DECLARATION OF DEPUTY DISTRICT ATTORNEY JOEL K. BROWNING IN SUPPORT OF OPPOSITION TO PLAINTIFFS' MOTION TO COMPEL [67] AND COUNTERMOTION FOR PROTECTIVE ORDER IN COMPLIANCE WITH LR 26-7(c) AND LR IA 1-3(f)

I, Deputy District Attorney JOEL K. BROWNING, the Declarant, being first duly sworn, deposes, and says:

1. I am an attorney licensed to practice law before all courts in the State of Nevada. I am a Deputy District Attorney for Clark County, counsel for Defendant Colleen Baharav in this matter.

2. I have personal knowledge of the facts referred to in this affidavit and could competently testify to these facts if called upon to do so in a court of law.

3. Plaintiffs filed their complaint [1] and motions for temporary restraining order [5] and preliminary injunction [4] on February 16, 2024, and February 22, 2024, respectively.

4. Clark County filed its motion to dismiss [9] the complaint and response to the motions for temporary restraining order [5] and preliminary injunction [4] on or around March 14, 2024.

5. Briefing on these various motions was completed on April 9, 2024, when Clark County filed its reply [21] in support of its motion to dismiss [9].

6. On or around March 28, 2024, Plaintiffs' counsel reached out requesting availability on April 9 or April 10 to conduct an FRCP 26(f) conference in this case.

7. On or around April 1, 2024, Declarant responded, citing to persuasive authorities that, given Plaintiffs' lawsuit consisted of questions of law and facial challenges to Clark County ordinances, it was Clark County's position that no discovery was necessary to resolve the issues before the Court.

8. In that same correspondence on April 1, 2024, counsel for Defendant Clark County proposed stipulating to a stay in discovery or seeking clarification from the Court on its position regarding whether additional discovery was necessary by filing a motion

to stay.

9. Plaintiffs' counsel did not respond to this proposal and, given the mountain of case law in support of the County's position, counsel for Defendant Clark County misinterpreted this silence as acquiescence to filing a motion for a stay with the Court to obtain its position on the matter. Accordingly, Clark County filed a motion to stay [18] with the Court on or around April 3, 2024.

10. On or around April 16, 2024, Plaintiffs' counsel reached out and requested an extension to file a response to the then pending motion to stay [18]. This was counsel for Clark County's first indication that Plaintiffs' counsel was opposed to the pending motion to stay [18] and was intending to oppose the same. *Id.*

11. The following day, on or around April 17, 2024, counsel for Clark County agreed to the extension of the deadline for Plaintiffs' response to the then pending motion to stay [18].

12. Plaintiffs' counsel indicated that she was amenable to a meet and confer conference via e-mail on April 18, 2024, and subsequently called later that day and spoke briefly with counsel for Defendant Clark County.

13. The meet and confer call on April 18, 2024, was brief. Plaintiff's counsel inquired if Defendant would be amenable to stipulating to an extension of time for Plaintiff's to respond to the National Resorts Association's ("NRA") brief, to which Defendant responded in the affirmative. Plaintiffs' counsel further indicated that her clients were looking for limited discovery only and that she would send some case law regarding her position for review via e-mail over the weekend and confer with co-counsel to determine the parameters of the discovery they were seeking and get back to counsel for Defendant about a time for a more thorough meet and confer.

14. On or around April 24, 2024, counsel for Defendant again reached out to Plaintiffs' counsel after having not received the case law and/or e-mail correspondence discussed on April 18, 2024, and asked if Plaintiffs were still interested in meeting and

conferring on the necessity of discovery. Counsel for Defendant proposed stipulating to extend the deadline for Plaintiffs' response if Plaintiffs were still interested in meeting and conferring on the issue. *Id.*

15. Plaintiffs agreed to stipulate to extend their response deadline and the parties agreed to a meet and confer on the morning of Monday, April 29, 2024.

Defendant's motion to dismiss [9] and Plaintiffs' motions for temporary restraining order [5] and preliminary injunction [4] are currently pending decision before the court.

16. On the morning of Monday, April 29, 2024, counsel for Defendant, Deputy District Attorney Joel K. Browning, spoke to counsel for Plaintiffs, Maggie McLetchie, Esq. and Chris Peterson, Esq. on the telephone.

17. During the meet and confer, Plaintiffs' counsel represented that they believed that regardless of the pending motions they had an obligation to conduct an FRCP 26 conference and to submit a proposed scheduling order and discovery plan to the Court. In response, Defendant requested that Plaintiffs prepare a standard proposed discovery plan and scheduling order pursuant to FRCP 26 and that he would review it.

18. Counsel for Defendant inquired after the authority Plaintiffs contended supported their position that discovery was necessary on facial challenges to ordinances. Plaintiffs' counsel cited *Video Software Dealers Ass'n* and *Pierce v. Jacobsen* in support of their contention that Defendant had an evidentiary burden to prove the ordinance was constitutional. While on the phone, counsel for Defendant pulled up both cases on Westlaw and read the language referenced by Plaintiffs' counsel as well as the factual background of each case. Defense counsel denied that either case stood for a government body having an *evidentiary* burden and indicated that neither applied anyway because they were both strict scrutiny analysis cases. After the call, Counsel for Defendant went and pulled the trial court docket for the cases and determined that *Video Software Dealers Ass'n* didn't even have discovery as the parties jointly submitted a case management

statement in lieu of a discovery plan.

19. In response to Plaintiff's inquiry about Defendant's position, Defense counsel indicated that on facial challenges like this one the Court is the proper entity to determine the importance of the stated government interest and can rationally determine whether the scope of the ordinance as stated is narrowly tailored to achieve that interest—the same way it does with rational basis cases, the application of discretionary act immunity, and all other facial challenges. In response, Plaintiffs' counsel argued that this ordinance would not be reviewed under a rational basis standard; to which Defense counsel responded that it would also not be reviewed under a strict scrutiny standard.

20. Defense counsel further stated that given that all the challenges were facial, the pending motions for temporary restraining order and preliminary injunction, and the First Amendment Issues in the case, he anticipated an order from the Court on the pending motions in the next 45 to 90 days. In consideration of this, Defendant argued that regardless of the outcome (i.e., Clark County appealing an order for injunction or Plaintiffs appealing an order dismissing the case), the order would likely be immediately appealable, and it made little sense to engage in a few weeks of discovery if the case were going to be stayed pending an appeal anyway. Plaintiffs' counsel argued that potential appeals did not obviate their duty to prepare a scheduling order and discovery plan and indicated they could see a potential scenario where both the motion for preliminary injunction and motion to dismiss were denied. Defendant responded that given the "likelihood of success on the merits" element of the preliminary injunction analysis, such an outcome was exceedingly unlikely.

21. Plaintiffs' counsel indicated that if Defense counsel would be willing to stipulate to the plaintiffs' standing in this case then they would be willing to work with Defendant on the scope of discovery conducted. Defendant inquired after the discovery sought and Plaintiffs' counsel indicated that they intended to conduct the deposition of William H. Sousa, PhD ("Dr. Sousa"), who prepared a report on the crime and safety

issues associated with the pedestrian bridges at issue in this case and attached as an exhibit to the NRA's motion to intervene in this case. They also indicated that they wanted to subpoena the underlying statistical data on which Dr. Sousa relied—including LVMPD crime statistics and associated call data and communications between LVMPD and Clark County and third-parties on the need for the ordinance. Defendant countered that it had not attached Dr. Sousa's report to its motion and did not intend to rely on Dr. Sousa's report because the Board of County Commissioners ("BCC") had made express findings in the language of the ordinance regarding its reasons for passing the same. When asked if Plaintiffs intended to subpoena records from individual County Commissioners or notice their depositions, Plaintiffs' counsel responded that they understood the importance of not needlessly propounding discovery on public officials because of their ongoing working relationship on a wide variety of issues but did not expressly agree not to conduct such discovery either.

22. Counsel for Defendant requested that Plaintiffs prepare a proposed scheduling order and discovery plan that indicated the discovery they sought. Defense counsel also indicated that he would look at the cases cited by Plaintiffs' counsel more closely to see if they stood for the proposition cited by Plaintiffs and that in the interim Defendant would withdraw its pending motion to stay discovery [18] while the parties continued to meet and confer in good faith.

23. Plaintiffs' counsel also indicated that Defendant's first motion to stay [18] was deficient because it failed to satisfy the meet and confer requirements under the local rules, a point which Defense counsel conceded. Counsel for Defendant explained how he misinterpreted Plaintiffs' counsel's silence as an acquiescence to seeking guidance from the court on the appropriateness of a stay of discovery in such a case.

24. Thereafter on the same day, Defendant filed a notice of withdrawal [32] of the motion to stay discovery pursuant to the understanding of the parties. Defendant also reviewed the cases cited by Plaintiffs' counsel, including pulling up the trial court

dockets, to determine if they stood for the proposition cited. Defense counsel came to the conclusion upon reviewing those and other cases that not only did the cases not stand for the proposition that discovery was necessary in facial challenges, but also that many courts have resoundingly held that it is appropriate to stay discovery until facial challenges have been resolved and/or facial challenges require no additional discovery.

25. The following day the Court issued a minute order [33] informing the parties that they must file one of the following three documents by May 14, 2024:

> (1) a joint proposed discovery plan, (2) a renewed motion to stay discovery, or (3) a joint proposed scheduling order representing that no discovery is required in the case and providing stipulated dates for the case to be decided on its merits.

26. Counsel for Defendant reached out to Plaintiffs' counsel thereafter in an e-mail dated April 30, 2024, and informed them of his findings and indicated that based on his research he felt it would either be appropriate for the parties to stipulate to a joint scheduling order that stayed discovery pending a ruling on the motion to dismiss [9] and motion for preliminary injunction [4] that would set a summary judgment briefing schedule based on the legislative record, i.e., the minutes, video, and exhibits submitted at the BCC meeting where the ordinance was passed, or to have the County file another motion to stay discovery.

27. In correspondence dated May 3, 2024, Plaintiffs' counsel disagreed, but provided no clear legal precedent or controlling case law supportive of their contention that they should be entitled to conduct discovery and review the data underlying the presentations, reports or public comments providing during the BCC meeting—information that the BCC commissioners themselves were not even privy to when voting on the subject ordinance.

28. Plaintiff again asserted that they would be willing to entertain limiting discovery based on certain stipulations including Defendant's willingness to stipulate to

Plaintiffs' standing to bring the instant claims. A fact they further noted in the proposed scheduling order and discovery plan attached to their May 3, 2024, correspondence.

29. In reviewing a detailed list of the discovery Plaintiffs sought in this matter, the topics were overly broad and vague and not likely to lead to the discovery of admissible evidence. Furthermore, the topics sought by the Plaintiffs exceeded the scope of discovery initially identified during the meet and confer call regarding the same.

30. Without reaching an agreement between the parties on the scope of discovery, Plaintiffs unilaterally filed a [Proposed] Discovery Plan and Scheduling Order [35] on or around May 10, 2024.

31. On or around May 13, 2024, Defendant Clark County filed an objection [36] to Plaintiffs' unilaterally filed Discovery Plan and Scheduling Order because it did not comply with the Court's order [33] on a discovery plan because it was not a joint order or a stipulation to stay discovery.

32. In light of the foregoing, and despite working in good faith with the Plaintiffs to find a mutually agreeable solution on discovery, Defendant Clark County was forced to come to the Court with a second motion to stay discovery [37] pending a determination by the Court on the pending motion to dismiss [9] and motion for preliminary injunction [4] on or around May 14, 2024.

33. On or around June 5, 2024, oral arguments were heard before the district court judge on Plaintiffs' Motions for Preliminary Injunction [4] and Temporary Restraining Order [5], and Defendant's MOTION to Dismiss [9]. *See*, *e.g.*, [ECF No. 42]. The court took the matter under advisement. *Id*.

34. On June 6, 2024, the court denied Plaintiffs' unilateral discovery plan and indicated that, if the motion to stay [37] was denied, the parties were to submit a joint plan within 14 days of the denial of the motion to stay discovery. *See*, *e.g.*, [ECF No. 43].

35. On August 21, 2024, the Court denied Plaintiffs' Motions for Injunctive Relief [4] [5], indicating that Plaintiffs had failed to show a likelihood of success on the

merits, but also denied Defendant Clark County's Motion to Dismiss in part because it wanted Clark County to do more than rely on a "traditionally recognized public interest" in demonstrating the harms sought to be addressed by the ordinance are real. [ECF No. 51] at 32:6-13. The Court indicated Clark County's burden would not be heavy, but that it needed more than just the language of the ordinance and case law indicating that it was a traditionally recognized public interest. *Id.*

36. The following day, on or around August 22, 2024, Plaintiffs counsel reached out seeking to schedule a 26(f) meeting to confer about a discovery plan and scheduling order. The parties agreed to a meet and confer on September 3, 2024, at 2 pm.

37. The call was conducted on September 3, 2024, with Clark County continuing to assert that the topics Plaintiffs sought were overly broad and, given Plaintiffs' refusal to not conduct depositions or seek inadmissible documents in discovery, Clark County could not consent to the list of discovery topics proposed by Plaintiffs. Counsel for Defendant discussed with Plaintiffs' counsel how facial challenges are more akin to cases brought under Administrative Procedures Act ("APA") which don't have much genuine discovery but are instead decided largely on the administrative record. Counsel for Defendant asserted that it would be better to resolve the issues of discovery now rather than to engage in the burdensome process of motions to compel and motions for protective orders later. Ultimately, after Plaintiffs' counsel assured Defendant that they were only seeking "limited discovery", an agreement was reached where Plaintiffs' desired topics would remain in the discovery plan and scheduling order, but would be subject to a footnote detailing Clark County's objections and retaining its right to file a motion for protective order if it felt that Plaintiffs exceeded the scope of permissible discovery in this matter.

38. On September 4, 2024, Plaintiffs circulated a proposed discovery with an additional topic not previously agreed to, but subject to the same objections the parties agreed to move forward with the new proposed discovery plan anyway.

39. On or around September 20, 2024, Plaintiffs propounded written discovery on Defendant Clark County for the first time. This discovery included Plaintiffs' First Request for Production of Documents which, given the scope of discovery in this case, included an unfathomable 82 separate requests for production of documents—many of which were compound, including discrete subparts, and were overly broad and unduly burdensome in their language and scope. In fact, these written discovery requests exceeded the number of requests received in almost any other case the County has been involved in within the past 5 or 6 years.

40. This discovery also included Plaintiffs' First Set of Interrogatories which, while more reasonable in their number, were primarily focused on seeking to have Defendant Clark County speculate about the subjective intent and thought processes of each of its legislators and define common terms undefined in ordinance rather than seeking factual information.

41. As counsel for Defendant was out of town for two weeks during the period when discovery was due, an extension to respond to this written discovery was requested until November 8, 2024—an extension to which Plaintiffs' agreed.

