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10 UNITED STATES DISTRICT COURT

11 DISTRICT OF NEVADA

12 LISA MCALLISTER, an individual; and )  
13 BRANDON SUMMERS, an individual; )  
13 JORDAN POLOVINA, an individual, )  
14 Plaintiffs, ) Case No: 2:24-cv-00334  
15 vs. )  
16 CLARK COUNTY, a political subdivision )  
16 of the state of Nevada. )  
17 )  
18 Defendant(s). )

**MOTION TO DISMISS PLAINTIFFS**  
**SUMMERS' AND POLOVINAS' AS-**  
**APPLIED CHALLENGES IN THE**  
**FIRST AMENDED COMPLAINT**  
**[61] PURSUANT TO FRCP 12(B)(1)**

20 Defendant CLARK COUNTY, by and through its counsel of record, hereby files this  
21 Motion to Dismiss Plaintiffs Brandon Summers' and Jordan Polovina's "As-Applied"  
22 Challenges in the First Amended Complaint ("FAC") [61] pursuant to Fed. R. Civ. P. 12(b)(1)  
23 and 12(b)(6).

24 This Motion is made and based upon the attached Memorandum of Points and  
25 Authorities, all papers and pleadings on file herein, and oral arguments permitted by the Court  
26 at a hearing on the matter, if any.

27 / / /

28 / / /

## MEMORANDUM OF POINTS AND AUTHORITIES

I.

## **PROCEDURAL POSTURE**

4 On or around January 6, 2025, Plaintiffs LISA MCALLISTER, BRANDON  
5 SUMMERS, and JORDAN POLOVINA (hereinafter collectively “Plaintiffs”) filed their First  
6 Amended Complaint [61] (hereinafter “FAC”) in this matter. *See generally* [ECF No. 61].  
7 Defendant CLARK COUNTY was the only defendant identified in the FAC. *Id.* As the  
8 deadline to amend pleadings and add parties lapsed on or around January 2, 2025, the FAC is  
9 Plaintiffs’ final and operative pleading in this matter. [ECF No. 63] at 3:28.

10 The FAC contains four causes of action: 1. Violation of the Fourteenth Amendment of  
11 the United States Constitution; 2. Violation of Article 1, Section 8 of the Nevada Constitution;  
12 3. Violation of the First Amendment of the United States Constitution (Facial Challenge for  
13 all Plaintiffs; As-Applied Challenge for Plaintiffs Summers and Polovina); and 4. Violation of  
14 Article 1, Section 9 of the Nevada Constitution. [ECF No. 61] at 13:3-26:9. This motion to  
15 dismiss is directed strictly at the as-applied challenges raised by Plaintiffs Summers and  
16 Polovina. *Id.* at 19:8-22:19.

17 Plaintiffs Summers and Polovina contend generally that playing the violin and cello,  
18 respectively, requires that they stop and induce others to stop to listen and to provide donations  
19 in Pedestrian Flow Zones and, accordingly, CCC 16.13.030 is unconstitutional as applied to  
20 them. [ECF No. 61] at 19:8-22:19. Plaintiffs' Prayer for Relief, however, is silent on the relief  
21 requested from the Court on these as-applied challenges—seeking only to have the ordinance  
22 declared unconstitutional and enjoined in its entirety. *Id.* at 26:10-22.

II.

## NATURE OF MOTION

25 To qualify for Article III standing before the federal courts, a Plaintiff must establish  
26 three distinct elements. The first element requires that a plaintiff must have suffered an injury-  
27 in-fact that is “concrete,” “particularized,” and “actual or imminent, not speculative.” *Food &*  
28 *Drug Admin. v. All. for Hippocratic Med.*, 602 U.S. 367, 381, 144 S. Ct. 1540, 1556, 219 L.

