *See* Fed. R. Civ. P. 26(c)(1). Accordingly, the movant must establish what undue burden or expense will result from discovery proceeding when a dispositive motion is pending. Ultimately, guided by Fed. R. Civ. P. 1, the Court is trying to determine "whether it is more just to speed the parties along in discovery and other proceedings while a dispositive motion is pending, or whether it is more just to delay or limit discovery and other proceedings to accomplish the inexpensive determination of the case." [] "The burden is upon the party seeking the order to 'show good cause' by demonstrating harm or prejudice that will result from the discovery." []

Shahrokhi, 2023 U.S. Dist. LEXIS 200604 at **4-5. (emphasis added). Thus, to meet its burden, the County must do far more than it does in its motion. Indeed, in addition to addressing the merits, "[m]ovants are encouraged to be specific about the realistically anticipated costs of discovery (based on factors such as the complexity of the claim(s) at issue, the number of claims asserted, the number of parties involved in the litigation, the number of witnesses including experts, the volume of documents at issue, etc.)." *Speaks v. Emp'rs Holdings Inc.,* No. 2:23-cv-0068-GMN-

BNW, 2023 U.S. Dist. LEXIS 123147, at *10 (D. Nev. July 17, 2023) The County cites Fed. R. Civ. P. 26(c)(1) but never articulates any actual burden, as discussed below.

B. Plaintiffs' Claims Have Merit.

To determine whether a stay of discovery is warranted, the Court must take a "preliminary peek" at the merits of the potentially dispositive motion and must be convinced that the plaintiff will be unable to state a claim for relief, a standard that is "not easily met." *Flynn v. Nevada*, 345 F.R.D. 338, 345-46 (D. Nev. 2024) (citing *Kor Media*, 294 F.R.D. at 583). "Generally, there must be **no question** in the court's mind that the dispositive motion will prevail, and, therefore, discovery is a waste of effort." *Flynn*, 345 F.R.D. at 345 (quoting *Kor Media*, 294 F.R.D. at 583) (emphasis in original).

While the County claims otherwise, a "preliminary peek" at the merits shows Plaintiffs have sufficiently pled all claims in their Complaint. While the County fails to address it in its Motion to Stay, under Plaintiffs' First and Second Causes of Action, Plaintiffs have sufficiently pled claims pursuant to the Fourteenth Amendment and the equivalent provision in the Nevada Constitution. Because CCC 16.13.030 prescribes criminal penalties and implicates a substantial amount of constitutional conduct, the Plaintiffs do not need to show that the ordinance is vague in every potential application. However, Clark County's own Motion to Dismiss interpreting the terms "stop" and "stand" in CCC 16.13.030 differently than the common meaning of those terms, and even the proposed amicus brief filed by the Nevada Resorts Association, supports Plaintiffs position that CCC 16.13.030 is unconstitutionally vague.

Under Plaintiffs' Third and Fourth Causes of Action, Plaintiffs have also sufficiently pled claims pursuant to the First Amendment and the equivalent provision under the Nevada Constitution. As Plaintiffs state in their complaint, CCC 16.13.030 prevents First Amendment activity, including but not limited to one-on-one communications identified in *McCullen v. Coakley*, 573 U.S. 464 (2014) as significant First Amendment activity, on pedestrian bridges.

Plaintiffs also allege that (1) Clark County has no legitimate interest justifying this limitation on protected activity, (2) if there was a legitimate interest, CCC 16.13.030 is not narrowly tailored to that interest, and (3) CCC 16.13.030 does not provide adequate alternative channels for the activities; all these allegations must be presumed to be true in the context of a motion to dismiss. Notably, Clark County has failed to explain how CCC 16.13.030 is narrowly tailored to its stated interests in public safety and sidewalk congestion, offer a specific factual basis to show its stated concerns are more than speculative, show how there are ample alternative channels of communication comparable to the unique pedestrian bridges, or explain why its current laws are inadequate to satisfy its interests. For example, the County cannot, as it pretends, rely on the fact that there First Amendment activities may take place on other sidewalks because of the unique nature of the pedestrian bridges. (*See* detailed discussion at ECF No. 17 at p. 15:7-8:1.)