42. On or around November 6, 2024, following the elections conducted by Clark County, counsel for Defendant became ill and requested another two-week extension to respond to discovery which Plaintiffs' counsel refused. Ultimately Defendant was given an eight-day extension to respond until November 14, 2024.

43. On or around November 14, 2024, Defendant served its responses to Plaintiffs' First Request for Production of Documents and First Set of Interrogatories.

44. Approximately one week later, on or around November 21, 2024, Plaintiffs' counsel reached out requesting a 30-day extension to discovery to give them time to review Defendants' responses and to conduct a meet and confer which was agreed to by counsel for Defendant.

45. On or around December 9, 2024, Plaintiffs sent a 32-page e-mail, which

only further highlights the oppressive, burdensome, and overly broad nature of Plaintiffs' discovery in this facial challenge, requesting supplementation of Defendants' answers to Interrogatories 1-9 and to Defendants' responses to Requests for Production 1-38, 40, 44-52, 54-59, 61-69, 73-78, 81-82. *See* e-mail correspondence dated December 9, 2024, attached hereto to this affidavit as **Exhibit A**. In the same correspondence, Plaintiffs proposed an amended complaint for review by the County. *Id.*

46. Following receipt of this correspondence, counsel for Defendant requested a meet and confer to discuss discovery issues and Plaintiffs' proposed amended complaint. The parties agreed to meet on December 19, 2024, at 1:00 PM via Zoom.

47. After taking some time to review Plaintiffs' counsel's e-mail from December 9, 2024, counsel for Clark County identified that Plaintiffs were seeking to pick apart perceived procedural missteps in the County's objections or citation to documents—but had lost sight of the bigger picture that they weren't entitled to most of the documents they were requesting anyway because they were not reasonably calculated to lead to the discovery of admissible evidence (e.g., language of the ordinance, legislative history, actual fact) or were shielded by various privileges or the work product doctrine. Accordingly, Clark County responded with correspondence dated December 18, 2024, to alert Plaintiffs' counsel of the larger issues at play and to inform them of their intent, again, to seek a protective order and to move for a stay and interlocutory appeal pursuant to 28 U.S.C. § 1292(b) if the parties were unable to come to an agreement about the permissible scope of discovery in Plaintiffs' facial challenge. *See* Correspondence from Clark County dated December 18, 2024, attached hereto as **Exhibit B**.

48. The following day on December 19, 2024, the parties met via zoom to discuss the discovery issues identified in the respective counsel's correspondence. The call lasted approximately two hours as the parties articulated their respective opinions.

49. The first point of conversation was the Plaintiffs' proposed First Amended Complaint. Clark County expressed its concerns with the proposed First Amended

Complaint, namely that Plaintiff Brandon Summers no longer lived in Nevada and, accordingly, it was unclear that he still had standing to challenge CCC 16.13.030 and that, since the Court had already dismissed Plaintiff McAllister's ADA claims, it did not appear that she met the standing requirement either because the factual allegations in the First Amended Complaint (which were identical to those in the original complaint) did not satisfy standing under either an overbreadth or due process challenge standard. Accordingly, Clark County suggested replacing Plaintiff Summers and McAllister with Plaintiff Polovina and moving forward with the action on the one resident of Nevada who was allegedly engaging in protected First Amendment conduct regularly. Plaintiffs' counsel indicated that due to client control issues, it may not be so simple to just remove Plaintiff McAllister from the action. Plaintiffs' counsel also indicated that while they conceded Plaintiff Summers had moved to Chicago and was working there full-time, he still intended to frequently return to Vegas in the future because he had connections to the community and his family lives here. Ultimately, Clark County acknowledged that the Court would likely grant a motion for leave to amend the complaint given the lax standard and so it would stipulate to allow Plaintiffs to file an amended complaint, but reserved the right to file an additional motion to dismiss any Plaintiff that was deemed to not have standing under FRCP 12(b)(1) and to conduct jurisdictional discovery on Plaintiff Summers to determine how frequently, if at all, he has returned to Las Vegas since his departure in the summer of 2024.

50. The parties discussed Requests for Production 1-14, 16-17 which sought information related to citations issued by LVMPD under the subject ordinance that Plaintiffs had disclosed in their First Supplemental Disclosures. Clark County explained its objections to the requests indicating that it was not the legal custodian of records for the associated citations and that those would need to be obtained from LVMPD for electronic citations or from the Las Vegas Township Justice Court for written citations. Clark County indicated that it is not the custodian of records for discovery in criminal

matters pursuant to NRS 239.0107(1) and that remaining case file in the possession of the Clark County District Attorney's Office – Criminal Division was work product which was protected from discovery. To the extent that Plaintiff asserted that the County had a duty to prove "allegations of criminal activity on the pedestrian bridges" through disclosures of these citations, the County indicated that the Courts role in this matter was not to rehash the policy debate that occurred in the legislative history between the respective sides to the passage of the ordinance or to replace the judgment of the court with that of the legislature by having the court determine whether the harms are sufficient to warrant the ordinance. The County reiterated that its burden was to demonstrate from the language of the ordinance, the legislative history, and actual fact that the harms are real and that the court indicated that burden is not high—and it certainly doesn't require the County to go through all of its criminal prosecutions or charging documents to produce documents that the Board of County Commissioners would have never seen before passing CCC 16.13.030.

The parties discussed the relevance of the citations in the case and Clark County agreed that actual evidence of enforcement by LVMPD and LVMPD's policy on enforcement would likely be admissible as actual fact of overbreadth that Plaintiff could cite to in support of its position and agreed to try and obtain lists of citations or prosecutions to provide to Plaintiffs in order for them to confirm that they were receiving a comprehensive list of citations and arrest reports from LVMPD in response to their public records requests/subpoenas. Clark County made a public records request to the Las Vegas Township Justice Court for a search of all citations/cases relating to CCC 16.13.030. A copy of this list was disclosed to Plaintiffs in Defendant's Fourth Supplemental Disclosures as CC 3913 to CC 3930. Clark County also requested a list of citations/cases under CCC 16.13.030 and case files from Clark County District Attorney's Office – Criminal Division. Clark County disclosed a list of cases and citations from the DA's office as CC 4030 to CC 4038. No response regarding the case

files was immediately obtainable due to the retirement of the head of DA Criminal's records request division, but subsequent to this motion a response was received confirming the County's representation that the discovery/citations and dockets for each associated citation would be the records of LVMPD and the justice court and that DA criminal considered documents its office generated protected by deliberative process privilege and the work product doctrine.

51. The next was the issue of Dr. Sousa's report and e-mail correspondence between Dr. Sousa and Clark County's attorneys. As way of background, the Court should be aware that Clark County attempted to pass a different ordinance in 2022 to address potential safety issues on the pedestrian bridges on the Las Vegas strip following a request for such an ordinance from LVMPD. After reviewing the language of the ordinance and hearing the evidence provided by LVMPD and arguments and threats of lawsuit put forth by the ACLU, the Clark County commissioners elected to not pass the legislation in 2022, but to retain Dr. Sousa to conduct a study on safety related issues on the pedestrian bridge. His retention was made in anticipation of threatened future litigation by the ACLU but also to confirm whether the harms cited by LVMPD were legitimate. Following the conclusion of Dr. Sousa's study which confirmed a disproportionate number of calls to the pedestrian bridges and safety concerns raised by the structural limitations and distinctness a new, more straightforward ordinance, the ordinance at issue in this case, CCC 16.13.030, was drafted and proposed for adoption. As Dr. Sousa's report and testimony are part of the legislative history, Clark County disclosed those. Clark County also produced e-mails and invoices for Dr. Sousa subject to redaction because he was an expert retained in anticipation of litigation, and because portions of the related e-mails included attorney-client privileged discussions and deliberations subject to privilege. Clark County, however, did not redact portions of the e-mails in which Clark County provided data for Dr. Sousa's consideration and which he relied on to draft his report because such expert communications must be disclosed under

the Federal Rules of Civil Procedure.

At the onset, Clark Count told Plaintiffs that he did not feel that expert discovery was appropriate in a facial challenge case involving questions of law. As experts are intended to aid juries in understanding complex issues and this case, which is comprised entirely of legal questions, will never see a jury, expert disclosures are also inappropriate. Disclosing experts would turn into a second round of policy debates on the merits of the ordinance—something that the Court is strictly prohibited from engaging in and as the court is the expert on questions of law it requires no assistance from experts to aid in its analysis anyway. However, because the parties could not agree on a discovery plan Clark County had been forced to sign off on the proposed plan by the ACLU subject to its objections and intent to file a protective. At the time counsel for ACLU Chris Peterson, Esq. initially agreed that expert discovery was not appropriate in this case. Though based on a recent stipulation and order he drafted he has apparently changed his position on the matter. Co-Counsel for the ACLU, Maggie McLetchie, Esq. argued in response to my arguments that if expert discovery was unwarranted then the County's objection that Dr. Sousa's file and communications were protected communications were also invalid, which the County countered by saying but if expert discovery is unwarranted then private e-mail communications would not be admissible anyway. Accordingly, the court will need to address whether expert discovery is appropriate in this case in response to the County's motion for protective order before the issue of the e-mails can be resolved—but regardless of how the Court rules it is the County's position that the e-mails are not admissible or likely to lead to the discovery of admissible evidence which has already been established by case law.

52. Plaintiffs also took issue with the County's use of the deliberative process objections saying that the County must create a privilege log for all documents it was asserting that privilege for. The County reiterated that the core obstacle to even getting to the stage of a privilege log was that the discovery sought by Plaintiffs was not reasonably

calculated to lead to the discovery of admissible evidence because internal communications or private communications of legislators or staff are not: 1. the language of the ordinance, 2. are not the legislative history, and 3. are not matters of actual fact eligible for consideration by the Court. Accordingly, as Plaintiffs couldn't even demonstrate that threshold to show that their discovery was permissible no search had been conducted. Defendants also pointed out that Plaintiffs questions all included impermissible ANY and ALL language, were not fixed in time for scope, and provided no meaning parameters for searches. Clark County indicated that it was not going to deploy all of its IT resources in such an overbroad, and unduly burdensome search unless Plaintiffs could make some showing by case law or through an order of the Court showing that they were entitled to them anyway. Plaintiffs expressed concerns that the documents might be terminated in the meantime until they could find case law supportive of their position or until the Court ordered the County to conduct a search of e-mails not eligible for consideration by the Court in a facial challenge. To assuage concerns that documents would be destroyed, Clark County agreed to provide a copy of the destruction hold order (and the associated search terms) sent by Defense counsel's office to the county commissioners, their staff, the department of public works, and Clark County IT at the onset of litigation in this matter. A copy of these preservation letters were provided to Plaintiffs counsel to assuage any fears they had that documents would be lost in a subsequent supplemental disclosure.

The County indicated that if the Court ordered the County to conduct a search for internal communications and Clark County's section 1292(b) interlocutory appeal on the issue was unsuccessful, that Clark County would work with Plaintiffs to establish reasonable parameters for a search.

53. In terms of the interrogatories, Plaintiffs' counsel asked why Defendant refused to define any of the terms requested in the interrogatories. Defendant indicated that interrogatories are used to define facts, not to provide subjective interpretations of

words or legal conclusions. Defense counsel asserted that because the words were undefined in statute, the County cannot define the terms without impermissibly delving into the subject intent of each of the legislatures and, accordingly, the term should be given their plain meaning when being evaluated by the Court. Plaintiffs' counsel asked if they could not inquire into the motives of the legislatures or seek the private correspondence of the legislatures how they were expected to prove their case. Counsel for Clark County reiterated that legislation is presumed constitutional unless, on its face, it clearly is not. Constitutional challenges do not contemplate that legislators will be hailed into litigation to defend their vote on each piece of legislation in interrogatories or depositions or that they consent to having their communications subject to public scrutiny for individuals seeking to go on fishing expeditions. This violates the separation of powers. Counsel for Defendant pointed to other unpopular federal legislation like the Patriot Act or Affordable Care Act and asked counsel how many legislators had been subject to deposition or interrogatories in those cases or how many of the congressional e-mails or even classified hearing documents were ever turned over in discovery. The answer of course is none because legislation lives or dies on its face and the stated purposes for its enactment in legislative history. Counsel reiterated that even discriminatory statements or statements of unconstitutional intent by one legislator could not defeat a statute because such intent could not be attributed to the remaining legislators who voted for it. *See Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215, 253–54, 142 S. Ct. 2228, 2256, 213 L. Ed. 2d 545 (2022).

54. Plaintiffs took issue with Defendant's citations to documents and the legislative history in response to some of their interrogatories. Indicating that interrogatories required written responses. First, Defendant pointed out that Plaintiffs' interrogatories actually called for citations to documents in certain places and then, reiterating earlier objections, indicated that Defendant could not provide definitive answers to questions that required it speculate about the motives of individual legislators.

Providing citations to the language of the ordinance and the legislative history was the only way to provide answers to interrogatories that called for legal conclusions and/or direct responses from legislators themselves. Clark County indicated that if Plaintiffs had asked for factual information regarding the square footage or the liner footage of the sidewalk or the measurements of the bridges it could provide such factual information, but that it could not answer questions that would require verifications from seven different Clark County commissioners. Furthermore, it would be inappropriate for Defense counsel to attribute motives or intent or the understanding of the various terms by the individual legislators independently by answering on their behalf. Accordingly, citations to the language of the ordinance and the legislative history, the content reviewed and approved by the legislators, were the only sufficient answer to such interrogatories.

55. Plaintiffs also indicated that the County needed to provide responsive pin cites in their responses to the requests for production. Clark County responded that the documents cited, including the legislative history and the traffic studies, function as a whole and collectively support the points for which they were cited. They also indicated that many of the pages had support in some fashion that tended to make the facts at issue in this case more or less likely. Clark County indicated that following the call it would go through and see if the cites could not be refined more, but ultimately did not want to limit its ability to use the cited references in their entirety when filing its motions for summary judgment because it had inadvertently omitted critical pages from consideration in its responses.

55. At the conclusion of the call, Defense counsel indicated that if Plaintiffs intended to pursue a motion to compel discovery for documents beyond the legislative history, the language of the ordinance, and issues of actual fact that it would need to file its own motion for protective order to protect the County and its resources and the County commissioners from unduly burdensome and oppressive discovery that is irrelevant to resolving the issues in this case—including the need to conduct extensive IT

searches, the retention of experts, and depositions in a case that involves only questions of law. The County made it clear that it considered the burdensome discovery Plaintiffs had already propounded to be an abuse of the discovery process because none of it was reasonably calculated to lead to the discovery of those three categories of evidence—but indicated that if Plaintiffs could provide case law indicating that they could produce expert testimony, depose legislators, or compel the production of private legislator and staff communications it would revisit its position. Plaintiffs, however, never provided any such case law thereafter.

56. A few days following the call, the Plaintiffs circulated a correspondence reflecting their recollection of the call. See correspondence from the ACLU dated December 24, 2024, attached hereto as **Exhibit C**.

