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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

LISA MCALLISTER, an individual; BRANDON SUMMERS, an individual; and JORDAN POLOVINA, an individual, Plaintiffs, vs. CLARK COUNTY, a political subdivision of the state of Nevada, Defendant.	Case No.: 2:24-cv-00334 **PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT** **[ORAL ARGUMENT REQUESTED]**

Plaintiffs LISA MCALLISTER, BRANDON SUMMERS, and JORDAN POLOVINA (collectively "Plaintiffs") moves this Honorable Court to grant summary judgment pursuant to FRCP

56. This motion is based on this notice, the memorandum of points and authorities filed herein, the declaration(s) filed by Plaintiffs, the exhibits filed herein, the statement of uncontroverted facts and conclusions of law, the pleadings previously filed in this action, and any oral argument permitted at the hearing on this motion.

DATED this 18th day of December, 2025.

ACLU OF NEVADA

/s/*Christopher M. Peterson*
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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

The pedestrian bridges in the Resort Corridor have always been considered part of the largest, and, arguably, the most important, public forum in Nevada. For decades, people—including the Plaintiffs—have stopped on these bridges to play music, perform, protest, solicit people passing by, to drop a dollar into a tip jar, simply engage as an audience, or take photographs. In fact, the only data collected by Clark County prior to 2024 about people stopping on these bridges were of folks engaging in activities protected by the First Amendment.

Clark County Code 16.13.030, passed in 2024, brought these activities to an end. The ordinance banned all stopping, standing, and any activities encouraging other people to stop; conduct integral to most, if not all, First Amendment activities. While it claimed that the ordinance was necessary to ensure public safety and to avoid over congestion, the County in fact had no evidence that either harm threatened the bridges. Furthermore, it had no evidence that stopping on the bridges caused either harm, and it also made no effort to determine if less burdensome alternatives such as the already existing ordinances banning sidewalk obstructions, time- and bridge- based restrictions, or a ban with a carve-out for First Amendment activities would have satisfied the County's objectives.

In addition to violating the First Amendment, CCC 16.13.030 violates the Fourteenth Amendment's prohibition on criminal laws that encourage seriously discriminatory enforcement. The Las Vegas Metropolitan Police Department has exempted entire categories of activities from enforcement under CCC 16.13.030, including stopping to take photographs on the bridges or view the Strip, which are not exemptions provided by the plain language of the ordinance. While LVMPD is a separate entity from Clark County, its enforcement policy is in line with the guidance provided by the County via social media immediately after CCC 16.13.030, and the County's testimony during the ordinance's passage.

Plaintiffs seek to restore the pedestrian bridges to their status prior to CCC 16.13.030, when First Amendment activity could occur as long as it did not actually obstruct pedestrian traffic. As the ordinance indisputably violates the First Amendment, Fourteenth Amendment, and related Nevada constitutional provisions, Plaintiffs are entitled to summary judgment.

II. PLAINTIFFS' STATEMENT OF UNDISPUTED FACTS

A. The pedestrian bridges and the Resort Corridor sidewalk system

There are 17 publicly-owned pedestrian bridges within the Resort Corridor. (Ex. 1, Deposition of Kaizad J. Yazdani, 30(b)(6) Designee for Clark County (Ex. 1, (Yazdani, Clark County 30(b)(6) Deposition) at 24:5–8.) These bridges are considered part of the Resort Corridor's sidewalk system. (*Id*. at 27:7–10.)

B. Circumstances surrounding the passage of CCC 16.13.030

In January of 2024, Clark County passed CCC 16.13.030, which banned stopping, standing, and any activities intended to cause other people to stop in "pedestrian flow zones." CCC 16.13.030. The pedestrian flow zones included all pedestrian bridges located within the Resort Corridor and the area around their entry and exit points. CCC 16.13.020.

Shortly after passing CCC 16.13.030, Clark County published a social media post stating that "[I]t is unlawful for any person to stop, stand, or engage in an activity that causes another person to stop or stand within any Pedestrian Flow Zone. This is not interpreted to mean that tourists and locals cannot take photos along the Boulevard while on a pedestrian bridge[.]" (Ex. 2, Statement on X posted by @ClarkCountyNV regarding CCC 16.13.030 on Jan. 2, 2024, 6:30 PM, M-S 00031.)

Since the passage of CCC 16.13.030, Clark County has testified that all intentional stopping or standing, even if incidental, violates CCC 16.13.030, unless the person is waiting for an elevator or escalator. (Ex. 3, Deposition of Abigail Frierson, 30(b)(6) Designee for Clark County at 107:16 – 23 (clarifying the only exception on the stopping ban is for people waiting for the escalators), 120:25

– 121:56 (no exception for taking photographs)).