Under the Fifth Cause of Action, Plaintiff McAllister has sufficiently pled a claim pursuant to the ADA. Again, all allegations in McAllister's Complaint are presumed to be true, and the Complaint adequately alleges that she has a unique need related to stopping on the pedestrian bridges related to her disability. Clark County misconstrues the law governing ADA violations and fails to acknowledge that fatigue and other difficulties caused by a disability must be accommodated by the government under the ADA. It also erroneously claims that individual officers refusing to enforce CCC 16.13.030 can render the ordinance valid. Finally, because the underlying claims were sufficiently pleaded in the Complaint, Plaintiffs' request for declaratory and injunctive relief do not warrant a dismissal.

C. The County Cannot Show Any Burden, and Limited Discovery Is Appropriate in this Case.

The County does not come close to making the required showing, instead pretending that the burden shifts to the Plaintiffs. Again, if the County's position were accepted, stays would need to be automatically granted any time a motion to dismiss is filed. Accordingly, the Court should deny the Motion on those grounds alone. Regardless, the County fails to address what is required

in this district to stay discovery. Instead, it spills much ink arguing that no discovery can be had because this matter is a First Amendment facial challenge. However, the County's extreme position is inaccurate, and limited discovery is appropriate in this case.

1. There Is No Bar on Discovery in First Amendment Facial Challenges.

While First Amendment cases "must entail minimal if any discovery, to allow parties to resolve disputes quickly without chilling speech through the threat of burdensome litigation,"[2] there is no bar on discovery regarding Plaintiffs' First Amendment claims.[3] Further, the general proposition that discovery should be limited in First Amendment cases is designed to protect First Amendment plaintiffs, not to allow the government to avoid scrutiny and transparency regarding its actions.[4] None of the cases cite by the County stand for the proposition that a government defendant can entirely avoid discovery in cases like this because its filed a motion to dismiss. Indeed, the cases the County cites do not seem applicable at all, procedurally and otherwise. For instance, *Mitchell v. Duval County Sch. Bd.*, 107 F.3d 837, 838, n. 1 (11th Cir.1997) does not appear to address discovery. *Cotton v. Mass. Mut. Life Ins. Co.*, 402 F.3d 1267, 1292 (11th Cir. 2005) is an out of circuit, inapplicable insurance case addressing a very different procedural posture. *Shelby County v. Holder*, 270 F.R.D. 16, 19 (D.D.C. 2010) is an inapplicable Voting Rights Act case. While *Briggs v. Orean Yi,* No. 3:22-cv-00265-SLG, 2023 U.S. Dist. LEXIS 63739, at *11 (D. Alaska Apr. 12, 2023) is a First Amendment case, it addresses summary judgment and, not only did the plaintiff fail in its opposition to summary judgment, to identify "any specific facts that he hopes to elicit from discovery that are essential to oppose the partial

[2] *Fed. Election Comm'n v. Wisc. Right To Life, Inc.*, 551 U.S. 449, 469, 127 S. Ct. 2652, 168 L. Ed. 2d 329 (2007) (controlling plurality op. of Roberts, C.J.)

[3] *Netchoice, LLC v. Griffin*, No. 5:23-CV-5105, 2024 U.S. Dist. LEXIS 51828, at *9 (W.D. Ark. Mar. 24, 2024)

[4] *Id.* (allowing discovery for nonmovant in summary judgment context, explaining that "here, under Rule 56(d), minimal discovery is a better fit than none.")

summary judgment motion…., counsel stated in a previous filing that a First Amendment facial challenge to a statute . . . is not a fact dependent inquiry, emphasizing that there is no factual inquiry that needs to be undertaken" (internal quotations marks omitted).