1 Ed. 2d 121 (2024). Second, a plaintiff must establish that their injury was likely “caused or  
 2 likely will be caused by the defendant's conduct.” *Food & Drug Admin. v. All. for Hippocratic*  
 3 *Med.*, 602 U.S. 367, 382, 144 S. Ct. 1540, 1556, 219 L. Ed. 2d 121 (2024). Third, there must  
 4 be a likelihood that the alleged injury would be redressed by the requested judicial relief. *Food*  
 5 & *Drug Admin. v. All. for Hippocratic Med.*, 602 U.S. 367, 380, 144 S. Ct. 1540, 1555, 219  
 6 L. Ed. 2d 121 (2024); *Summers v. Earth Island Inst.*, 555 U.S. 488, 492, 129 S. Ct. 1142, 1148,  
 7 173 L. Ed. 2d 1 (2009).

8 In defining what an “as-applied challenge” is, the courts have indicated that “An as-  
 9 applied challenge contends that the law is unconstitutional as applied to the litigant's particular  
 10 speech activity, even though the law may be capable of valid application to others.” *Foti v.*  
 11 *City of Menlo Park*, 146 F.3d 629, 635 (9th Cir. 1998). “The distinction is both instructive and  
 12 necessary, for it goes to the breadth of the remedy employed by the Court [...].” *Citizens*  
 13 *United v. Fed. Election Comm'n*, 558 U.S. 310, 331, 130 S. Ct. 876, 893, 175 L. Ed. 2d 753  
 14 (2010). “A successful as-applied challenge **bars a law's enforcement** against a particular  
 15 plaintiff[.]” *Bruni v. City of Pittsburgh*, 824 F.3d 353, 362 (3d Cir. 2016) (emphasis added).

16 While, as this Court has pointed out, the Ninth Circuit has recognized “as-applied”  
 17 challenges in situations where no enforcement action has yet been taken; those cases all  
 18 involve the entity responsible for the enforcement of the ordinance or statute being named as  
 19 a defendant in the action. *See* [ECF No. 51] at 28:9-11; *see also Real v. City of Long Beach*,  
 20 852 F.3d 929, 934 (9th Cir. 2017); *Project Veritas v. Schmidt*, 125 F.4th 929, 940 (9th Cir.  
 21 2025), cert. denied sub nom. *Project Veritas v. Vasquez*, No. 24-1061, 2025 WL 2823711  
 22 (U.S. Oct. 6, 2025).

23 Here, as Plaintiffs have failed to name the Las Vegas Metropolitan Police Department  
 24 (“LVMPD”) and Clark County exercises no control over the policy or procedures of LVMPD,  
 25 which is a separate legal entity, any successful as-applied challenge in this case would serve  
 26 as nothing more than an impermissible advisory opinion and provide no redressability to  
 27 Plaintiffs. Accordingly, Plaintiffs' as-applied challenges fail to qualify for Article III standing  
 28 making their as-applied challenges ripe for dismissal under a Fed. R. Civ. P. 12(b)(1) standard.

II.

## **STANDARD OF REVIEW**

3 “Dismissal under Rule 12(b)(1) is appropriate if the complaint, considered in its entirety,  
4 fails to allege facts on its face that are sufficient to establish subject matter jurisdiction.”  
5 *Charleston v. Nevada*, 423 F. Supp. 3d 1020, 1025 (D. Nev. 2019), aff’d, 830 F. App’x 948  
6 (9th Cir. 2020) (citing *In re Dynamic Random Access Memory (DRAM) Antitrust Litigation*,  
7 546 F.3d 981, 984–85 (9th Cir. 2008)).

8       “Although the defendant is the moving party in a motion to dismiss brought under Rule  
9 12(b)(1), the plaintiff is the party invoking the court's jurisdiction. As a result, the plaintiff  
10 bears the burden of proving that the case is properly in federal court.” *Charleston v. Nevada*,  
11 423 F. Supp. 3d 1020, 1025 (D. Nev. 2019), aff'd, 830 F. App'x 948 (9th Cir. 2020); *see also*  
12 *McCauley v. Ford Motor Co.*, 264 F.3d 952, 957 (9th Cir. 2001); *McNutt v. General Motors*  
13 *Acceptance Corp.*, 298 U.S. 178, 189, 56 S.Ct. 780, 80 L.Ed. 1135 (1936)).