56. Per the agreement in the call, Clark County supplemented its discovery responses to include GIS maps and diagrams of the pedestrian bridges, printouts of citations and cases involving CCC 16.13.030 obtained from DA Criminal and the justice court, copies of its destruction hold and preservation letters to staff and commissioners, etc. Accordingly, the parties were able to work together to resolve some of the issues without court intervention. Clark County was still awaiting a response from DA Criminal on the issue of case files when Plaintiffs filed the instant motion to compel.

57. Despite a sincere effort to resolve or narrow the remaining disputed issues during the meet-and-confer conference, the parties were unable to resolve or narrow the dispute without court intervention because their relative positions are grounded in fundamental disagreements about the existing law and the scope of permissible discovery in facial constitutional challenges like the instant case.

58. Therefore, Defendant has been forced to prepare and file the instant opposition and motion for protective order with the Court seeking a restriction on discovery to only matters reasonably calculated to lead to the discovery of the language of the ordinance, the legislative history, and issues of actual fact of which the Court may

take judicial notice.

12. The instant Motion is brought in good faith and is brought in compliance with LR IA 1-3(f) and LR 26-7(c).

Further, your Declarant sayeth naught.

Executed on this 7th day of February, 2025.

/s/ Joel K. Browning
JOEL K. BROWNING
DEPUTY DISTRICT ATTORNEY
.

EXHIBIT A

From:	Chris Peterson
To:	Joel Browning
Cc:	Maggie; Leo Wolpert; Jacob Smith; Tatiana Smith; Jeffrey Rogan; 7e21629dc+matter1552083226@maildrop.clio.com
Subject:	McAllister - Request for meet and confer (P 1st ROGs, 1st RFPs, Proposed FAC; D Privilege Log in 1st Supp)
Date:	Monday, December 9, 2024 10:57:47 PM
Attachments:	20241209 PFZ FAC Complaint [FINAL] [redlined].docx 20241209 PFZ FAC Complaint [FINAL].docx

Good evening Joel,

As previously discussed, we are requesting a meet and confer to discuss Plaintiff's First Request for Production, Plaintiff's First Set of Interrogatories, the privilege asserted in your First Supplemental Disclosures, and Plaintiff's proposed First Amended Complaint. **We request to meet by December 18, 2024, if at all possible, to ensure that we have enough time to file a motion for leave to amend prior to the current deadline on January 3, 2024.**

To ensure a productive meet and confer, I have provided replies to your discovery responses. I provided some general replies to objections that were raised multiple times in your responses; I also provided specific replies to the interrogatory responses and production responses. I also provided a specific reply to the privilege asserted in the log provided in your First Supplemental Disclosures.

These replies are meant to make our meet-and-confer more productive either by asking for clarification or clarifying our position where I believe it is possible to avoid court intervention. If after reviewing these replies you have additional information, such as legal authorities, you believe we should review to prior to a meet-and-confer, please let me know.

I have not addressed every objection raised in your responses, nor have I provided every legal argument we might raise to challenge an objection or refusal to provide documents. **We do not waive any legal rights, including the right litigate a complete respond to any and all objections, in providing these replies for the purposes for our meet-and-confer.**

I. First Amended Complaint

I have attached our proposed First Amended Complaint (clean and redlined copies) to this email. With the amendments, we are adding an additional plaintiff, supplementing with additional facts now available, restructuring the complaint for clarity, and removing the ADA claim dismissed by the Court. If there are any specific concerns you would like to discuss at the meet and confer, please let me know.

II. General replies

Many of the responses to our requests and interrogatories involved the same objections or substantive responses. For ease of use, I am providing generally applicable replies here. I reference some again when I discuss specific responses below.

Objection or response	Reply

"Inquiries for First Amendment purposes are strictly limited to the facial effect of the ordinance . . ."	*Colacurcio v. City of Kent*, which you cite, directly contradicts this position. "We will look to the full record to determine whether evidence indicates that the purpose of the ordinance is to suppress speech or ameliorate secondary effects. In so doing, we will rely on **all objective indicators of intent**, including the face of the statute, **the effect of the statute, comparison to prior law, facts surrounding enactment, the stated purpose, and the record of proceedings.**" *Colacurcio v. City of Kent*, 163 F.3d 545, 552 (9th Cir. 1998) (emphasis added). We are not limited to the language of CCC 16.13.030 during discovery for facial challenges, All "objective indicators" related to Clark County's intent are relevant. Plaintiff Summers has also raised an as applied challenge to the ordinance, as the Court recognized in its order denying your motion to dismiss.
Assertions of the "deliberative process and legislative privilege" with citation to *Foley*.	*City of Las Vegas v. Foley*, 747 F.2d 1294, 1298 (9th Cir. 1998) does not discuss either the deliberative or legislative privilege. None of the interrogatories ask for information related to internal County processes in drafting CCC 16.13.030 (i.e. the deliberative process). Information related to a final determination is not protected. The privilege also does not protect information and documents used in drafting documents other than the policy itself (e.g. materials related reports by third parties that were disclosed to the public as documents separate from the bill itself).
Interrogatory responses that answer by referring to a list of documents, such as disclosed documents and/or dictionaries, without providing an answer that is "complete in itself" to the interrogatory	An interrogatory cannot be answered by referring to other documents. "An answer to an interrogatory must be responsive to the question. It should be complete in itself and should not refer to the pleadings, or to depositions or other documents, or to other interrogatories, at least where such references make it impossible to determine whether an adequate answer has been given without an elaborate comparison of answers. ... A party's interrogatory response may refer to business records or abstracts only if the burden of deriving or ascertaining the answer will be substantially the same for either party." *Reflex Media, Inc. v. Richard Easton Ltd.*, No. 2:20-cv-00051-GMN-EJY, 2022 U.S. Dist. LEXIS 121593, at *7-8 (D. Nev. July 8, 2022)
Objections asserting that a request is "vague and ambiguous as to time"	The interrogatories and the requests for production provide the default time frame (unless otherwise stated) in their "Instructions" sections for all discovery requests. The only exception to this default time frame in the interrogatories and requests for production provided in Plaintiffs' first set would be requests, such as Interrogatory No. 8, that ask for the "original"

	parameters for the pedestrian bridges as the first pedestrian bridge was built prior to 2014.
Objection that request calls for a "line-by-line explanation" of the ordinance.	I am unfamiliar with this objection and could not find a legal authority describing its contours. Please provide a legal authority if available.
Assertions of privilege in response to requests for production not reflected in the privilege log such as deliberative process privilege and legislative privilege.	Our discovery order requires that parties "provide a log for any material claimed to be privileged or protected by the work product doctrine (or material that is withheld for any reason). [ECF No. 54] at 5:3–6. You assert privilege in response to many of the requests for production where you do not disclose documents. You also assert privileges that do not appear anywhere in your privilege log. If you are in possession of documents that are responsive to our requests for production but are withholding those documents due to privilege or other reason, the privilege log must include those documents and the basis for withholding them.

III. Responses to Interrogatories

Interrogatory	Reply to response
1	**Objections** ● "Legal conclusion" – "disorderly offenses" is not in the legally operative language in CCC 16.13.030. It is a term the County uses to explain the purpose behind the ban imposed by CCC 16.13.030. Plaintiffs are entitled to know the scope of the County's stated purpose in passing the ordinance to determine whether the stated purpose is a legitimate basis to burden First Amendment activity. ● "Line-by-line explanation" – See Section I. ● "Legislator's subjective intent" – The interrogatory does not inquire into an individual legislator's intent. It is asking for Clark County to explain what "disorderly offenses" are because the County used the term to explain why it passed 16.13.030. ● Deliberative and legislative privilege – See Section I. ● "Inquiries for First Amendment purposes are strictly limited to the facial effect of the ordinance . . ." – See Section II, specifically *Colacurcio*'s statement that the Court looks at "all objective indicators of intent" including "stated purpose". **Substantive** ● Answer is insufficient considering that Clark County states that it passed the ordinance to prevent "disorderly offenses"; what activities the County intended to prevent is relevant in determining whether this purpose was legitimate. ● An interrogatory cannot be answered by referring to other documents. See

	above for explanation. ○ Additionally, if the documents provided are examples of "disorderly offenses", the County must say so. ● If the County does not know what the term means or the scope of activities covered by the term, it must say so.
2	**Objections** ● "Legal conclusion" – "criminal disorder" is not legally operative language in CCC 16.13.030. It is a term the County is using to explain the purpose behind the ban imposed by CCC 16.13.030. Plaintiffs are entitled to know the scope of the County's stated purpose in passing the ordinance to determine whether the stated purpose is a legitimate basis to burden First Amendment activity ● "Line-by-line explanation" – See Section I. ● "Legislator's subjective intent" – the interrogatory does not inquire into an individual legislator's intent. It is asking for Clark County to explain what "criminal disorder" means to the County because the County used the term to explain why it passed 16.13.030. ● Deliberative and legislative privilege – See Section I. ● "Inquiries for First Amendment purposes are strictly limited to the facial effect of the ordinance . . ." – See Section II, specifically *Colacurcio*'s statement that the Court looks at "all objective indicators of intent". **Substantive** ● Answer is insufficient considering that Clark County states that it passed the ordinance to prevent "criminal disorder"; what activities the County intended to prevent is relevant in determining whether this purpose was legitimate. ● An interrogatory cannot be answered by referring to other documents. See above for explanation. ○ Additionally, if the documents provided are examples of "criminal disorder", the County must say so. ● If the County does not know what the term means or the scope of activities covered by the term, it must say so.
3	**Objections** ● Interrogatory does not require inquiry into any individual legislator's subjective intent to answer. ● Deliberative and legislative privilege – See Section I. ● Plaintiffs are only asking for the facts that Clark County has available to it – not any facts solely in the possession of a law enforcement agencies not under Clark County's jurisdiction. Those facts are what are relevant as the County could not have relied on facts it did not have to assert that "captive audiences" are a legitimate concern. ● "Inquiries for First Amendment purposes are strictly limited to the facial effect of the ordinance . . ." – See Section II, specifically *Colacurcio*'s

	statement that the Court looks at "all objective indicators of intent". The interrogatory asks for facts surrounding the enactment of 16.13.030, which is explicitly allowed in *Colacurcio*. **Substantive response** ● When the government claims that a law that burdens First Amendment activity serves a particular purpose, it must provide specific facts to show that the purpose was a legitimate concern. ● The interrogatory does not ask for Clark County to "martial evidence of every wrongdoing" – the interrogatory asks Clark County for facts that it is aware of or can become aware of after a reasonable inquiry. ● An interrogatory cannot be answered by referring to other documents. See above for explanation. ● If Clark County is unaware of any specific instances where a "captive audience" existed on a pedestrian bridge or any facts indicating that a "captive audience" occurred on the bridges, it must say so.
4	**Objections** ● Legal conclusion - Not a legal conclusion if asking for specific instances when cessation of movements (fact) would not be considered a crime under law (i.e. application of law to fact). ● "Line by line explanation" – See Section I. ● "Inquiries for First Amendment purposes are strictly limited to the facial effect of the ordinance . . ." – See Section II, specifically *Colacurcio*'s statement that the Court looks at "all objective indicators of intent". ● Interrogatory is not asking for an individual legislator's intent in passing the ordinance. ● Deliberative and legislative privilege – See Section I. ● Interrogatory specifically relates to Clark County's intended scope and purpose of passing the ordinance, which is relevant to First and Fourth Amendment claims. **Substantive** ● "An interrogatory is not objectionable merely because it asks for an opinion or contention that relates to fact or the application of law to fact" FRCP 33(a)(2); Interrogatory is clear in that it requires: ○ Confirmation as to whether Clark County believes that the specific examples provided would be excluded from criminalization – (already said they would be) ○ Provide other examples if Clark County is aware of them where prosecution would not occur ○ The County would need to determine whether these instances would be prosecuted as a violation of CCC 16.13.030 since the Clark County DA falls under the County's jurisdiction. ● County expressly states elsewhere the specific examples provided do not constitute stopping. *See* response to Request for Production #49 ("Notably, taking photographs does not constitute stopping or standing.") indicating that the County can answer the interrogatory as provided.

5	**Objections** ● Answer does not require any individual legislator's subjective intent to answer – it is specifically asking for objective facts that the County was aware of at the time the ordinance was passed. ● Deliberative and legislative privilege – See Section I. ● "Inquires for First Amendment purposes are strictly limited to the facial effect . . ." – See above. ● "Admissible evidence" – the interrogatory clearly related to First Amendment claim and whether Clark County has sufficient facts to support its legal claim. **Substantive** ● Clark County is required to be familiar with what its employees know in their professional capacity: "A party is generally charged with knowledge of what its agents know, or what is in records available to it, or even information others have given to it on which it intends to rely in its suit. A party cannot limit its interrogatory answers to matters within its own knowledge and ignore information immediately available to it or under its control." *Alvarado-Herrera v. Acuity A Mut. Ins. Co.*, No. 2:22-cv-00438-CDS-NJK, 2022 U.S. Dist. LEXIS 235093, at *4-5 (D. Nev. Nov. 8, 2022. ● An interrogatory cannot be answered by referring to other documents. See Section I. ● If the County was unaware of any such facts requested by Plaintiffs, it should say as much.
6	**Objections** ● Legal conclusion – Plaintiffs do not ask for a legal conclusion, only the facts that the County has to support a claim it has asserted previously. A party may ask for all facts that support a legal claim asserted by an opposing party during discovery, *See Johnson v. INTU Corp.*, No. 2:18-cv-02361-MMD-NJK, 2019 U.S. Dist. LEXIS 191537, at *6 (D. Nev. Nov. 5, 2019) (affirming Plaintiffs right to ask for "all facts" supporting Defendant's affirmative defense). ● Answer does not require any individual legislator's subjective intent to answer – it is specifically asking for objective facts that the County was aware of at the time the ordinance was passed. ● Deliberative and legislative privilege – See Section I. ● "Inquires for First Amendment purposes are strictly limited to the facial effect . . ." – See Section I. **Substantive** ● Clark County is required to be familiar with what its employees know in their professional capacity: "A party is generally charged with knowledge of what its agents know, or what is in records available to it, or even information others have given to it on which it intends to rely in its suit. A