Other cases cited by the County are also inapposite. *Cafe Erotica of Fla., Inc. v. St. Johns Cnty.*, 360 F.3d 1274 (11th Cir. 2004) does not stand for the proposition that discovery is unwarranted in this matter. That appeal concerned the district court permanently enjoining enforcement of purportedly facially unconstitutional statutes. The common-sense dictum that the court must analyze the statute as written when considering a facial challenge is irrelevant to whether discovery is warranted in any given instance, such as this one. And as noted in the excerpt cited by the County, *New Hampshire Motor Transp. Ass'n v. Rowe*, 324 F. Supp. 2d 231 (D. Me. 2004) concerns a facial preemption challenge. Unlike the matter at hand, whether a state statute is preempted by the plain language of a federal statute of course does not necessitate discovery.

While the court did stay discovery in *Fund Texas Choice v. Deski*, No. 1:22-CV-859-RP, 2023 U.S. Dist. LEXIS 218674 (W.D. Tex. Dec. 21, 2023), the circumstances were markedly different from here. In that matter, the defendants moved for discovery under FRCP 56(d), which required them to "set forth a plausible basis for believing that specified facts, susceptible of collection within a reasonable time frame, probably exist and indicate how the emergent facts, if adduced, will influence the outcome of the pending summary judgment motion." In addition to not meeting this requirement, the discovery-seeking Defendants in Fund Texas Choice propounded, inter alia, an astounding 1,700 written discovery requests on the ten individual plaintiffs. *Id*. at *6. The court found that this requested discovery would subject plaintiffs to, "at a minimum, "undue burden or expense" under Rule 26(c)(1)." *Id.* at *8. Here, subjecting Clark County to limited discovery regarding the statute would not impose an undue burden on expense on this massive municipal corporation. And, as this Court recognized, even if discovery can be expensive, "a stay of discovery is directly at odds with the need for expeditious resolution of

litigation," *Flynn*, 345 F.R.D. at 349 (quoting *Tradebay, LLC v. eBay, Inc.*, 278 F.R.D. 597, 601 (D. Nev. 2011). Indeed, "delaying a plaintiff's pursuit of justice premised on a bare desire to avoid the ordinary cost or inconvenience of discovery is an unjustifiable disservice to those coming to this courthouse as a forum to right a perceived wrong." *Flynn*, 345 F.R.D. at 349.

While the Magistrate Judge in *Glynn Envtl. Coalition, Inc. v. Sea Island Acquisition, LLC*, No. 2:19-CV-50, 2019 U.S. Dist. LEXIS 240007 noted that "facial attacks" "likely will not require additional discovery to resolve," that matter did not involve facial challenges to the constitutionality of a statute. Rather, the "facial attacks" mentioned were not challenging the constitutionality of a statute, but whether plaintiffs' complaint was sufficient under Fed. R. Civ. P. 12(b)(6), "specifically, whether Plaintiffs can bring a cause of action under the Clean Water Act, whether Plaintiffs sufficiently alleged a violation of the Clean Water Act, whether Plaintiffs' allegations demonstrate an injury-in-fact, and whether Plaintiffs' Complaint constitutes an impermissible "shotgun pleading."" *Id*. at *4.

"[A] restriction on expressive activity is content-neutral if it is justified, i.e., based on a non-pretextual reason divorced from the content of the message attempted to be conveyed." *United States v. Griefen*, 200 F.3d 1256, 1260 (9th Cir. 2000). However, "a facially neutral law is nonetheless subject to strict scrutiny if it is an obvious pretext for discrimination." *Personnel Administrator of Massachusetts v. Feeney,* 442 U.S. 256, 272, 60 L. Ed. 2d 870, 99 S. Ct. 2282 (1979). Here, there are real questions as to whether CCC 16.13.030 is actually justified by the reasons claimed by the County (and the Nevada Resort Association)—and whether it is narrowly tailored. Indeed, the County's own statement and the comments of Sheriff McMahill suggest animus towards persons like street performers. (*See* Motion for Preliminary Injunction [ECF No. 4] at p. 5.) While the County claims that it is seeking to address security concerns on pedestrian bridges, much of the purported conduct it is concerned about is, in fact, already illegal (such as illegal solicitation). At the same time, CCC 16.13.030 would prohibit First Amendment conduct