III.

## **LEGAL ARGUMENTS**

**A. To Qualify for Article III Standing Plaintiffs' As-Applied Challenges must be Redressable by Clark County pursuant to the Judicial Relief Sought**

18        “To establish standing, as this Court has often stated, a plaintiff must demonstrate (i)  
19 that she has suffered or likely will suffer an injury in fact, (ii) that the injury likely was caused  
20 or will be caused by the defendant, and (iii) that the injury likely would be redressed by the  
21 requested judicial relief.” *Food & Drug Admin. v. All. for Hippocratic Med.*, 602 U.S. 367,  
22 380, 144 S. Ct. 1540, 1555, 219 L. Ed. 2d 121 (2024). “[N]o federal court has jurisdiction  
23 to enter a judgment unless it provides a remedy that can redress the plaintiff’s injury.”  
24 *Uzuegbunam v. Preczewski*, 592 U.S. 279, 291, 141 S. Ct. 792, 801, 209 L. Ed. 2d 94 (2021)  
25 (emphasis added). Moreover, “[a] plaintiff must demonstrate standing separately for each form  
26 of relief sought.” *Mayfield v. United States*, 599 F.3d 964, 969 (9th Cir. 2010); *see also*  
27 *Gonzalez v. Immigr. & Customs Enf’t*, No. CV1304416BROFFMX, 2014 WL 12605369, at  
28 \*4 (C.D. Cal. Oct. 24, 2014).

1       “To determine whether an injury is redressable, a court will consider the relationship  
 2 between the judicial relief requested and the injury suffered.” *California v. Texas*, 593 U.S.  
 3 659, 671, 141 S. Ct. 2104, 2115, 210 L. Ed. 2d 230 (2021) (internal quotation marks omitted).  
 4 “If [...] a favorable judicial decision **would not require the defendant to redress** the  
 5 plaintiff’s claimed injury, **the plaintiff cannot demonstrate redressability.**” *M.S. v. Brown*,  
 6 902 F.3d 1076, 1083 (9th Cir. 2018) (emphasis added); *see also Mayfield v. United States*, 599  
 7 F.3d 964, 971 (9th Cir. 2010) (“When the lawsuit at issue challenges the legality of  
 8 government action, and the plaintiff has been the object of the action, then it is presumed **that**  
 9 **a judgment preventing the action will redress his injury.**”) (emphasis added).

10       Accordingly, in order to establish the redressability prong of Article III standing for the  
 11 purpose of maintaining an as-applied challenges against Clark County, Plaintiffs must  
 12 demonstrate that the relief they seek from the Court would sufficiently redress their claimed  
 13 injury and that the redress sought could be provided to them by Clark County—an entity  
 14 subject to the Court’s jurisdiction in this action.

15       As-applied challenges, however, are those which seek to preclude the enforcement of  
 16 a law under a specific set of facts against a specific person; in this case the application of CCC  
 17 16.13.030 to Plaintiffs Summers and Polovina. Clark County, however, is not the entity  
 18 responsible for enforcing CCC 16.13.030 at the street level—LVMPD is. Accordingly, even  
 19 if this Court were to find that Plaintiffs’ as-applied challenges were meritorious and issue an  
 20 order to that effect, such an order would be directed at Clark County, the only defendant in  
 21 this matter. As Clark County does not direct the policy or practices of LVMPD with respect  
 22 to law enforcement, however, such an order would serve as nothing more than an advisory  
 23 opinion not redressable by Defendant Clark County.