	party cannot limit its interrogatory answers to matters within its own knowledge and ignore information immediately available to it or under its control." *Alvarado-Herrera v. Acuity A Mut. Ins. Co.*, No. 2:22-cv-00438-CDS-NJK, 2022 U.S. Dist. LEXIS 235093, at *4-5 (D. Nev. Nov. 8, 2022. ● An interrogatory cannot be answered by referring to other documents. See Section I. ● If the County is unaware of any facts responsive the interrogatory, it must say so.
7	**Objections** ● Legal conclusion – Plaintiffs do not ask for a legal conclusion, only the facts that the County has to support a claim it has asserted previously. A party may ask for all facts that support a legal claim asserted by an opposing party during discovery, *See Johnson v. INTU Corp.*, No. 2:18-cv-02361-MMD-NJK, 2019 U.S. Dist. LEXIS 191537, at *6 (D. Nev. Nov. 5, 2019) (affirming Plaintiffs right to ask for "all facts" supporting Defendant's affirmative defense). ● "Inquires for First Amendment purposes are strictly limited to the facial effect . . ." – See above. ● Answer does not require any individual legislator's subjective intent to answer – it is specifically asking for objective facts that the County was aware of at the time the ordinance was passed. ● The interrogatory does not require the County to have any duty to address traffic concerns to answer the interrogatory. It is directly related to whether the County has considered alternative means to addressing its stated purpose for passing CCC 16.13.030. **Substantive** ● An interrogatory cannot be answered by referring to other documents. See above for explanation. ● The interrogatory specifically asks what steps the County has taken to address traffic congestion on the pedestrian bridges, not the Resort Corridor as a whole. Plaintiffs request that the interrogatory response address that specific concern rather than general measures applied to all sidewalks in the Resort Corridor.
8	**Objections** ● Legal conclusion – Plaintiffs do not ask for a legal conclusion. The County has claimed that the pedestrian bridges had specific parameters when it was built. The details of those "original parameters" are facts, not legal opinions, and are subject to discovery. ● "Line-by-line explanation" – See Section I. ● "Inquires for First Amendment purposes are strictly limited to the facial effect . . ." – See Section I. ● Answer does not require any individual legislator's subjective intent to answer – it is specifically asking for what the "original parameters" were for

	the pedestrian bridges, which the County has offered as a factual basis in support of CCC 16.13.030's restrictions. ● Deliberative and legislative privileges – See Section I. ● This interrogatory does not require expert testimony. The County's use of the term "original parameters" implies that there were parameters set when the bridges were first build. Expert testimony should not change now what those parameters are. **Substantive** ● An interrogatory cannot be answered by referring to other documents. See above for explanation. ○ The documents provided do not discuss the original parameters for the pedestrian bridges as they are dated years after the bridges. ● If the County does not know what, if any, parameters were formally set when the pedestrian bridges were originally built or any details surrounding how those parameters (i.e. when were they set, who set them, and why), the County should say so.
9	**Objections** ● Legal conclusion – Plaintiffs do not ask for a legal conclusion, only facts that the County has to support a claim it has asserted previously. A party may ask for all facts that a support a legal claim asserted by an opposing party during discovery, *See Johnson v. INTU Corp.*, No. 2:18-cv-02361-MMD-NJK, 2019 U.S. Dist. LEXIS 191537, at *6 (D. Nev. Nov. 5, 2019) (affirming Plaintiffs right to ask for "all facts" supporting Defendant's affirmative defense). ● "Inquires for First Amendment purposes are strictly limited to the facial effect . . ." – See Section I. ● Deliberative and legislative privileges – See Section I. ● Answer does not require any individual legislator's subjective intent to answer – it is specifically asking for objective facts that the County was aware of at the time the ordinance was passed. ● The County made the claim at issue in the interrogatory when it passed the ordinance. Explaining the facts that Clark County was aware of at the time of the claim does not require contemporary expert testimony (the County was not aware of whatever the expert was going to say later at the time of passage). **Substantive** ● An interrogatory cannot be answered by referring to other documents. See above for explanation. ● To clarify, the interrogatory did not ask for the County's arguments as to why sidewalks are safer but the facts supporting the County's contention asserted in CCC 16.13.010. ● We are not asking for any legislator's subjective opinion regarding "calls for service" versus "service calls for disorderly offenses", asking for the County's official position on how the County distinguished between those statistics.

	• If LVMPD has provided presentations to the County on 16.13.030 and/or criminal activity on the pedestrian bridges, and the County has documentation from the presentations, we ask those be disclosed pursuant to our applicable requests for production below.

IV. Responses to Request for Production

Request	Reply to response
1	Responsive documents should be in the County's possession through the District Attorney's Office under Case Number 24-PC-011972
2	Responsive documents should be in the County's possession through the District Attorney's Office under Case Number 24-PC-012650
3	Responsive documents should be in the County's possession through the District Attorney's Office under Case Number 24-PC-014361
4	Responsive documents should be in the County's possession through the District Attorney's Office under Case Number 24-PC-015383
5	Responsive documents should be in the County's possession through the District Attorney's Office under Case Number 24-PC-015954
6	Responsive documents should be in the County's possession through the District Attorney's Office under Case Number 24-PC-017128
7	Responsive documents should be in the County's possession through the District Attorney's Office under Case Number 24-PC-017964
8	Responsive documents should be in the County's possession through the District Attorney's Office under Case Number 24-PC-018861
9	Responsive documents should be in the County's possession through the District Attorney's Office under Case Number 24-PC-024870
10	Responsive documents should be in the County's possession through the District Attorney's Office under Case Number 24-PC-026111
11	Responsive documents should be in the County's possession through the District Attorney's Office under Case Number 24-PC-027252
12	Responsive documents should be in the County's possession through the District Attorney's Office under Case Number 24-PC-028079
13	Responsive documents should be in the County's possession through the District Attorney's Office under Case Number 24-PC-028400
14	Responsive documents should be in the County's possession through the District Attorney's Office under Case Number 24-PC-029968
15	No other follow up at this time.
16	We believe responsive documents are in the possession of the Clark County District Attorney's Office under the following case numbers: 24-CR-049569 24-PC-056616 24-CR-045524 24-PC-078744

	24-CR-086665 24-CR-086643 24-CR-091057 Please confirm that no other cases have been provided to the Clark County District Attorney's Office by LVMPD or any other entity seeking prosecutions for violations of CCC 16.13.030. This is goes to the "effect of the statute" as discussed in *Colacurcio*.
17	We believe responsive documents are in the possession of the Clark County District Attorney's Office under the following case numbers: 24-CR-049569 24-PC-056616 24-CR-045524 24-PC-078744 24-CR-086665 24-CR-086643 24-CR-091057 We also believe that there are other cases that have been filed by the Clark County District Attorney's Office that specifically related criminal activity or allegations of criminal activity on the pedestrian bridges, such as in *State v. Kevin Menon*, 24-CR-074082, C-24-386532-1. Considering that you have claimed that this ordinance addresses increased criminal activity on the pedestrian bridges, this discovery request is necessary to determine the validity of that claim, including the reliability of the underlying statistics provided by LVMPD. .
18	Concerns regarding the objections asserted: ● There is no legal authority provided to claim that this request is premature. If available, please provide legal authority. ● The request is specifically related to the report provided by Dr. Souza to the County in support of the passage of CCC 16.13.030, not a report he has prepared for this litigation pursuant to FRCP 26. ● According to the documents you have disclosed, Dr. Souza had not been retained to provide expert testimony in this or any other litigation according to the agreement he signed with the County. *See* CC 1397 – CC 1404. If another agreement was in effect while Dr. Souza worked on CC 132–CC 139, please provide that document. I am unaware of any legal authority that would render a document privilege through a retainer signed after the creation of the

	document or communication. ● The documents you have asserted attorney work product privilege over would not be protected as attorney work product because (1) litigation was not yet anticipated since the ordinance had not yet passed, and (2) Souza was not yet a testifying expert since his 2023 agreement did not include that as a service. ● You have not asserted the deliberative process or legislative process privilege over any documents in the privilege log you have provided. If there are specific documents that you are asserting deliberative process or legislative privilege over, those documents must be included in the privilege log with a description of the document and the privilege asserted. ○ The legal authority cited (*Transgender L. Ctr.*) also does not appear to extend the privilege to third parties from outside the agency. ○ According to CC 132-CC 139, Souza was not hired to draft the policy at issue. See also Section IV related to privilege log assertions.
19	Concerns regarding the objections asserted: ● There is no legal authority provided to claim that this request is premature. Please provide legal authority. ● The request is specifically related to the report provided by Dr. Souza to the County in support of the passage of CCC 16.13.030, not a report he has prepared for this litigation pursuant to FRCP 26. ● According to the documents you have disclosed, Dr. Souza had not been retained to provide expert testimony in this or any other litigation according to the agreement he signed with the County. *See* CC 1397 – CC 1404. If another agreement was in effect while Dr. Souza worked on CC 132–CC 139, please provide that document. I am unaware of any legal authority that would render a document privilege through a retainer signed after the creation of the document or communication. ● The documents you have asserted attorney work product privilege over would not be protected as attorney work product because (1) litigation was not yet anticipated since the ordinance had not yet passed, and (2) Souza was not yet a testifying expert since his 2023 agreement did not include that as a service. ● You have not asserted the deliberative process or legislative process privilege over any documents in the privilege log you have provided. If there are specific documents that you are asserting deliberative process or legislative privilege over, those documents must be included in the privilege log with a description of the document and the privilege asserted. ○ The legal authority cited (*Transgender L. Ctr.*) also does not appear to extend the privilege to third parties from outside the

	agency. ○ According to CC 132-CC 139, Souza was not hired to draft the policy at issue. See also Section IV related to privilege log assertions.
20	No follow up at this time.
21	If there are specific documents that you are asserting deliberative process or legislative privilege over, those documents must be included in the privilege log with a description of the document and the privilege asserted. Based on the Nevada Resorts Association's representations in its amicus brief, we want to clarify that "communications" for any of our requests would include communications between the NRA (including its employees and representatives) and Clark County (including its employees and representatives) not already a part of the public record. Considering that the NRA is a third party and not a policy maker, its communications would not be protected under either deliberative process or legislative privilege. Finally, any reports or presentations provided by other agencies, such as LVMPD, that provided factual information to the County would not be protected under "deliberative process" as the privilege does not apply to statements of fact. Additionally, opinions or impressions not directly related to the actual drafting process presumably would not be protected.
22	If there are specific documents that you are asserting deliberative process or legislative privilege over, those documents must be included in the privilege log with a description of the document and the privilege asserted. Based on the Nevada Resorts Association's representations in its amicus brief, we want to clarify that "communications" for any of our requests would include communications between the NRA (including its employees and representatives) and Clark County (including its employees and representatives) not already a part of the public record. Considering that the NRA is a third party and not a policy maker, its communications would not be protected under either deliberative process or legislative privilege. Finally, any reports or presentations provided by other agencies, such as LVMPD, that provided factual information to the County would not be protected under "deliberative process" as the privilege does not apply to statements of fact. Additionally, opinions or impressions not directly related to the actual drafting process presumably would not be protected.
23	If there are specific documents that you are asserting deliberative process or legislative privilege over, those documents must be included in the privilege log with a description of the document and the privilege asserted.

	Based on the Nevada Resorts Association's representations in its amicus brief, we want to clarify that "communications" for any of our requests would include communications between the NRA (including its employees and representatives) and Clark County (including its employees and representatives) not already a part of the public record. Considering that the NRA is a third party and not a policy maker, its communications would not be protected under either deliberative process or legislative privilege. Finally, any reports or presentations provided by other agencies, such as LVMPD, that provided factual information to the County would not be protected under "deliberative process" as the privilege does not apply to statements of fact. Additionally, opinions or impressions not directly related to the actual drafting process presumably would not be protected.
24	If there are specific documents that you are asserting deliberative process or legislative privilege over, those documents must be included in the privilege log with a description of the document and the privilege asserted. Based on the Nevada Resorts Association's representations in its amicus brief, we want to clarify that "communications" for any of our requests would include communications between the NRA (including its employees and representatives) and Clark County (including its employees and representatives) not already a part of the public record. Considering that the NRA is a third party and not a policy maker, its communications would not be protected under either deliberative process or legislative privilege. Finally, any reports or presentations provided by other agencies, such as LVMPD, that provided factual information to the County would not be protected under "deliberative process" as the privilege does not apply to statements of fact. Additionally, opinions or impressions not directly related to the actual drafting process presumably would not be protected.
25	If there are specific documents that you are asserting deliberative process or legislative privilege over, those documents must be included in the privilege log with a description of the document and the privilege asserted. Based on the Nevada Resorts Association's representations in its amicus brief, we want to clarify that "communications" for any of our requests would include communications between the NRA (including its employees and representatives) and Clark County (including its employees and representatives) not already a part of the public record. Considering that the NRA is a third party and not a policy maker, its communications would not be protected under either deliberative process or legislative privilege. Finally, any reports or presentations provided by other agencies, such as

	LVMPD, that provided factual information to the County would not be protected under "deliberative process" as the privilege does not apply to statements of fact. Additionally, opinions or impressions not directly related to the actual drafting process presumably would not be protected.
26	If there are specific documents that you are asserting deliberative process or legislative privilege over, those documents must be included in the privilege log with a description of the document and the privilege asserted. Based on the Nevada Resorts Association's representations in its amicus brief, we want to clarify that "communications" for any of our requests would include communications between the NRA (including its employees and representatives) and Clark County (including its employees and representatives) not already a part of the public record. Considering that the NRA is a third party and not a policy maker, its communications would not be protected under either deliberative process or legislative privilege. Finally, any reports or presentations provided by other agencies, such as LVMPD, that provided factual information to the County would not be protected under "deliberative process" as the privilege does not apply to statements of fact. Additionally, opinions or impressions not directly related to the actual drafting process presumably would not be protected.
27	If there are specific documents that you are asserting deliberative process or legislative privilege over, those documents must be included in the privilege log with a description of the document and the privilege asserted. Based on the Nevada Resorts Association's representations in its amicus brief, we want to clarify that "communications" for any of our requests would include communications between the NRA (including its employees and representatives) and Clark County (including its employees and representatives) not already a part of the public record. Considering that the NRA is a third party and not a policy maker, its communications would not be protected under either deliberative process or legislative privilege. Finally, any reports or presentations provided by other agencies, such as the Nevada Department of Transportation, or internal agency documents such as documents related to the construction of the pedestrian bridges, would not be subject to the deliberative process privilege as the documents would presumably contain fact rather than opinion.
28	If there are specific documents that you are asserting deliberative process or legislative privilege over, those documents must be included in the privilege log with a description of the document and the privilege asserted. Based on the Nevada Resorts Association's representations in its amicus

	brief, we want to clarify that "communications" for any of our requests would include communications between the NRA (including its employees and representatives) and Clark County (including its employees and representatives) not already a part of the public record. Considering that the NRA is a third party and not a policy maker, its communications would not be protected under either deliberative process or legislative privilege. Finally, any reports or presentations provided by other agencies, such as LVMPD, that provided factual information to the County would not be protected under "deliberative process" as the privilege does not apply to statements of fact. Additionally, opinions or impressions not directly related to the actual drafting process presumably would not be protected.
29	If there are specific documents that you are asserting deliberative process or legislative privilege over, those documents must be included in the privilege log with a description of the document and the privilege asserted. Based on the Nevada Resorts Association's representations in its amicus brief, we want to clarify that "communications" for any of our requests would include communications between the NRA (including its employees and representatives) and Clark County (including its employees and representatives) not already a part of the public record. Considering that the NRA is a third party and not a policy maker, its communications would not be protected under either deliberative process or legislative privilege. Finally, any reports or presentations provided by other agencies, such as LVMPD, that provided factual information to the County would not be protected under "deliberative process" as the privilege does not apply to statements of fact. Additionally, opinions or impressions not directly related to the actual drafting process presumably would not be protected.
30	If there are specific documents that you are asserting deliberative process or legislative privilege over, those documents must be included in the privilege log with a description of the document and the privilege asserted. Based on the Nevada Resorts Association's representations in its amicus brief, we want to clarify that "communications" for any of our requests would include communications between the NRA (including its employees and representatives) and Clark County (including its employees and representatives) not already a part of the public record. Considering that the NRA is a third party and not a policy maker, its communications would not be protected under either deliberative process or legislative privilege. Finally, any reports or presentations provided by other agencies, such as LVMPD, that provided factual information to the County would not be protected under "deliberative process" as the privilege does not apply to