that federal courts have made clear to Metro and the County (and others, such as the Venetian) is permitted on the public thoroughfares along the Strip, despite their dislike of it. At the center of much of this historical litigation is whether the government can criminalize street performers like Plaintiff Summers and exclude them from public sidewalks on the Strip. Thus, there are real questions in this case as to whether CCC 16.13.030 is in fact content neutral and whether it is instead an effort to deny street performers their First Amendment rights to perform on pedestrian bridges.

In any case, the County admits that at least intermediate scrutiny applies here (*see e.g.,* ECF No. 37 at p. 12:16-17), pursuant to which the County of course has the evidentiary burden.[5] And "the quantum of empirical evidence needed to satisfy heightened judicial scrutiny of legislative judgments will vary up or down with the novelty and plausibility of the [law's] justification."[6] Here, for the reasons discussed above—there is little plausibility for the County's claims that it needs to make stopping or standing illegal when actual obstruction is already illegal.

No matter what quantum of evidence is required, the County has to actually come forward with evidence, and Plaintiffs are entitled to challenge it. While the County is free to refuse to disclose and provide actual evidence and to concede the unconstitutionality of CCC 16.13.030, there are also factual issues as to whether the ordinance is narrowly tailored. First, to be narrowly tailored, a regulation should "achieve its ends without restricting substantially more speech than necessary." *Long Beach Area Peace Network v. City of Long Beach*, 574 F.3d 1011, 1024 (9th Cir. 2008). Here, Plaintiffs are entitled to challenge the County's assertions and to seek and present evidence regarding whether the ordinance restricts more speech than necessary.

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[5] *See, e.g., Nixon v. Shrink Mo. Gov't Pac,* 528 U.S. 377, 392, 120 S. Ct. 897, 907 (2000) ("we have never accepted mere conjecture as adequate to carry a First Amendment burden.")

[6] *Id.* at 391.

Second, the regulation is only valid if it "promotes a substantial government interest that would be achieved less effectively absent the regulation." *Ward v. Rock Against Racism*, 491 U.S. 781, 799, 109 S. Ct. 2746, 105 L. Ed. 2d 661 (1989). While narrow tailoring does not require the regulation to be the "least restrictive alternative," the Court may consider "obvious alternatives." *Id.* at 798-99; *Long Beach Area Peace Network v. City of Long Beach*, 574 F.3d 1011, 1025 (9th Cir. 2008). Here, there are questions regarding enforcement of existing laws and Plaintiffs are entitled to seek and present evidence and facts regarding the very "obvious alternatives" to the extreme prohibition reflected in the code. For example, in its Response to Motion for Preliminary Injunction, Clark County claims there is an immediate public safety concern that cannot be addressed without the use of CCC 16.13.030, citing the "dangerous conditions" on the bridge. (ECF No. 10 at p. 18:5–23.) Not only is it factually disputed that there are, in fact, dangerous conditions on pedestrian bridges, there are also factual disputes as to whether the substantial government interest would be achieved less effectively absent the regulation. Notably, any actual criminal behavior CCC 16.13.030 properly targets is already addressed by an existing ordinance, CCC 16.11.020. As much as the County and the NRA would like to treat it as criminal, street performing itself is not a crime or "dangerous condition" and the nebulous ills such as "disorder" Dr. Sousa points to are not ills at all, let alone ones that can be targeted or cured by CCC 16.13.030. If the County had its way, the Court would nonetheless take the County's assertions and grant its Motion to Dismiss and deny Plaintiffs' pending motions by ignoring all the issues with Dr. Sousa's report, a result that cannot stand.