24       **B. The Relief Sought in Plaintiffs’ As-Applied Challenges is the Preclusion of  
 25 Enforcement of CCC 16.13.030 on Plaintiffs Summers and Polovina**

26       “Facial and as-applied challenges differ *in the extent* to which the invalidity of a statute  
 27 need be demonstrated.” *Legal Aid Servs. of Or. v. Legal Servs. Corp.*, 608 F.3d 1084, 1096  
 28 (9th Cir.2010) (citation and internal quotation marks omitted). “The distinction is both

1 instructive and necessary, for it goes to the breadth of the remedy employed by the Court, not  
 2 what must be pleaded in a complaint.” *Citizens United v. Fed. Election Comm'n*, 558 U.S. 310,  
 3 331, 130 S. Ct. 876, 893, 175 L. Ed. 2d 753 (2010).

4       **“A successful as-applied challenge bars a law's enforcement against a particular**  
 5 plaintiff[.]” *Bruni v. City of Pittsburgh*, 824 F.3d 353, 362 (3d Cir. 2016) (emphasis added);  
 6 *see also Fed. Election Comm'n v. Wisconsin Right To Life, Inc.*, 551 U.S. 449, 481, 127 S. Ct.  
 7 2652, 2673, 168 L. Ed. 2d 329 (2007) (holding that enforcement of a statute by the Federal  
 8 Election Commission prohibiting “electioneering communications” **could not be**  
 9 **constitutionally enforced** on three specific ads which did not endorse voting for a specific  
 10 candidate.); Richard H. Fallon, Jr., *As-Applied and Facial Challenges and Third-Party*  
 11 *Standing*, 113 Harv. L. Rev. 1321, 1327 (2000) (“In a nutshell, everyone has a personal right,  
 12 independent of third-party standing, **to challenge the enforcement** of a constitutionally  
 13 invalid statute against [themselves].”) (emphasis); *CMR D.N. Corp. v. City of Philadelphia*,  
 14 703 F.3d 612, 624 (3d Cir. 2013) (“In the case of an as applied challenge, the remedy is an  
 15 injunction **preventing the unconstitutional application of the regulation to the plaintiff's**  
 16 **property and/or damages....”**) (internal quotation marks omitted) (emphasis added); *United*  
 17 *States v. Brooks*, 341 F. Supp. 3d 566, 600 (W.D. Pa. 2018); *Doe #1 v. Lee*, 518 F. Supp. 3d  
 18 1157, 1179 (M.D. Tenn. 2021) (“When a plaintiff succeeds in an as-applied challenge, the law  
 19 may not be applied to the plaintiff [...]”); *Bennett v. St. Louis Cnty., Missouri*, 542 S.W.3d 392,  
 20 397 (Mo. Ct. App. 2017); *CMR D.N. Corp. v. City of Philadelphia*, 703 F.3d 612, 624 (3d Cir.  
 21 2013).

22       Accordingly, by bringing as-applied challenges to CCC 16.13.030, Plaintiffs Summers  
 23 and Polovina are seeking to preclude the enforcement of CCC 16.13.030 against them based  
 24 on their own individual circumstances as violin and cello players who allegedly must stop in  
 25 order to perform in the designated Pedestrian Flow Zones. Any remedy from the Court on  
 26 these as-applied challenges would be injunctive relief tailored to the application of CCC  
 27 16.13.030 to their specific circumstances, rather than an invalidation of the ordinance as a  
 28 whole.

1           **C. Because As-Applied Challenges Preclude Enforcement of Laws, They must**  
 2           **Necessarily be Directed at the Agency Responsible for the Enforcement of the**  
 3           **Ordinance or Statute**

4           It goes without saying that to preclude enforcement of a law or ordinance, an as-applied  
 5           challenge must be directed at the body responsible for enforcement of the law and not the body  
 6           that enacted the legislation. In *Foti v. City of Menlo Park*, the Plaintiffs brought as-applied  
 7           challenges to the City's enforcement, through its internal police department, of the size of  
 8           signs which could be used while picketing outside of Planned Parenthood when one of their  
 9           oversized signs was confiscated. 146 F.3d 629, 634 (9th Cir. 1998), as amended on denial of  
 10           reh'g (July 29, 1998).