	statements of fact. Additionally, opinions or impressions not directly related to the actual drafting process presumably would not be protected.
31	If there are specific documents that you are asserting deliberative process or legislative privilege over, those documents must be included in the privilege log with a description of the document and the privilege asserted. Based on the Nevada Resorts Association's representations in its amicus brief, we want to clarify that "communications" for any of our requests would include communications between the NRA (including its employees and representatives) and Clark County (including its employees and representatives) not already a part of the public record. Considering that the NRA is a third party and not a policy maker, its communications would not be protected under either deliberative process or legislative privilege. Finally, any reports or presentations provided by other agencies, such as LVMPD, that provided factual information to the County would not be protected under "deliberative process" as the privilege does not apply to statements of fact. Additionally, opinions or impressions not directly related to the actual drafting process presumably would not be protected.
32	If there are specific documents that you are asserting deliberative process or legislative privilege over, those documents must be included in the privilege log with a description of the document and the privilege asserted. Based on the Nevada Resorts Association's representations in its amicus brief, we want to clarify that "communications" for any of our requests would include communications between the NRA (including its employees and representatives) and Clark County (including its employees and representatives) not already a part of the public record. Considering that the NRA is a third party and not a policy maker, its communications would not be protected under either deliberative process or legislative privilege. Finally, any reports or presentations provided by other agencies, such as LVMPD, that provided factual information to the County would not be protected under "deliberative process" as the privilege does not apply to statements of fact. Additionally, opinions or impressions not directly related to the actual drafting process presumably would not be protected.
33	If there are specific documents that you are asserting deliberative process or legislative privilege over, those documents must be included in the privilege log with a description of the document and the privilege asserted. Based on the Nevada Resorts Association's representations in its amicus brief, we want to clarify that "communications" for any of our requests would include communications between the NRA (including its employees

	and representatives) and Clark County (including its employees and representatives) not already a part of the public record. Considering that the NRA is a third party and not a policy maker, its communications would not be protected under either deliberative process or legislative privilege. Finally, any reports or presentations provided by Nevada or Clark County agencies, such as the Department of Public Works, conveying information about the total surface space provided by sidewalks within the Resort Corridor and/or the pedestrian bridges would not be protected by privilege (based on the documents provided, I believe we are in agreement here, but adding this in case we are not).
34	If there are specific documents that you are asserting deliberative process or legislative privilege over, those documents must be included in the privilege log with a description of the document and the privilege asserted. Presumably attorney work product privilege would not apply to documents drafted prior to the passage of CCC 16.13.030. We are not seeking intra-agency documents between the Clark County District Attorney's Office and Clark County officials in anticipation of actual litigation unless the documents were disclosed to third parties. Based on the Nevada Resorts Association's representations in its amicus brief, we want to clarify that "communications" for any of our requests would include communications between the NRA (including its employees and representatives) and Clark County (including its employees and representatives) not already a part of the public record. Considering that the NRA is a third party and not a policy maker, its communications would not be protected under either deliberative process or legislative privilege. Finally, any reports or presentations provided by other agencies, such as LVMPD, that provided factual information to the County would not be protected under "deliberative process" as the privilege does not apply to statements of fact. Additionally, opinions or impressions not directly related to the actual drafting process presumably would not be protected.
35	If there are specific documents that you are asserting deliberative process or legislative privilege over, those documents must be included in the privilege log with a description of the document and the privilege asserted. Presumably attorney work product privilege would not apply to documents drafted prior to the passage of CCC 16.13.030. We are not seeking intra-agency documents between the Clark County District Attorney's Office and Clark County officials in anticipation of actual litigation unless the documents were disclosed to third parties.

	Based on the Nevada Resorts Association's representations in its amicus brief, we want to clarify that "communications" for any of our requests would include communications between the NRA (including its employees and representatives) and Clark County (including its employees and representatives) not already a part of the public record. Considering that the NRA is a third party and not a policy maker, its communications would not be protected under either deliberative process or legislative privilege. Finally, any reports or presentations provided by other agencies, such as LVMPD, that provided factual information to the County would not be protected under "deliberative process" as the privilege does not apply to statements of fact. Additionally, opinions or impressions not directly related to the actual drafting process presumably would not be protected.
36	If there are specific documents that you are asserting deliberative process or legislative privilege over, those documents must be included in the privilege log with a description of the document and the privilege asserted. Based on the Nevada Resorts Association's representations in its amicus brief, we want to clarify that "communications" for any of our requests would include communications between the NRA (including its employees and representatives) and Clark County (including its employees and representatives) not already a part of the public record. Considering that the NRA is a third party and not a policy maker, its communications would not be protected under either deliberative process or legislative privilege. Any reports or presentations provided by other agencies, such as LVMPD, that provided factual information to the County would not be protected under "deliberative process" as the privilege does not apply to statements of fact. Additionally, opinions or impressions not directly related to the actual drafting process presumably would not be protected. If there are specific documents that you are asserting deliberative process or legislative privilege over, those documents must be included in the privilege log with a description of the document and the privilege asserted. Presumably attorney work product privilege would not apply to documents drafted prior to the passage of CCC 16.13.030. We are not seeking intra-agency documents between the Clark County District Attorney's Office and Clark County officials in anticipation of actual litigation unless the documents were disclosed to third parties. Based on the Nevada Resorts Association's representations in its amicus brief, we want to clarify that "communications" for any of our requests would include communications between the NRA (including its employees and representatives) and Clark County (including its employees and representatives) not already a part of the public record. Considering that

	the NRA is a third party and not a policy maker, its communications would not be protected under either deliberative process or legislative privilege.
37	If there are specific documents that you are asserting deliberative process or legislative privilege over, those documents must be included in the privilege log with a description of the document and the privilege asserted. Presumably attorney work product privilege would not apply to documents drafted prior to the passage of CCC 16.13.030. We are not seeking intra-agency documents between the Clark County District Attorney's Office and Clark County officials in anticipation of actual litigation unless the documents were disclosed to third parties. Based on the Nevada Resorts Association's representations in its amicus brief, we want to clarify that "communications" for any of our requests would include communications between the NRA (including its employees and representatives) and Clark County (including its employees and representatives) not already a part of the public record. Considering that the NRA is a third party and not a policy maker, its communications would not be protected under either deliberative process or legislative privilege. Finally, any reports or presentations provided by other agencies, such as LVMPD, that provided factual information to the County would not be protected under "deliberative process" as the privilege does not apply to statements of fact. Additionally, opinions or impressions not directly related to the actual drafting process presumably would not be protected.
38	If there are specific documents that you are asserting deliberative process or legislative privilege over, those documents must be included in the privilege log with a description of the document and the privilege asserted. Presumably attorney work product privilege would not apply to documents drafted prior to the passage of CCC 16.13.030. We are not seeking intra-agency documents between the Clark County District Attorney's Office and Clark County officials in anticipation of actual litigation unless the documents were disclosed to third parties. Based on the Nevada Resorts Association's representations in its amicus brief, we want to clarify that "communications" for any of our requests would include communications between the NRA (including its employees and representatives) and Clark County (including its employees and representatives) not already a part of the public record. Considering that the NRA is a third party and not a policy maker, its communications would not be protected under either deliberative process or legislative privilege. Finally, any reports or presentations provided by Nevada or Clark County agencies, such as the Department of Public Works, conveying information

	about the total surface space provided by sidewalks within the Resort Corridor and/or the pedestrian bridges would not be protected by privilege (based on the documents provided, I believe we are in agreement here, but adding this in case we are not).
39	No follow up at this time.
40	If there are specific documents that you are asserting deliberative process or legislative privilege over, those documents must be included in the privilege log with a description of the document and the privilege asserted. Presumably attorney work product privilege would not apply to documents drafted prior to the passage of CCC 16.13.030. We are not seeking intra-agency documents between the Clark County District Attorney's Office and Clark County officials in anticipation of actual litigation unless the documents were disclosed to third parties. Based on the Nevada Resorts Association's representations in its amicus brief, we want to clarify that "communications" for any of our requests would include communications between the NRA (including its employees and representatives) and Clark County (including its employees and representatives) not already a part of the public record. Considering that the NRA is a third party and not a policy maker, its communications would not be protected under either deliberative process or legislative privilege. Finally, any reports or presentations provided by other agencies, such as LVMPD, that provided factual information to the County would not be protected under "deliberative process" as the privilege does not apply to statements of fact. Additionally, opinions or impressions not directly related to the actual drafting process presumably would not be protected.
41	No follow up at this time.
42	No follow up at this time.
43	No follow up at this time.
44	The claim asserted by Clark County's counsel must ultimately be supported by facts in the record. If the counsel intends to make the same assertion at the motion for summary judgment stage, we are entitled to discovery related to that claim to challenge counsel's position.
45	The claim asserted by Clark County's counsel must ultimately be supported by facts in the record. If the counsel intends to make the same assertion at the motion for summary judgment stage, we are entitled to discovery related to that claim to challenge counsel's position.
46	If there are specific documents that you are asserting deliberative process or legislative privilege over, those documents must be included in the

	privilege log with a description of the document and the privilege asserted. Presumably attorney work product privilege would not apply to documents drafted prior to the passage of CCC 16.13.030. We are not seeking intra-agency documents between the Clark County District Attorney's Office and Clark County officials in anticipation of actual litigation unless the documents were disclosed to third parties. Based on the Nevada Resorts Association's representations in its amicus brief, we want to clarify that "communications" for any of our requests would include communications between the NRA (including its employees and representatives) and Clark County (including its employees and representatives) not already a part of the public record. Considering that the NRA is a third party and not a policy maker, its communications would not be protected under either deliberative process or legislative privilege. Finally, any reports or presentations provided by other agencies, such as LVMPD, that provided factual information to the County would not be protected under "deliberative process" as the privilege does not apply to statements of fact. Additionally, opinions or impressions not directly related to the actual drafting process presumably would not be protected. The claim asserted by Clark County's counsel must ultimately be supported by facts in the record. If the counsel intends to make the same assertion at the motion for summary judgment stage, we are entitled to discovery related to that claim to challenge counsel's position. Furthermore, *Colacurcio* specifically recognizes that "comparison to prior law" is relevant to the claims asserted in this case.
47	If there are specific documents that you are asserting deliberative process or legislative privilege over, those documents must be included in the privilege log with a description of the document and the privilege asserted. We are not seeking intra-agency documents between the Clark County District Attorney's Office and other Clark County officials that were drafted in anticipation of litigation unless the documents were disclosed to third parties. Deliberative process and legislative privileges do not protect post-decisional documents. For example, documents, including communications such as emails, related to Clark County's public statements about CCC 16.13.030, such as any documents related to the County's tweets stating that activities such as taking a photograph on a pedestrian bridges would not result in criminal charges, must be disclosed.

48	If there are specific documents that you are asserting deliberative process or legislative privilege over, those documents must be included in the privilege log with a description of the document and the privilege asserted. We are not seeking intra-agency documents between the Clark County District Attorney's Office and Clark County officials in anticipation of actual litigation unless the documents were disclosed to third parties. Deliberative process and legislative privileges do not protect post-decisional documents. For example, documents, including communications such as emails, related to Clark County's public statements about CCC 16.13.030, such as any documents related to the County's tweets stating that activities such as taking a photograph on a pedestrian bridge would not result in criminal charges, must be disclosed.
49	If there are specific documents that you are asserting deliberative process or legislative privilege over, those documents must be included in the privilege log with a description of the document and the privilege asserted. We are not seeking intra-agency documents between the Clark County District Attorney's Office and Clark County officials in anticipation of actual litigation unless the documents were disclosed to third parties. Deliberative process and legislative privileges do not protect post-decisional documents. For example, documents, including communications such as emails, related to Clark County's public statements about CCC 16.13.030, such as any documents related to the County's tweets stating that activities such as taking a photograph on a pedestrian bridge would not result in criminal charges, must be disclosed.
50	If there are specific documents that you are asserting deliberative process or legislative privilege over, those documents must be included in the privilege log with a description of the document and the privilege asserted. Post-decisional documents are not protected by the deliberative process privilege.
51	"Trainings" is a defined term under "Definitions" in the original set of requests served by Plaintiffs. This request would include any training provided by any law enforcement agency related to 16.13.030, including but not limited to the Clark County District Attorney's Office.
52	"Policy" is a defined term under "Definitions" in the original set of requests served by Plaintiffs. This request would include any general policies generated by any law

	enforcement agency related to 16.13.030, including but not limited to the Clark County District Attorney's Office.
53	No follow up at this time.
54	This request is relevant as the bill that is subject to this request intended to place additional restrictions on the pedestrian bridges similar to CCC 16.13.030, and the facts connected to Clark County's intent in that matter is necessarily related to its intent in connection to CCC 16.13.030. Prior laws are relevant to determining the County's objective intent. If there are specific documents that you are asserting deliberative process or legislative privilege over, those documents must be included in the privilege log with a description of the document and the privilege asserted. Based on the Nevada Resorts Association's representations in its amicus brief, we want to clarify that "communications" for any of our requests would include communications between the NRA (including its employees and representatives) and Clark County (including its employees and representatives) not already a part of the public record. Considering that the NRA is a third party and not a policy maker, its communications would not be protected under either deliberative process or legislative privilege.
55	This request is relevant as the bill that is subject to this request intended to place additional restrictions on the pedestrian bridges similar to CCC 16.13.030, and the facts connected to Clark County's intent in that matter is necessarily related to its intent in connection to CCC 16.13.030. Prior laws are relevant to determining the County's objective intent. If there are specific documents that you are asserting deliberative process or legislative privilege over, those documents must be included in the privilege log with a description of the document and the privilege asserted. Based on the Nevada Resorts Association's representations in its amicus brief, we want to clarify that "communications" for any of our requests would include communications between the NRA (including its employees and representatives) and Clark County (including its employees and representatives) not already a part of the public record. Considering that the NRA is a third party and not a policy maker, its communications would not be protected under either deliberative process or legislative privilege.
56	This request is relevant as the bill that is subject to this request intended to place additional restrictions on the pedestrian bridges similar to CCC 16.13.030, and the facts connected to Clark County's intent in that matter is necessarily related to its intent in connection to CCC 16.13.030. Prior laws are relevant to determining the County's objective intent. If there are specific documents that you are asserting deliberative process

	or legislative privilege over, those documents must be included in the privilege log with a description of the document and the privilege asserted.
57	"Trainings" is a defined term under "Definitions" in the original set of requests served by Plaintiffs. This request would include any training provided by any law enforcement agency related to 16.13.030, including but not limited to the Clark County District Attorney's Office. *Colacurcio* recognizes that comparison to other statutes is relevant in determining the County's objective intent in passing CCC 16.13.030. It is also relevant to your claim that existing law was insufficient to address the concerns that CCC 16.13.030 is now meant to address.
58	"Policy" is a defined terms under "Definitions" in the original set of requests served by Plaintiffs. This request would include any training provided by any law enforcement agency related to 16.13.030, including but not limited to the Clark County District Attorney's Office. *Colacurcio* recognizes that comparison to other statutes is relevant in determining the County's objective intent in passing CCC 16.13.030. It is also relevant to your claim that existing law was insufficient to address the concerns that CCC 16.13.030 is now meant to address.
59	*Colacurcio* recognizes that comparison to other statutes is relevant in determining the County's objective intent in passing CCC 16.13.030. It is also relevant to your claim that existing law was insufficient to address the concerns that CCC 16.13.030 is now meant to address. CCC 16.11 was the pre-existing law meant to prevent obstructions on sidewalks, including pedestrian bridges. Whether the ordinance was in fact adequate is relevant to this matter. This request would include any documents or communications provided by any law enforcement agency to the County or created by a Clark County law enforcement agency (including the Clark County District Attorney's Office) related to 16.11.
60	No follow up at this time.
61	If there are specific documents that you are asserting deliberative process or legislative privilege over, those documents must be included in the privilege log with a description of the document and the privilege asserted.