C. Plaintiffs' impacted activities

Mr. Summers and Mr. Polovina are street performers who play the violin and cello respectively. (Ex. 4, Declaration of Brandon Summers ("Summers Decl.") at ¶¶ 4 & 5; Ex. 5, Declaration of Jordan Polovina ("Polovina Decl.") at ¶¶ 4 & 5.) They have regularly performed on the sidewalks in the Resort Corridor for years, and prior to the passage of CCC 16.13.030, they both played on the pedestrian bridges, always making efforts to avoid impeding pedestrian traffic. (Ex. 4, Summers Decl. at ¶¶ 7 & 13; Ex. 5, Polovina Decl. at ¶¶ 7 & 13.) They intend for their performances to attract an audience of people stopping to hear them play. (Ex. 4, Summers Decl. at ¶ 4; Ex. 5, Polovina Decl. at ¶ 4.) While playing their instruments, both use small speakers to amplify their sound so their performances can be heard above the ambient sounds. (Ex. 4, Summers Decl. at ¶¶ 6 & 9; Ex. 5, Polovina Decl. at ¶¶ 6 & 9.). While playing they also solicit tips from people who come to listen to their respective performances. (Ex. 4, Summers Decl. at ¶ 11; Ex. 5, Polovina Decl. at ¶ 11.) Mr. Polovina cannot continuously move while performing because of the size of his cello, cannot move while using his amplifier, and cannot move if playing and soliciting tips at the same time. (Ex. 5, Polovina Decl. at ¶¶ 8, 10, & 12.) Mr. Summers cannot move, play his violin, and use an amplifier at the same time. (Ex. 4, Summers Decl. at ¶¶ 10 & 12).

Since the County passed CCC 16.13.030, neither can perform on the pedestrian bridges without risking citation or arrest. This concern is not theoretical: Mr. Polovina was not only instructed to stop performing and leave a pedestrian bridge by law enforcement when they were detaining another individual for violating CCC 16.13.030, and has been warned by law enforcement that his performance on pedestrian bridges violated CCC 16.13.030, he was actually cited for allegedly violating CCC 16.13.030 on May 23, 2025, for "playing an instrument" on a pedestrian bridge. (Ex. 5, Polovina Decl. at ¶¶ 14-16; Ex. 6, Polovina Citation, M-S003041). Both Mr. Summers and Mr.

Polovina have been forced to stop performing on pedestrian bridges due to risk of prosecution under CCC 16.13.030. (Ex. 4, Summers Decl. at ¶¶ 14 & 16; Ex. 5, Polovina Decl. at ¶¶ 17 & 20.)

D. Pedestrian traffic data about people stopping, First Amendment activities, and levels of congestion on pedestrian bridges

Since the bridges were first built, Clark County has commissioned four pedestrian traffic studies in the Resort Corridor that include information about traffic on the pedestrian bridges.[1] (Ex. 1, Yazdani, Clark County 30(b)(6) Deposition at 96:22–97:4.) These studies, completed by the firm Kimley Horn in 2012, 2015, 2016, and 2022, include surveys of the pedestrian bridges within the Resort Corridor. (*Id*.) While the 2022 pedestrian study was published to the public after the County passed CCC 16.13.030, the County had access to the study's data and Kimley Horn's analysis prior to passing the ordinance. (*Id*. at 157:5–20, 160:1–161:23.) These studies contain the only data about pedestrian traffic on the bridges in the Resort Corridor within the last 30 years, and to the County's knowledge, the studies are accurate. (*Id*. at 96:13–97:7.)

As part of their pedestrian bridge surveys, the studies documented Non-Permanent Obstructions (NPOs) on the bridges. (Ex. 7, Clark County Pedestrian Study, December 2022 ("2022 Pedestrian Study") at CC 383907; Ex. 8, Clark County Pedestrian Study, November 2012 ("2012 Pedestrian Study") at CC 1072; Ex. 9, Clark County Pedestrian Study, 2015 Update ("2015 Pedestrian Study Update") at CC 1241; Ex. 10, Pedestrian Study, 2016 Update of Non-Permanent Obstructions ("2016 Pedestrian Study Update") at CC 4268.) Every person designated as an NPO by the studies engaged in one of four activities in addition to stopping: street performing, handbilling, soliciting, or vending. (*Id*.) The studies only designated a person an NPO if they stopped while engaging in one of these activities. (Ex. 1, Yazdani 30(b)(6) Deposition at 105:19–22; Ex. 11, Deposition of Devlin Val Moore, 30(b)(6) Designee for Non-Party Kimley-Horn ("Moore Deposition") at 35:16–36:2.) The

[1] Another firm, Lee Engineering, also completed a pedestrian traffic study in 1994, but this study does not include information about pedestrian traffic information on any bridges.

studies did not document anyone stopping on the pedestrian bridges other than to perform, handbill, solicit, or vend. **(**Ex. 11, Moore Deposition at 47:10.) Over two decades, researchers documented hundreds of instances of people street performing, handbilling, soliciting, and vending on the pedestrian bridges within the Resort Corridor while conducting the studies. (Ex. 7, 2022 Pedestrian Study at CC 383974–75; Ex. 8, 2012 Pedestrian Study at CC 1072; Ex. 10, 2016 Pedestrian Study Update at CC 4282.)