11           In *Fed. Election Comm'n v. Wisconsin Right To Life, Inc.*, the Plaintiffs brought an as-  
 12           applied challenge against the Federal Election Commission (FEC) —the enforcement agency  
 13           for election laws—rather than against the congress that enacted them—to preclude  
 14           enforcement of allegedly unconstitutional election laws against them. 551 U.S. 449, 481, 127  
 15           S. Ct. 2652, 2673, 168 L. Ed. 2d 329 (2007).

16           *Citizens United v. Fed. Election Comm'n* involved a nonprofit corporation which  
 17           brought action against the FEC to preclude the enforcement of civil and criminal penalties if  
 18           it made a film regarding a candidate seeking nomination as a political party's candidate. 558  
 19           U.S. 310, 130 S. Ct. 876, 175 L. Ed. 2d 753 (2010). Again, the associated as-applied challenge  
 20           was brought against the enforcement agency and not congress.

21           In *Real v. City of Long Beach*, a man brought an as-applied challenge against the City  
 22           of Long Beach to preclude enforcement of its zoning ordinances which limited the locations  
 23           of tattoo parlors—zoning ordinances which were enforced by the city's internal police  
 24           department and code enforcement divisions. 852 F.3d 929, 932 (9th Cir. 2017).

25           Here, Plaintiffs bring as-applied challenges against a sole defendant—Clark County.  
 26           Clark County, however, is not the entity responsible for the enforcement of CCC 16.13.030.  
 27           Unlike many jurisdictions like Henderson or North Las Vegas, which rely on law enforcement  
 28           agencies that are non-suable departments within the public entity and which are led by a chief

1 that serves at the pleasure of the mayors and city councils and, accordingly, must take direction  
 2 therefrom, the law enforcement entity responsible for enforcing the law in Clark County and  
 3 the City of Las Vegas is LVMPD—a separate statutory entity which is headed by the Clark  
 4 County Sheriff, an elected official who is solely responsible for the policies, practices, and  
 5 customs of his department. As Clark County cannot compel or direct LVMPD to enforce laws  
 6 or to preclude enforcement of laws under specific circumstances, it cannot provide the redress  
 7 sought by Plaintiffs in their as-applied challenges in this case.

8 **D. LVMPD, which is a Separate Legal Entity from Clark County, is the Enforcement  
 9 Agency for CCC 16.13.030 and is Responsible for its own Policy and Procedure**

10 Pursuant to NRS § 280.010, Las Vegas and Clark County merged their police  
 11 departments into a single entity now known as LVMPD. *See Scott v. Las Vegas Metro. Police  
 12 Dep't*, No. 2:10-CV-01900-ECR, 2011 WL 2295178, at \*4 (D. Nev. June 8, 2011). NRS §  
 13 280.280(4) and NRS § 280.37 provide that only LVMPD is subject to suit and liable for the  
 14 defense of claims for any acts or omissions of the Sheriff and any employee or agent of  
 15 LVMPD. *See* NRS § 280.280(4); NRS § 280.37; *Scott v. Las Vegas Metro. Police Dep't*, No.  
 16 2:10-CV-01900-ECR, 2011 WL 2295178, at \*4 (D. Nev. June 8, 2011). In interpreting these  
 17 statutes, both this Court and the Ninth Circuit have held that Clark County is not a proper party  
 18 in suits arising from the conduct of LVMPD agents or LVMPD policy. *See Scott v. Las Vegas  
 19 Metro. Police Dep't*, No. 2:10-CV-01900-ECR, 2011 WL 2295178, at \*5 (D. Nev. June 8,  
 20 2011); *Palm v. Las Vegas Metro. Police Dep't*, 1998 U.S.App. LEXIS 7939 at \*3 (9th  
 21 Cir.1998) (citing NEV. REV. STAT. § 280.190–270); *Denson v. Clark County*, 2010 U.S.  
 22 Dist. LEXIS 89677, 2010 WL 3076260 (D.Nev. Aug. 4, 2010).