	Colacurcio recognize that comparison to other statutes is relevant in determining whether a statute is constitutional. It is also relevant to your claim that existing law was insufficient to address the concerns that CCC 16.13.030 is now meant to address. Deliberative process and legislative privileges would not apply to communications related to an ordinance in existence and its current application.
62	As discussed in Section I, your interpretation of the scope of a First Amendment facial challenge is contradicted by *Colacurio*, which recognizes that "**all objective indicators of intent**, including the face of the statute, **the effect of the statute, comparison to prior law, facts surrounding enactment, the stated purpose, and the record of proceedings."** (emphasis added). To clarify, Plaintiff Summers has raised both facial and as applied challenges pursuant to the First Amendment claim. All keywords provided relate directly to issues in this matter and the substance of CCC 16.13.030. If there are specific keywords that you take issue with, please identify them. If there are specific documents that you are asserting deliberative process or legislative privilege over, those documents must be included in the privilege log with a description of the document and the privilege asserted.
63	As discussed in Section I, your interpretation of the scope of a First Amendment facial challenge is contradicted by *Colacurio*, which recognizes that "**all objective indicators of intent**, including the face of the statute, **the effect of the statute, comparison to prior law, facts surrounding enactment, the stated purpose, and the record of proceedings."** (emphasis added). To clarify, Plaintiff Summers has raised both facial and as applied challenges pursuant to the First Amendment claim. All keywords provided, in combination with the word "bridge" relate directly to issues in this matter and the substance of CCC 16.13.030. In particular, Plaintiffs are entitled to challenge whether Clark County's stated purposes for the ordinance are a pretext for targeting First Amendment activity. If there are specific keywords that you take issue with, please identify them. If there are specific documents that you are asserting deliberative process

	or legislative privilege over, those documents must be included in the privilege log with a description of the document and the privilege asserted.
64	As discussed in Section I, your interpretation of the scope of a First Amendment facial challenge is contradicted by *Colacurio*, which recognizes that "**all objective indicators of intent**, including the face of the statute, **the effect of the statute, comparison to prior law, facts surrounding enactment, the stated purpose, and the record of proceedings."** (emphasis added). To clarify, Plaintiff Summers has raised both facial and as applied challenges pursuant to the First Amendment claim. All keywords provided, in combination with the word "overpass" relate directly to issues in this matter and the substance of CCC 16.13.030. In particular, Plaintiffs are entitled to challenge whether Clark County's stated purposes for the ordinance are a pretext for targeting First Amendment activity. If there are specific keywords that you take issue with, please identify them. If there are specific documents that you are asserting deliberative process or legislative privilege over, those documents must be included in the privilege log with a description of the document and the privilege asserted.
65	As discussed in Section I, your interpretation of the scope of a First Amendment facial challenge is contradicted by *Colacurio*, which recognizes that "all objective indicators of intent, including the face of the statute, the effect of the statute, comparison to prior law, facts surrounding enactment, the stated purpose, and the record of proceedings." This request is specifically related to the effect of the statute and the sufficiency of the prior laws. The request is also related to whether enforcement of CCC 16.13.030 has been arbitrary, which is related to Plaintiff's Fourteenth Amendment claims. To clarify, Plaintiff Summers and has raised both facial and as applied challenges pursuant to the First Amendment claim. All keywords provided, in combination with the word "overpass" relate directly to issues in this matter and the substance of CCC 16.13.030. If there are specific keywords that you take issue with, please identify them. If there are specific documents that you are asserting deliberative process or legislative privilege over, those documents must be included in the privilege log with a description of the document and the privilege asserted.

66	As discussed in Section I, your interpretation of the scope of a First Amendment facial challenge is contradicted by *Colacurio*, which recognizes that "all objective indicators of intent, including the face of the statute, the effect of the statute, comparison to prior law, facts surrounding enactment, the stated purpose, and the record of proceedings." This request is specifically related to the effect of the statute and the sufficiency of the prior laws. This request is also related to Clark County's claims regarding increased disorder and/or crime on pedestrian bridges and whether there is any factual support for that claim. To clarify, Plaintiff Summers has raised both facial and as applied challenges pursuant to the First Amendment claim. If there are specific documents that you are asserting deliberative process or legislative privilege over, those documents must be included in the privilege log with a description of the document and the privilege asserted. While LVMPD is a distinct entity from Clark County, the Clark County District Attorney's office is not. If the CCDA has any such complaints in its possession, including any complaints from entities such as the Nevada Resorts Association or its members, it must be disclosed.
67	As discussed in Section I, your interpretation of the scope of a First Amendment facial challenge is contradicted by *Colacurio*, which recognizes that "all objective indicators of intent, including the face of the statute, the effect of the statute, comparison to prior law, facts surrounding enactment, the stated purpose, and the record of proceedings." This request is specifically related to the effect of the statute and the sufficiency of the prior laws. This request is also related to Clark County's claims regarding increased disorder and/or crime on pedestrian bridges and whether there is any factual support for that claim. To clarify, Plaintiff Summers has raised both facial and as applied challenges pursuant to the First Amendment claim. If there are specific documents that you are asserting deliberative process or legislative privilege over, those documents must be included in the privilege log with a description of the document and the privilege asserted. While LVMPD is a distinct entity from Clark County, the Clark County District Attorney's office is not. If the CCDA has any such complaints in its

	possession, including any complaints from entities such as the Nevada Resorts Association or its members, it must be disclosed.
68	As discussed in Section I, your interpretation of the scope of a First Amendment facial challenge is contradicted by *Colacurio*, which recognizes that "all objective indicators of intent, including the face of the statute, the effect of the statute, comparison to prior law, facts surrounding enactment, the stated purpose, and the record of proceedings." This request is specifically related to the effect of the statute. This request is also related to Clark County's claims regarding increased disorder and/or crime on pedestrian bridges and whether there is any factual support for that claim. To clarify, Plaintiff Summers has raised both facial and as applied challenges pursuant to the First Amendment claim. If there are specific documents that you are asserting deliberative process or legislative privilege over, those documents must be included in the privilege log with a description of the document and the privilege asserted. While LVMPD is a distinct entity from Clark County, the Clark County District Attorney's office is not. If the CCDA has any such complaints in its possession, including any complaints from entities such as the Nevada Resorts Association or its members, it must be disclosed.
69	As discussed in Section I, your interpretation of the scope of a First Amendment facial challenge is contradicted by *Colacurio*, which recognizes that "all objective indicators of intent, including the face of the statute, the effect of the statute, comparison to prior law, facts surrounding enactment, the stated purpose, and the record of proceedings." This request is specifically related to the sufficiency of the prior laws. This request is also related to Clark County's claims regarding increased disorder and/or crime on pedestrian bridges and whether there is any factual support for that claim. To clarify, Plaintiff Summers has raised both facial and as applied challenges pursuant to the First Amendment claim. If there are specific documents that you are asserting deliberative process or legislative privilege over, those documents must be included in the privilege log with a description of the document and the privilege asserted.

	While LVMPD is a distinct entity from Clark County, the Clark County District Attorney's office is not. If the CCDA has any such complaints in its possession, including any complaints from entities such as the Nevada Resorts Association or its members, it must be disclosed.
70	No follow up at this time
71	No follow up at this time.
72	No follow up at this time pending follow up from Clark County Public Works Division.
73	If there are specific documents that you are asserting deliberative process or legislative privilege over, those documents must be included in the privilege log with a description of the document and the privilege asserted. As discussed in Section I, your understanding of the scope of a First Amendment facial challenge is belied by *Colacurio*, which recognizes that "all objective indicators of intent, including the face of the statute, the effect of the statute, comparison to prior law, facts surrounding enactment, the stated purpose, and the record of proceedings." This request is related to the effect of the statute and the facts surrounding the statute's enactment. Specifically, this request is directly related to the facts (or lack thereof) supporting Clark County's stated purpose of reducing crime and/or disorder on the pedestrian bridges.
74	If there are specific documents that you are asserting deliberative process or legislative privilege over, those documents must be included in the privilege log with a description of the document and the privilege asserted. Based on the Nevada Resorts Association's representations in its amicus brief, we want to clarify that "communications" for any of our requests would include communications between the NRA (including its employees and representatives) and Clark County (including its employees and representatives) not already a part of the public record. Considering that the NRA is a third party and not a policy maker, its communications would not be protected under either deliberative process or legislative privilege. Finally, any reports or presentations provided by other agencies, such as the Nevada Department of Transportation, or internal agency documents such a document related to the construction of the pedestrian bridges, would not be subject to the deliberative process privilege as the documents would presumably contain fact rather than opinion.
75	If there are specific documents that you are asserting deliberative process or legislative privilege over, those documents must be included in the privilege log with a description of the document and the privilege asserted. Based on the Nevada Resorts Association's representations in its amicus brief, we want to clarify that "communications" for any of our requests

	would include communications between the NRA (including its employees and representatives) and Clark County (including its employees and representatives) not already a part of the public record. Considering that the NRA is a third party and not a policy maker, its communications would not be protected under either deliberative process or legislative privilege. Finally, any documents related to the construction of the pedestrian bridges, would not be subject to the deliberative process privilege as the documents would presumably contain fact rather than opinion. Relevant documents would include blueprints or schematics for the pedestrian bridges and/or designs implemented to change the bridge structures after initial construction and/or contracts and communications related to the construction of the bridges.
76	If there are specific documents that you are asserting deliberative process or legislative privilege over, those documents must be included in the privilege log with a description of the document and the privilege asserted. Based on the Nevada Resorts Association's representations in its amicus brief, we want to clarify that "communications" for any of our requests would include communications between the NRA (including its employees and representatives) and Clark County (including its employees and representatives) not already a part of the public record. Considering that the NRA is a third party and not a policy maker, its communications would not be protected under either deliberative process or legislative privilege. Finally, any documents related to the construction of the pedestrian bridges, would not be subject to the deliberative process privilege as the documents would presumably contain fact rather than opinion.
77	If there are specific documents that you are asserting deliberative process or legislative privilege over, those documents must be included in the privilege log with a description of the document and the privilege asserted. As discussed in Section I, your understanding of the scope of a First Amendment facial challenge is belied by *Colacurio*, which recognizes that "all objective indicators of intent, including the face of the statute, the effect of the statute, comparison to prior law, facts surrounding enactment, the stated purpose, and the record of proceedings." This request is for effect of the statute. Since this matter includes a First Amendment challenge, how the ordinance impacts First Amendment activity is particularly relevant. Whether the County intended to burden First Amendment activity is also relevant to what level of scrutiny would apply in this matter.
78	If there are specific documents that you are asserting deliberative process

	or legislative privilege over, those documents must be included in the privilege log with a description of the document and the privilege asserted. As discussed in Section I, your understanding of the scope of a First Amendment facial challenge is belied by *Colacurio*, which recognizes that "all objective indicators of intent, including the face of the statute, the effect of the statute, comparison to prior law, facts surrounding enactment, the stated purpose, and the record of proceedings." This request is for effect of the statute. Since this matter includes a First Amendment challenge, how the ordinance impacts First Amendment activity is particularly relevant. Whether the County intended to burden First Amendment activity is also relevant to what level of scrutiny would apply in this matter.
79	No follow up at this time.
80	No follow up at this time.
81	You have not offered any legal authority supporting your claim that the requests for the CVs can be refused as "premature". You listed people identified in this request as lay witnesses in your initial disclosure making them relevant to the discovery process at this time. It is within the scope of discovery to request the CVs now if they are within the County's possession.
82	Concerns regarding the objections asserted: • There is no legal authority provided to claim that this request is premature. If available, please provide legal authority. • The request is specifically related to the report provided by Dr. Souza to the County in support of the passage of CCC 16.13.030, not a report he has prepared for this litigation pursuant to FRCP 26. • According to the documents you have disclosed, Dr. Souza had not been retained to provide expert testimony in this or any other litigation according to the agreement he signed with the County. *See* CC 1397 – CC 1404. If another agreement was in effect while Dr. Souza worked on CC 132–CC 139, please provide that document. I am unaware of any legal authority that would render a document privilege through a retainer signed after the creation of the document or communication. • The documents you have asserted attorney work product over would not be protected as attorney work product because (1) litigation was not yet anticipated since the ordinance had not yet passed, and (2) Souza was not yet a testifying expert since his 2023 agreement did not include that as a service. • You have not asserted the deliberative process or legislative process privilege over any documents in the privilege log you have

	provided. If there are specific documents that you are asserting deliberative process or legislative privilege over, those documents must be included in the privilege log with a description of the document and the privilege asserted. ○ The legal authority cited (*Transgender L. Ctr.*) also does not appear to extend the privilege to third parties from outside the agency. ○ According to CC 132-CC 139, Souza was not hired to draft the policy at issue. See also Section IV related to privilege log assertions.

V. Privilege Log

In asserting privileges in your privilege log, you have only asserted "Communications with an expert witness retained in anticipation of litigation not subject to an exception. *See*, *e.g.*, Fed.R.Civ.P. 26(b)(4)(C); *Republic of Ecuador v. Mackay*, 742 F.3d 860, 869 (9th Cir. 2014). In regards to the documents you have considered responsive to Plaintiffs' requests, it appears that you have only asserted privilege in regards to the communications between Williams Souza and Clark County staff prior to the passage of CCC 16.13.030.