Finally, there are factual issues as to whether there are ample alternatives. While the First Amendment "does not guarantee the right to communicate one's views at all times and places or in any manner that may be desired" (*Heffron v. Int'll Soc. for Krishna Consciousness, Inc.*, 452 U.S. 640, 647, 101 S. Ct. 2559, 69 L. Ed. 2d 298 (1981)), alternatives are not adequate if they do not allow the speaker to reach her intended audience. *Long Beach Area Peace Network,* 574 F.3d

at 1025. The location is part of the expressive message, or there are no opportunities for spontaneity. *Id*. The cost and convenience of alternatives may also be a factor. *See City of Ladue v. Gilleo,* 512 U.S. 43, 57, 114 S. Ct. 2038, 129 L. Ed. 2d 36 (1994).

Courts have allowed discovery into matters such as the motivations behind restrictions, and whether a restriction is narrowly tailored to meet such restrictions. For example, in *Liberty & Prosperity 1776, Inc. v. Corzine*, 720 F. Supp. 2d 622, 635-36 (D.N.J. 2010), a court denied a motion to dismiss based on qualified immunity and held that discovery should be permitted. That court discussed whether exemptions—such as those that the County has expressly states exist to protect tourists from criminal sanctions for things like stopping to take a photo—were content neutral and found that discovery was needed. The court explained "[it] does not prejudge the evidence that Defendant might be able to adduce to support the security threat posed by the distribution of leaflets outside the auditorium" and explained:

> Because the exclusion of Plaintiffs based on fears about security does not seem 'more likely' based on the facts alleged than Plaintiffs' contention that the real justification for the restriction was Plaintiffs' viewpoint, and because in this context the security justification does not appear to meet the requirements of content-neutral restrictions, dismissal based on Defendants' argument that security was the real rationale for restricting Plaintiffs' signs and leaflets, even outside the auditorium, is inappropriate at this stage.

Id. See also Free Speech Coal., Inc. v. Att'y Gen. of the U.S., 677 F.3d 519, 538 (3d Cir. 2012) (finding the district court erred in dismissing a First Amendment facial claim without the factual record needed to "intelligently weigh the legitimate versus problematic applications of the [challenged statutes]"); *Greater Balt. Ctr. for Pregnancy Concerns, Inc. v. Mayor & City Council Balt.,* 721 F.3d 264, 282 (4th Cir. 2013) ("regardless of the type of analysis utilized — facial or as-applied — the court abused its discretion by failing to recognize and honor the City's right to discovery.")

2. The Largely Unsupported "Facts" Relied Upon by the County and the NRA Emphasize the Appropriateness of Discovery.

The assertions made by the County in its Motion to Dismiss (ECF No. 9 at p. 2:21) and the NRA's amicus brief reinforce the reality that Plaintiffs need a fair opportunity to engage in discovery.[7] By both detailing extensive "facts" (without evidentiary support) to justify CCC 16.13.030 in its Motion to Dismiss and by endeavoring to block Plaintiffs from seeking even limited discovery relating to such assertions regarding both the ordinance's purpose and fit, the County is essentially asking the Court to rubber stamp any ordinance the County enacts, regardless of its actual intent or its effect on free speech, whenever the County claims that it is motivated by safety.

The fact the NRA's brief is before the Court also reinforces the need for the Court to deny the Motion to Stay. To justify CCC 16.13.030, the NRA's brief discusses hearsay factual assertions regarding purported concerns of tourists regarding fear of the bridges.[8] The NRA also attaches and references Dr. Sousa's report. Not only are Plaintiffs entitled to probe and challenge the factual assertions contained in the report and brief through discovery, they are entitled to challenge the County's backdoor effort to present Dr. Sousa as an expert and to take his deposition. For example, Plaintiffs are entitled to challenge "Dr. Sousa's ultimate conclusion was that the pedestrian bridges were comparatively less safe than the sidewalks and were not safely designed for the purpose of people stopping, standing, or congregating." (ECF No. 23, Ex. 2 (pp. 28-35).) Likewise, Plaintiffs are entitled to challenge the claim that calls for service have increased due to anything other than an increase in tourism and to evaluate the data provided from the LVMPD Research & Analysis Unit and the Clark County Public Works Department cited by Dr. Sousa.