23 “[The Clark County Sheriff's] agency, the Las Vegas Metropolitan Police Department,  
 24 is separate from both Clark County and the City of Las Vegas, and it has its own capacity to  
 25 sue and be sued.” *Campopiano v. Gillespie*, No. 2:10-CV-00459-KJD, 2010 WL 2802723, at  
 26 \*2 (D. Nev. July 14, 2010) (citing NRS 280.280). Accordingly, Clark County and LVMPD  
 27 are separate entities and Clark County “cannot be said to be the moving force behind the  
 28 actions of LVMPD” and “cannot be held liable for the actions or policies of the LVMPD.”

1 *Scott v. Las Vegas Metro. Police Dep't*, No. 2:10-CV-01900-ECR, 2011 WL 2295178, at \*5  
 2 (D. Nev. June 8, 2011). Clark County similarly has no ability to direct the conduct of LVMPD  
 3 or its officers or to establish policy or procedures for how LVMPD enforces laws. *Id*; *see also*  
 4 *Belcher-Bey v. City of Las Vegas*, No. 2:12-CV-01829-JAD, 2014 WL 1153468, at \*3 (D.  
 5 Nev. Mar. 20, 2014); *Palm v. Las Vegas Metro. Police Dep't*, 1998 U.S.App. LEXIS 7939 at  
 6 \*3 (9th Cir.1998); *Pullano v. No. 8170, CCDC Guard*, No. 2:10-CV-00335-KJD, 2011 WL  
 7 2680746, at \*3 (D. Nev. July 8, 2011).

8 Accordingly, any lawsuit that seeks to enjoin the enforcement of laws by LVMPD must  
 9 be directed at LVMPD itself—not Clark County or the City of Las Vegas which exercise only  
 10 limited budgetary oversight of LVMPD. *Scott v. Las Vegas Metro. Police Dep't*, No. 2:10-  
 11 CV-01900-ECR, 2011 WL 2295178, at \*4–5 (D. Nev. June 8, 2011) (citing *Palm v. Las Vegas*  
 12 *Metro. Police Dep't*, 1998 U.S.App. LEXIS 7939 at \*3 (9th Cir.1998)). As LVMPD is not a  
 13 party to the instant lawsuit, Plaintiffs cannot seek to preclude enforcement of the ordinance  
 14 against them specifically.

15 **E. As Clark County could not Direct LVMPD to stop enforcing CCC 16.13.030, an  
 16 Order from this Court on Plaintiffs' As-Applied Challenges would be Strictly an  
 17 Impermissible Advisory Opinion**

18 “Under Article III, federal courts do not adjudicate hypothetical or abstract disputes.”  
 19 *TransUnion LLC v. Ramirez*, 594 U.S. 413, 423, 141 S. Ct. 2190, 2203, 210 L. Ed. 2d 568  
 20 (2021). Accordingly, federal courts are not permitted to issue advisory opinions. *See, e.g.*, §  
 21 3:257. Prohibition on advisory opinions in federal court, 2A Fed. Proc., L. Ed. § 3:257. “The  
 22 rule against advisory opinions is the oldest and most consistent thread in the federal law of  
 23 justiciability.” *Ctr. for Biological Diversity v. U.S. Forest Serv.*, 925 F.3d 1041, 1047 (9th Cir.  
 24 2019) (internal quotation marks and citation omitted).

25 “Where the plaintiff can win no effective relief, any opinion as to the legality of the  
 26 challenged action would be advisory.” § 3:257. Prohibition on advisory opinions in federal  
 27 court, 2A Fed. Proc., L. Ed. § 3:257; *see also Koller v. Harris*, 312 F. Supp. 3d 814, 822 (N.D.  
 28 Cal. 2018) (“A controversy is not ‘live’ if the plaintiff can win no effective relief.”).