According to our review of the documents disclosed, it appears that those communications occurred prior to this suit and even prior to the passage of CCC 16.13.030. It appears that you are asserting this privilege based upon the relation formed through the agreement provided pursuant to CC 1397–CC 1404. According to the documents you have disclosed, Dr. Souza had not been retained to provide expert testimony in this or any other litigation according to the agreement he signed with the County. *See* CC 1397–CC 1404. If another agreement was in effect while Dr. Souza worked on CC 132–CC 139, please provide that document. We are unaware of any legal authority that would render a document privileged under FRCP 26 through a testifying expert relationship that formed after the document was created.

VI. Conclusion

Please let me know if you have any questions or concerns about the replies above or the proposed amended complaint, I will get back to you as soon as possible. Otherwise I look forward to discuss these issues with you at the meet and confer.

Sincerely,

Christopher Peterson
Legal Director
ACLU of Nevada
4362 W Cheyenne Ave.
North Las Vegas, NV 89032

EXHIBIT B

CLARK COUNTY
OFFICE OF THE DISTRICT ATTORNEY
Civil Division

STEVEN B. WOLFSON
District Attorney

500 S. Grand Central Pkwy, Suite 5075 • Las Vegas, NV 89155 • 702-455-4761 • Fax: 702-382-5178 • TTY and/or other relay services: 711

CHRISTOPHER LALLI *Assistant District Attorney*
ROBERT DASKAS *Assistant District Attorney*
BRIGID J. DUFFY *Assistant District Attorney*
KAREN S. CLIFFE *Assistant District Attorney*
LISA LOGSDON *County Counsel*

December 18, 2024

From: Clark County District Attorney's Office
500 S. Grand Central Pkwy
Las Vegas, NV 89155-2215

To: Christopher Peterson
Legal Director
ACLU of Nevada
4362 W Cheyenne Ave.
North Las Vegas, NV 89032
Chris Peterson (peterson@aclunv.org)

Re: *McAllister, et al. v. Clark County, et al.*, Case No. 2:24-cv-00334-JAD-NJK

Counsel:

Please allow the instant correspondence to serve as Clark County's response to your objections to its responses to written discovery and your request for a meet and confer.

Burden in Discovery

First, it must be noted that the party seeking discovery has the primary duty to demonstrate that the evidence they seek is relevant and discoverable. *Puente Arizona v. Arpaio*, 314 F.R.D. 664, 667 (D. Ariz. 2016); *Mi Familia Vota v. Hobbs*, 343 F.R.D. 71, 81 (D. Ariz. 2022).

Rule 26(b)(1) provides:

Parties may obtain discovery regarding any **nonprivileged matter** that is **relevant** to any party's claim or defense and **proportional to the needs of the case**, considering the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, **the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit**.

Fed. R. Civ. P. 26(b)(1) (emphasis added).

Questions of Law Require no Fact Finding

"The determination of whether a statute is constitutional is a **question of law**, which this court reviews de novo." *Flamingo Paradise Gaming, LLC v. Chanos*, 125 Nev. 502, 509, 217 P.3d 546, 551 (2009) (citing *Silvar v. Dist. Ct.*, 122 Nev. 289, 292, 129 P.3d 682, 684 (2006)) (emphasis added); *see also Shelby County v. Holder*, 270 F.R.D. 16, 19 (D.D.C. 2010) ("Because Shelby County brings only a facial challenge to the [Voter Registration Act], discovery into that claim is unwarranted.") (emphasis added); *Briggs v. Yi*, No. 3:22-CV-00265-SLG, 2023 WL 2914395, at *5 (D. Alaska Apr. 12, 2023) ("Mr. Briggs' facial challenge to the constitutionality of [statute] is a pure question of law and Mr. Briggs has not identified any discoverable facts that would be relevant to resolving this question.") (emphasis added); *Doherty v. Wireless Broad. Sys. of Sacramento, Inc.*, 151 F.3d 1129, 1131 (9th Cir. 1998) (recognizing that "[t]he district court concluded that Pacific **did not need to undertake discovery because the issue in this case involved a purely legal question**.") (emphasis added); *Pullman Co. v. Knott*, 235 U.S. 23, 26, 35 S.Ct. 2, 59 L.Ed. 105 (1914) (A statute "is not to be upset upon hypothetical and unreal possibilities, if it would be good upon the facts as they are"); *Washington State Grange v. Washington State Republican Party*, 552 U.S. 442, 455, 128 S. Ct. 1184, 1193–94, 170 L. Ed. 2d 151 (2008) ("Because respondents brought their suit as a facial challenge, we have no evidentiary record against which to assess their assertions that voters will be confused."); *Shelby Cnty., Ala. v. Holder*, 270 F.R.D. 16, 19 (D.D.C. 2010) ("Because Shelby County brings only a facial challenge to the VRA, **discovery into that claim is unwarranted**.") (emphasis added); *Gen. Elec. Co. v. Johnson*, 362 F. Supp. 2d 327, 337 (D.D.C. 2005), aff'd sub nom. Gen. Elec. Co. v. Jackson, 610 F.3d 110 (D.C. Cir. 2010) ("a facial challenge to the text of a statute does not typically require discovery for resolution because the challenge focuses on the language of the statute itself.") (emphasis added); *Cafe Erotica of Fla., Inc. v. St. Johns Cnty.*, 360 F.3d 1274, 1282 (11th Cir. 2004) ("When analyzing a facial challenge, we must analyze the statute as written."); *New Hampshire Motor Transp. Ass'n v. Rowe*, 324 F. Supp. 2d 231, 232 (D. Me. 2004) ("discovery or an 'evidentiary showing' on the effect of the challenged provisions of [a law] is not necessary to a ruling on a facial preemption challenge."); *Fund Texas Choice v. Deski*, No. 1:22-CV-859-RP, 2023 WL 8856052, at *14 (W.D. Tex. Dec. 21, 2023) ("For this reason, district courts have commonly held that parties do not need discovery to defend a law's facial validity."); *Glynn Env't Coal., Inc. v. Sea Island Acquisition, LLC*, No. 2:19-CV-50, 2019 WL 13020440, at *2 (S.D. Ga. Aug. 5, 2019) ("These remaining arguments represent facial attacks which likely will not require additional discovery to resolve.").

Questions of law—like those raised in Plaintiffs' complaint—are not questions of fact, nor are they mixed questions of fact and law. Questions of law can be resolved by the Court on the face of the ordinance and other matters of public record, including the legislative history, of which the Court may take judicial notice.

Given the foregoing, Plaintiffs' overly burdensome requests for production and interrogatories are both irrelevant and disproportionate to the needs of the case to the extent they seek anything beyond objective data and the legislative record.

Evidence Relevant to Resolving First Amendment Challenges to Statutes

"**Statutes are presumed constitutional**." *SeaRiver Mar. Fin. Holdings, Inc. v. Mineta*, 309 F.3d 662, 669 (9th Cir. 2002) (emphasis added); *see also Heller v. Doe*, 509 U.S. 312, 320, 113 S.Ct. 2637, 125 L.Ed.2d 257 (1993).

In determining the constitutional validity of a statute or ordinance, the court "**may only look to its terms, to the intent expressed by Members of Congress who voted its passage, and to the existence or nonexistence of legitimate explanations for its apparent effect**." *Nixon v. Adm'r of Gen. Servs.*, 433 U.S. 425, 484, 97 S. Ct. 2777, 2811, 53 L. Ed. 2d 867 (1977) (emphasis added); *Citizens Union of City of New York v. Att'y Gen. of New York*, 269 F. Supp. 3d 124, 140 (S.D.N.Y. 2017) ([The government defendants] correctly point out that, in other First Amendment cases, numerous courts have recognized that the bill text, legislative record and other public materials are the primary source for discerning the governmental interest in the legislation (regardless of the standard of review applied)."); *New York v. Ferber*, 458 U.S. 747, 757–59, 102 S.Ct. 3348, 73 L.Ed.2d 1113 (1982) (relying on the legislative history and other public sources as supplying the governments' basis for enacting the challenged law and holding "[w]e shall not second-guess this legislative judgment"); *City of Las Vegas v. Foley*, 747 F.2d 1294, 1297 (9th Cir. 1984) (for a First Amendment case, "[t]he **relevant governmental interest is determined by objective indicators** as taken from the face of the statute, the effect of the statute, comparison to prior law, facts surrounding enactment of the statute, the stated purpose, and the record of proceedings.") (emphasis added); *Allstate Ins. Co. v. Serio*, No. 97-cv-620 (SS) (THK), 1998 WL 477961, at *5 (S.D.N.Y. Aug. 13, 1998) ("[a]s is traditionally done, **inquiry into the constitutionality of [the challenged provision] can be conducted on the basis of the statutory scheme, the legislative history, [and] other publicly available material** ...") (emphasis added); *All. of Auto. Mfrs., Inc. v. Jones*, No. 4:08-cv-555 (MCR) (CAS), 2013 WL 4838764, at *4–5 (N.D. Fla. Sept. 11, 2013) ("**Legislative history is the primary source for determining legislative intent**") (emphasis added); *see also Nat'l Ass'n of Mfrs. v. Taylor*, 582 F.3d 1, 13–13 (D.C. Cir. 2009) (**courts may look to the legislative history to discern the government's interest, but should only do so when the statutory text itself is ambiguous**); Legislative Purpose and Federal Constitutional Adjudication, 83 Harv. L. Rev. 1887, 1903 (1970) ("Examining motives, it is said, involves inquiry into the subjective reasons for legislative action; purpose, on the other hand, denotes what the legislature sought to achieve, and not why. Purpose is derived from the terms of a statute, its operation, and the legal and practical context in which it was enacted. **To determine purpose, the court may consider both the language of the statute and general public knowledge about the evil which the legislature sought to remedy; prior law; accompanying legislation; enacted statements of purpose; formal public pronouncements; and internal legislative history**.") (emphasis added); *City of Seattle v. Webster*, 115 Wash. 2d 635, 640, 802 P.2d 1333, 1337 (1990) ("Facts are not essential for consideration of a facial challenge to a statute or ordinance on First Amendment grounds. Constitutional analysis is made upon the language of the ordinance or statute itself.") (footnotes omitted).

Accordingly, the case law is clear that first amendment constitutional challenges such as the instant lawsuit can be decided on the face of the statute and other publicly available information and facts. Therefore, any written discovery which seeks information that is not a matter of public record is per se irrelevant and disproportionate to the needs of the case, which is to say nothing of other forms of privilege which may apply like legislative and deliberative process privileges.

The Court's Position on the Party's Relative Burdens

In its Order [51] denying Plaintiffs' Motions for Preliminary Injunction and for TRO and granting in part and denying in part Defendant Clark County's Motion to Dismiss, the Court provided clear guidance on the relative burdens of the parties and the positions of the parties that required additional factual support before the Court could properly rule on them.

In the Court's view, the Plaintiffs' burden is "to demonstrate 'from the **text of [the law] and from actual fact**' that substantial overbreadth exists." [ECF No. 51] at 25:15-17 (citing *N.Y. State Club Ass'n, Inc. v. City of N.Y.*, 487 U.S. 1, 14 (1988)) (emphasis added). Actual fact of overbreadth can be determined from the amount of area affected by the pedestrian flow zone ordinance versus areas that are unaffected and identifying the type of speech, if any, that may require stopping or standing. Non-public e-mail communications or requests for the County to define words in the ordinance are irrelevant to Plaintiffs satisfying their burden in this matter.

As it pertains to the County, the Court indicated that the County's duty is to "'demonstrate that the recited harms are real, not merely conjectural, and that the regulation will in fact alleviate these harms in a direct and material way.'" [ECF No. 51] at 30:9-11 (citing *Porter*, 68 F.4th at 443); *see also id* at 32:10-11 ("While **the burden on the County is not heavy**, it requires more than the County offers here.) (emphasis added). Again, the County's burden is satisfied by the issues identified in the legislative history on the need for the subject ordinance and related legislation and the logical connection between the subject ordinance and those issues.

Therefore, it is clear, not only from case law, but also from the Court's own order, the issues raised in Plaintiff's complaint may be resolved with minimal additional information which can be found in the text of the ordinance, the legislative history, and matters of public fact.

Motion for Protective Order and Interlocutory Appeal Pursuant to § 1292(b)

Given the scope of relevant discovery in this matter, the County was shocked to receive Plaintiffs' 82 requests for production, which included multiple discrete subparts, and which would place a heavy burden on the County and its resources. What's worse, however, is

that these requests sought materials which are neither relevant nor admissible in this matter and which are disproportionate to the needs of the case.

In the past five years the only time the County has seen this many requests for production was in opioid litigation which included numerous defendants and a complex factual history covering decades and litigation over a land-use decision which was based on more than 20 years of interactions between the property owner and the County and multiple prior lawsuits. In light of this, Plaintiffs' discovery feels more like a bad faith abuse of process than a genuine attempt to conduct relevant discovery on a question of law.

Plaintiffs' interrogatories were similarly problematic—impermissibly seeking legal conclusions, definitions of words undefined in ordinance, and the subjective motives of the legislators who passed the subject ordinance.

If Plaintiffs elect to file a motion to compel responses to their overly burdensome written discovery, the County intends to file a countermotion for protective order and to seek fees and costs associated with responding to Plaintiffs' motion because the County can find no case law supporting that Plaintiffs would be entitled to the discovery they're seeking in other First Amendment challenges to the constitutionality of a statute or ordinance.

Furthermore, if the Court for whatever reason, denies Defendant's motion for protective order—the County will seek interlocutory appeal pursuant to 28 U.S.C. § 1292(b) because whether the documents Plaintiffs seek are discoverable or relevant is the type of issue in litigation where the bell can't be unrung and, given the extensive case law cited above, the County believes there is substantial ground for difference of opinion on this question of law warranting review by the Ninth Circuit. *See*, *e.g.*, *Reese v. BP Expl. (Alaska) Inc.*, 643 F.3d 681, 688 (9th Cir. 2011) (28 U.S.C. § 1292(b)).

First Amended Complaint

The foregoing issues notwithstanding, Clark County is eager to see this case resolved on the merits and, if an appeal lies, to see that the appeal proceed on the merits of the case and not some procedural aspect of discovery.

In reviewing Plaintiffs' proposed First Amended Complaint, the County has some concerns. First, Ms. McAllister's only claims in the case pertained to her potential ADA claims and now those claims are dismissed. It seems reasonable to amend the caption and the complaint to remove reference to Ms. McAllister as a party moving forward.

Given the representations in the Complaint and some independent research, it is upon information and belief that Mr. Summers no longer resides in Las Vegas and has not been back to Las Vegas since the summer. It is upon information and belief that he is employed full-time in Chicago and intends to reside there hereafter. Accordingly, it is not clear that Mr. Summers can satisfy the requirements to serve as a Plaintiff in this matter either.