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[7] None of the purported factual assertions should be considered by the Court with regard to the Motion to Dismiss, which is limited to the pleadings.

[8] *See, e.g.,* ECF No. 23, p.5:1-2.

3. Plaintiffs' Discovery Is Appropriate.

While Plaintiffs do not bear the burden of showing why discovery is appropriate, the scope of the discovery sought as detailed in Plaintiffs' proposed plan (ECF No. 35, at p.p. 3:25-4:11) is entirely appropriate. For example, the County can either stipulate to the facts concerning standing or not. The record concerning the County's purpose (rather than the unsupported factual assertions) is obviously fair game, as are facts relating to the applicable legal test, such as facts regarding whether CCC 16.13.030 achieves its ends without restricting substantially more speech than necessary. And, for the reasons detailed above, of course Plaintiffs are entitled to discovery regarding facts referenced in filings by Clark County and in the Nevada Resort Association's brief and the attached exhibit (the report of Dr. Thomas Sousa). None of the facts are outside the scope of this case and, contrary to the suggestions of Clark County, they cannot simply rely on a "trust us, we're the government" approach.[9] Instead, the County must meet its burdens and the Plaintiffs must meet theirs.

D. Plaintiffs Are Harmed While the County Refuses to Participate in Discovery.

In light of the fact that this case involves First Amendment claims and other important issues (such as ensuring disabled people do not face criminal penalties simply by virtue of trying to pass through pedestrian bridges), a stay would be harmful. Further, as discussed below, certain

[9] While the County argues that courts should not usurp the legislature's role (ECF No. 37, p. 11:3-16), permitting discovery here would do no such thing. Furthermore, courts have soundly rejected the contention that "facts" put forth by the government are entitled to a presumption of truthfulness, particularly in the context of citizens' constitutional rights. *See, e.g., Hicks v. Colvin*, 2016 U.S. Dist. LEXIS 176888, *1 (E.D.Ky. 2016) ("'Just trust us: We're the government.' That's not something you are supposed to hear every day. For good reasons, the Constitution limits the government's freedom to act simply on trust. One reason is that withholding this freedom from the government protects the freedom of its citizens."); *Elhady v. Piehota*, 303 F. Supp. 3d 453, 465 (E.D.Va. 2017) ("The Government's '"trust us' approach is inconsistent with the fundamental procedural protections applicable to the deprivation of a protected liberty interest").

information referenced in this litigation (and the motions before the Court) is in the possession of the County and/or the Nevada Resort Association and Plaintiffs should have access to it to probe the claims made by both and to question Dr. Sousa.

E. The County Ignores the ADA Claim.

In arguing that no discovery should be permitted, the County almost entirely ignores that this case also involved a claim under the Americans with Disabilities Act (ADA), a claim on which Plaintiff McCallister is entitled to discovery. While it is appreciated that the County concedes that injunctive relief should issue if CCC 16.13.030 has a discriminatory impact,[10] the County has claimed that Plaintiff McAllister does not have a unique need to stop on a pedestrian bridge due to her disability. (ECF No. 9 at 19:5–23.) In contrast, Plaintiffs have argued, *inter alia*, that those unable to walk have a unique dependence upon mobility devices (*see, e.g.,* ECF No. 1-2 at p. 4). Clearly, the parties dispute the impact of the County's "no stopping" ordinance on people who stop on the disabled and, therefore, discovery is necessary.

III. CONCLUSION

Based on the foregoing, Plaintiffs respectfully request that this Honorable Court deny Clark County's Motion for a Stay.

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[10] The County states "[i]f CCC 16.13.030 did have a discriminatory impact, Ninth Circuit case law precludes enforcement of criminal statutes or ordinances where the purported criminal conduct was the result of a person's disability." (ECF No. 37, p. 12:22-25.)

Dated this 30th day of May, 2024.

/s/ Margaret A. McLetchie
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