1           In order to avoid violating the prohibition on advisory opinions a case must satisfy two  
 2 requirements:

3           First, the case must present “an honest and actual antagonistic  
 4 assertion of rights by one [party] **against another.**” *Ctr. for*  
*5 Biological Diversity*, 925 F.3d at 1047 (quoting *U.S. Nat'l Bank v.*  
*6 Indep. Ins. Agents of Am., Inc.*, 508 U.S. 439, 446, 113 S.Ct. 2173,  
*7 124 L.Ed.2d 402 (1993)*). Second, the Court “**must be**  
*8 empowered to issue a decision that serves as more than an*  
*9 advisement or recommendation.*” *Id.* at 1048.

10           *United States v. Suarez*, 791 F. Supp. 3d 1096, 1099 (N.D. Cal. 2025) (emphasis added).

11           In *Center for Biological Diversity*, the Ninth Circuit reviewed these factors in analyzing  
 12 a district court order dismissing an action against the U.S. Forest Service (“USFS”) for lack  
 13 of justiciability in a case under the Resource Conservation and Recovery Act (“RCRA”)  
 14 involving USFS’ refusal to regulate the use of lead ammunition for hunting on property it  
 15 managed, and the resultant lead poisoning suffered by condors and other wild animals.

16           In that case the Ninth Circuit overturned the district court order dismissing the action  
 17 for a lack of justiciability when it was determined that there was an antagonistic relationship  
 18 between the Center for Biodiversity and USFS and that an order against USFS would require  
 19 that USFS make efforts to mitigate the effects of lead ammunition—even if USFS lacked the  
 20 discretion to outright prohibit the use of lead ammunition. Here, however, Clark County has  
 21 no ability whatsoever to mitigate enforcement of CCC 16.13.030 under specific  
 22 circumstances—that ability rests solely with the enforcement agency LVMPD.

23           In as-applied First Amendment challenges the relief sought is to preclude enforcement  
 24 of the specific law under the specific circumstances identified by plaintiffs and, accordingly,  
 25 it must necessarily involve an order enjoining enforcement by the enforcement agency from  
 26 the Court. An order to Clark County enjoining enforcement of CCC 16.13.030 as to Plaintiffs  
 27 in this case will have no effect as Clark County cannot direct LVMPD in its law enforcement  
 28 activities and would serve as nothing more than an impermissible advisory opinion.  
 Accordingly, there is no redressability by an order from the Court from Defendant Clark  
 County on Plaintiffs’ as-applied challenges and the Court lacks subject matter jurisdiction to  
 hear those associated claims pursuant to Fed. R. Civ. P. 12(b)(1).

1  
IV.2  
**CONCLUSION**

3 As-applied challenges seek to preclude enforcement of a law under a specific set of  
4 circumstances so they must be directed at the enforcement agency to be redressable by a  
5 defendant. In this case Plaintiffs have named the legislative body that passed the ordinance—  
6 not the separate legal entity that enforces the ordinance—and, accordingly, their as-applied  
7 challenges cannot be redressed by a defendant in this matter. As redressability is a critical  
8 component of justiciability and standing, the fact that these claims are not redressable means  
9 that Plaintiffs' as-applied challenges are ripe for dismissal pursuant to Fed. R. Civ. P. 12(b)(1).  
10 Accordingly, the Honorable Court should grant the instant Motion to Dismiss Plaintiffs  
11 Summers' and Polovinas' As-Applied Challenges in the First Amended Complaint [61]  
12 Pursuant to FRCP 12(b)(1).

13 DATED this 18th day of December, 2025.

14 STEVEN B. WOLFSON  
15 DISTRICT ATTORNEY

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## **CERTIFICATE OF ELECTRONIC SERVICE**

I hereby certify that I am an employee of the Office of the Clark County District Attorney and that on this 18th day of December, 2025, I served a true and correct copy of the foregoing **MOTION TO DISMISS PLAINTIFFS SUMMERS' AND POLOVINAS' AS-APPLIED CHALLENGES IN THE FIRST AMENDED COMPLAINT [61] PURSUANT TO FRCP 12(B)(1)** (United States District Court Pacer System or the Eighth Judicial District Wiznet), by e-mailing the same to the following recipients. Service of the foregoing document by e-mail is in place of service via the United States Postal Service.

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