Rather than file a 12(b)(1) motion to dismiss Mr. Summers and opposing Plaintiffs' motion for leave to amend the complaint, insisting instead that a new complaint be filed, the County would be willing to stipulate amending the complaint and substituting the current parties with the new party subject to certain conditions if Plaintiffs are amenable.

We look forward to the opportunity to address these concerns the meet and confer and hope that we can come to an agreement on these issues without the need to involve the Court in the process.

Best regards,

/s/ Joel K. Browning

Deputy District Attorney Joel K. Browning
Attorney of Record for:
Clark County

EXHIBIT C

December 24, 2024

VIA EMAIL ONLY
Joel K. Browning, Senior Deputy District Attorney
Clark County District Attorney's Office
500 South Grand Central Pkwy., Suite 5075
Las Vegas, Nevada 89155-2215
Telephone (702) 455-4761
E-Mail: Joel.Browning@ClarkCountyDA.com

ACLU
AMERICAN CIVIL LIBERTIES UNION
Nevada

4362 W. CHEYENNE AVE.
NORTH LAS VEGAS, NV 89032
P/702.366.1226
ACLUNV@ACLUNV.ORG

WWW.ACLUNV.ORG

Re: *McCallister et al vs. Clark County*, U.S. District Court *Case Number: 2:24-cv-00334*
Follow-up from 12/19/24 telephonic meet and confer

Hello Joel:

I am following up from our meet and confer on December 19, 2024, to memorialize the discussion, which followed our meet and confer letters regarding the County's responses to written discovery and our request that you stipulate to the filing of our proposed First Amended Complaint. Thank you for the time you spent discussing these issues. Please let me know as soon as possible— and no later than December 30, 2024— if you believe anything below is inaccurate or if the County has changed its positions taken on December 19, 2024 (and responses and prior correspondence).

In light of the unresolved issues set forth below and the Parties drastically divergent positions, Plaintiffs are filing a Motion to Compel seeking supplementation and associated sanctions, including but not limited to fees and costs. Plaintiffs also reserve all other rights, such as the right to seek evidentiary sanctions for nondisclosure and failure to cooperate with discovery.

I. Timing and Attendance

The teleconference lasted from 1 PM until 2:40 PM. You and Timothy Allen were present on behalf of the Defendant. Maggie McLetchie, Jacob Smith, Tatiana Smith, and I were present on behalf of the Plaintiffs.

II. First Amended Complaint

We first briefly discussed your concerns related to the proposed First Amended Complaint. You agreed to stipulate to the proposed amended complaint if the stipulation made clear the Plaintiffs were not seeking damages as a remedy pursuant to that complaint. We agreed to that condition, and the parties thereafter agreed to a stipulation. Thank you for resolving those issues with us and helping avoid motion practice on this issue.

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AMERICAN CIVIL LIBERTIES UNION
Nevada

4362 W. CHEYENNE AVE.
NORTH LAS VEGAS, NV 89032
P/702.366.1226
ACLUNV@ACLUNV.ORG

WWW.ACLUNV.ORG

III. Unresolved Disputes Regarding Specific Discovery

The following issues regarding specific issues were discussed during our meet and confer, but we did not resolve any of the disputes detailed in our meet ad confer letter. The County's positions were informed by some of the global positions it took, discussed below (IV).

a. Scope of discovery related to the County's interests in passing CCC 16.13.030

All parties agree that whether the County had a real substantial interest in passing CCC 16.13.030 is relevant to this matter. However, parties continue to dispute what information is relevant to that inquiry. The County believes that the relevant information is limited what the legislators formally knew at the time they passed CCC 16.13.030 and is reflected on the record, meaning that discovery is limited to (1) the language of CCC 16.13, and (2) the official record related to the passage of CCC 16.13 (i.e. CCC 16.13's legislative history). This would include testimony before the County Commission and documents formally filed before the Commission during the legislative process but would not include any other documents. The County's position is that the accuracy of the testimony or documentation in the record is irrelevant; rather the issue is whether the County identified a substantial interest justifying the burden CCC 16.13.030 places upon First Amendment activity and that interest is supported by evidence on the record related to CCC 16.13.030.

Plaintiffs believe that they have the right to meaningfully litigate as to whether the County's evidence that it has asserted meets its burden by challenging., *inter alia,* whether the interests asserted by the County in passing CCC 16.13.030 were in reality issues that needed to be addressed as well as the fit between the asserted harms and the ordinance. For example, Plaintiffs believe that they may use documents and other information not necessarily presented before the Commission to show that the Bridges did not have issues related to traffic congestion at the time the County passed CCC 16.13.030. Plaintiffs believe that they are also entitled to challenge the accuracy of the information presented before the Commission, and that Commission may not rely on inaccurate information in passing CCC 16.13.030 even if the information appeared accurate on its face in the record. Likewise, the County cannot rely on pretext to violate the Constitution.

b. Interrogatories asking for County to define terms used in CCC 16.13

In their interrogatories, Plaintiffs asked the County to clarify a number of terms related to the County's statements in CCC 16.13.010 related to the County's stated purposes in passing CCC 16.13.030. During the meet and confer, Plaintiffs specifically asserted that terms such as "disorderly offenses", "criminal disorder", and "captive audiences" were part of factual statement made in CCC 16.13.010 related to the interests asserted by the County to justify the passage of CCC 16.13.030, and that the Plaintiffs were entitled to clarification regarding the scope of these stated purposes in passing CCC 16.13.030.

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AMERICAN CIVIL LIBERTIES UNION
Nevada

4362 W. CHEYENNE AVE.
NORTH LAS VEGAS, NV 89032
P/702.366.1226
ACLUNV@ACLUNV.ORG

WWW.ACLUNV.ORG

The County stated that these requests were asking for legal conclusions from counsel, and that the County could not provide a more specific definition than that provided in the Clark County Code related to CCC 16.13. The County explained that it could not define the terms used in CCC 16.13 because the individual County Commissioners may have different understandings of what the words meant, and the County could not replace the Commissioners' understanding of the terms with its own.

Though we conferred at length regarding the scope of discovery related to this issue, we did not resolve this dispute.

c. Intended enforcement of CCC 16.13.030

In relation to Plaintiffs Interrogatory #4, Plaintiffs believe that how the County intends for CCC 16.13.030 to be enforced, including what activities should be excluded from enforcement, is relevant to Plaintiffs First Amendment and Fourteenth Amendment claims.

First, the County's position is that it is not in a position to answer this interrogatory because the agency that enforces CCC 16.13.030 (LVMPD) does not fall within the County's jurisdiction. Second, the County does believe that this inquiry is irrelevant; the County believes that the relevant inquiry is how the County Commission objectively intended for CCC 16.13.030 to be enforced at the time of passage (as in, what was specifically provided on the record at the time CCC 16.13.030 was passed), not how entities have enforced or intended for CCC 16.13.030 since passage.

IV. Other issues

The following issues, which animated the Parties' positions set forth above, were also discussed during our meet and confer. Specific requests were also discussed by Plaintiffs as examples of discovery requests that unquestionably fell within the scope of discovery contemplated.

We talked at length but did not resolve any of the disputes.

a. Overall scope of discovery

Both Parties presented their positions about the scope of discovery.

Plaintiffs believe that they have the right to meaningfully litigate as to whether the County's evidence that it has asserted meets its burden by challenging., *inter alia,* whether the interests asserted by the County in passing CCC 16.13.030 were in reality issues that needed to be addressed as well as the fit between the asserted harms and the ordinance. For example, Plaintiffs believe that they may use documents and other information not necessarily presented before the Commission to show that the Bridges did not have issues related to traffic congestion at the time the County passed CCC 16.13.030. Plaintiffs believe that they are also entitled to challenge the accuracy of the information presented before the Commission, and that Commission may not rely on inaccurate information in passing CCC 16.13.030-- even if the information appeared accurate on its face in the record.

ACLU
AMERICAN CIVIL LIBERTIES UNION
Nevada

4362 W. CHEYENNE AVE.
NORTH LAS VEGAS, NV 89032
P/702.366.1226
ACLUNV@ACLUNV.ORG

WWW.ACLUNV.ORG

Plaintiffs, in response to the County's letter, pointed out that the County's argument raised in its letter that it could seek interlocutory relief if ordered to produce anything further because it would be irreparable harm and a bell that could not be "unrung" was baseless since any person was likely entitled to the records under Nevada's Public Records Act, a point the County indicated was irrelevant.

Plaintiffs discussed the Court's Order finding the County's prior motion to stay—which raised near identical issues as the County raised in its response to our meet and confer letter and that the County raised during the call. While the County's motion to stay discovery, the Court "considered it to dispel the County's misguided notion that cases involving facial challenges need no discovery at all.." (ECF No. 51, p.38:7-8.) While of course this case involves more claims than just a First Amendment facial claim, even with regard to that limited claim, the Court explained:

> At a minimum, development of the factual record is needed to determine whether CCC 16.13.030's unconstitutional applications are substantial when compared to its constitutional ones—a threshold question for plaintiffs' facial challenges.

(*Id.* at 9-11 (footnote omitted).) The Court went on to point out that the case also involved an as-applied First Amendment challenge, and further explained that:

> … discovery is necessary to determine (1) whether the County has met its burden to show that the ordinance responds to a real, rather than speculative, significant government interest; (2) whether the ordinance is narrowly tailored to that interest when compared to other narrower laws that prohibit similar conduct and whether the County considered alternatives that would have had a lesser impact on speech; and (3) whether ample alternatives truly exist for First Amendment activity on the Strip

(*Id.* at p. 38: 11-p. 39:-1 (footnote omitted).) While Plaintiffs explained that the discovery they sought was largely designed to address the issues, the County contended Plaintiffs were only entitled to the legislative record and "facts" such as the sidewalk measurements the County produced after Plaintiffs' meet and confer letter was received, but nothing else from the County (but that Plaintiffs could search other sources such as TikTok).

We conferred at length regarding these issues regarding the scope of discovery, but we did not resolve this disputes, as also detailed above.

b. Unclear responses and County's lack of searches; Plaintiffs' offer to work together to alleviate burdens.

In response to Plaintiffs' contentions that the responses did not generally make clear what was and wasn't being provided (and provide privilege logs) and that confusion about the discovery was further compounded by the County's reservation of rights to produce

ACLU
AMERICAN CIVIL LIBERTIES UNION
Nevada

4362 W. CHEYENNE AVE.
NORTH LAS VEGAS, NV 89032
P/702.366.1226
ACLUNV@ACLUNV.ORG

WWW.ACLUNV.ORG

records later, the County explained that, should the Court disagree with its positions, it could then produce and rely on information not previously produced. Plaintiffs disagreed that this was a permissible approach. The County, claiming burden, also claimed it had not done searches in response to the requests, other than the legislative record and certain specific information like the sidewalk measurements.

The County had objected to many of Plaintiffs' requests for production as overbroad, and in particular requests for communications, in that they did not provide a sufficiently limited scope. Specifically, the County stated that many of the requests needed additional limitations such as specific email accounts, time periods, and/or keywords for the County to search before it could satisfy the requests.

Plaintiffs offered to work together to narrow custodians and to craft electronic discovery searches; Plaintiffs also offered to discuss potential limits on specific requests for production. The County stated that such a discussion would be premature considering the County's position regarding what information would be relevant to the Plaintiffs claims, specifically that only the ordinance's language, the legislative history, and the public record is relevant, and the Court would need to determine that other information would be relevant the Plaintiffs' claims before the County would discuss limiting the Plaintiff's requests for production. While, thus, the County refused to do so unless and until the Court granted Plaintiffs' order on their planned motion to compel, Plaintiffs disagreed that this was a permissible approach.

Plaintiffs raised related preservation issues, and while that your preservation notices have not yet been disclosed, you indicated you would check as to whether you could produce preservation notices (which you preliminarily thought was appropriate).

c. Assertion of privilege related to Professor Souza

Plaintiffs further explained that they did not believe that the expert witness privilege applied to Souza's work prior to the passage of CCC 16.13.030 and observed that Souza's retainer for that work made no reference to litigation and that the County had listed Souza as a fact witness.

The County responded that, while it had not formally retained Souza as an expert for this litigation (and indicated it would not do so unless the Court ruled in Plaintiff's favor on the related issues discussed herein), all work by Souza performed was made in anticipation of litigation as the Executive Director of the ACLU of Nevada threatened to sue the County prior to the passage of CCC 16.13.030 both in relation to that bill and similar bills. Plaintiffs contested the validity of this position.

The County did clarify that it had disclosed the factual information provided by the County to Souza and that the County did not have the documentation that Souza relied upon from other agencies such as LVMPD.

V. Agreed-upon Supplemental Response and Other Follow up

While most issues were not resolved, some progress was made (and some motion practice this avoided).

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AMERICAN CIVIL LIBERTIES UNION
Nevada

4362 W. CHEYENNE AVE.
NORTH LAS VEGAS, NV 89032
P/702.366.1226
ACLUNV@ACLUNV.ORG

WWW.ACLUNV.ORG

First, as noted above, the County also indicated it was inclined to disclose the preservation notice that it provided to County employees to ensure that the documents requested by Plaintiffs would be preserved during the discovery dispute but would need to check with Lisa Logsdon, County counsel. Please let us know the status.

Second, the County agreed to the following regarding Plaintiff's discovery requests, and that the County would complete supplemental responses in the manner set forth on the table below by January 9, 2025.

Discovery request	**Agreed upon follow up**
Interrogatory responses where the County cited to specific documents previously disclosed as responsive to the interrogatory.	The County agreed to review the interrogatory responses to determine whether it could or would clarify why the citations were responsive. If The County would provide clarification where possible.
Requests for production #1 – 17	The County agreed to follow up with the Clark County District Attorney's Office's Criminal Division to determine if that agency had responsive documents. The County observed that the Criminal Division may refuse to disclose the documents as it is typically considered separate from the rest of the County government.

Besides the follow up discussed above, the County stated that it did not intend to change its response to any other outstanding request from Plaintiffs at this time.

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VI. The County's Proposed Extension

The Parties discussed potential stipulation to extend discovery deadlines. Plaintiffs believed that the stipulation was premature but was open to further discussion regarding a potential reasonable stipulation in January after the County followed upon on the requests discussed above. Please note that Plaintiffs disagree with the County's position that (other than the limited responses noted above) the County can or should wait to make appropriate responses and disclosures—or perform appropriate searches—until further Court order.

Sincerely,

ACLU
AMERICAN CIVIL LIBERTIES UNION
Nevada

4362 W. CHEYENNE AVE.
NORTH LAS VEGAS, NV 89032
P/702.366.1226
ACLUNV@ACLUNV.ORG

WWW.ACLUNV.ORG

Christopher Peterson
Legal Director
ACLU of Nevada
peterson@aclunv.org
P: 702.366.1902
C: 702.518.4202