The Kimley Horn studies also assessed Level of Service ("LOS") on the sidewalks within the Resort Corridor, including on the bridges. (Ex. 1, Yazdani 30(b)(6) Deposition at 86:20-89:13; Ex. 7, 2022 Pedestrian Study at 383881-882, 383985, 383911; Ex. 8, 2012 Pedestrian Study at CC 983-984; Ex. 9, Pedestrian Study, 2015 Update at CC 1216, 1250–1251.) The County uses LOS to determine whether a particular walkway is over congested. (Ex. 1, Yazdani 30(b)(6) Deposition at 86:20-89:13.) According to the County, a LOS of A, B, or C is acceptable, and LOS worse than C (*i.e.*, D, E, or F) should be avoided. (*Id.*) (explaining the LOS C is the County's acceptable level of service). For the 2012, 2015, and 2022 studies, Kimley Horn identified the locations where the calculated LOS dropped below C and documented how long the disruption lasted for. (Ex. 7, 2022 Pedestrian Study at CC 383985-383989; Ex. 8, 2012 Pedestrian Study at CC 1116–1117; Ex. 9, Pedestrian Study, 2015 Update at CC 1326–28.). Over the three studies, the researchers only ever identified three bridges that ever suffered an LOS worse than C (*id.*), and during the latest 2022 study, the researchers only identified one disruption that lasted longer than 15 minutes. (Ex. 7, 2022 Pedestrian Study at CC 383987-383989.) According to that study, LOS never dropping below D on any of the bridges. (*Id.*) By comparison, the researchers conducting the 2022 study identified multiple grade-level sidewalks where LOS dropped as low as F and disruptions lasted up to 8 hours. (*Id.*)

E. Other evidence related to CCC 16.13.030's impact on First Amendment activities.

Since CCC 16.13.030 was enacted, the Las Vegas Metropolitan Police Department (LVMPD) has enforced it against many people engaging in First Amendment activities including solicitation, protest, and street performing.

In 2024, LVMPD documented at least sixteen times where it arrested people who were engaging in First Amendment activities, including playing music, soliciting money, filming music videos, and vending for violating CCC 16.13.030. (*See* Ex. 12, Pedestrian Bridge Arrests, LVMPD 00296–306 (documenting arrests pursuant to CCC 16.13.030 from February 14, 2024, until October 3, 2024).) Over the same period of time, the vast majority of other enforcement measures were taken against people who were actually obstructing the sidewalk, *i.e.*, sleeping, lying down, or sitting on the sidewalk. (*Id.*)

While LVMPD has not provided systemic data of enforcement post-2024, people have been charged for stopping on the bridges while protesting. (*See* Ex. 13, *State v. Mirabelli*, 25-CR-071740, Criminal Complaint, CC 385906 (accusing defendant of "stopping on the pedestrian bridge to engage in a protest".)

F. The County's data to support the ordinance

The County has no substantive data related to crime on the pedestrian bridge. (Ex. 1, Yazdani 30(b)(6) Deposition at 111:23-112:25, 212:3-16; Ex. 3, Frierson 30(b)(6) Deposition at 20:6-16, 33:6-35:2, 52:9-18.) Instead, to claim that "disorder" is a problem on the pedestrian bridges and that CCC 16.13.030 is an appropriate solution, the County relies on testimony from Dr. William Sousa, who it has noticed as an expert in this matter and whose definition of disorder the County has adopted. (Ex. 3, Frierson 30(b)(6) Deposition at 31:23-32:7; Ex. 14, Clark County Board of Commissioners Meeting Agenda from November 21, 2023, at CC013; Ex. 15, Clark County Board of Commissioners Meeting Agenda from December 5, 2023, at CC 041; Ex. 16, Clark County Board of Commissioners

Meeting Agenda from January 2, 2024, at CC080; *Compare* Ex. 3, Frierson 30(b)(6) Deposition at 55:19-62:13 *with* Ex. 17, Questions Related to Public Safety on Pedestrian Bridges, William H. Sousa, Ph. D. ("Final Sousa Report") at CC 133.). Dr. Sousa describes disorder as "relat[ing] to problems that – don't necessarily rise to the level of serious crime, but they're nonetheless concerns for citizens." (Ex. 18, Deposition of William H. Sousa ("Sousa Deposition") at 29:24–30:4.) Under Sousa's definition of disorder not all criminal behavior constitutes disorder and not all disorder is criminal. (*Id*. at 30:22–31:7.) Also according to Dr. Sousa, there are no specific noncriminal acts that would be considered disorder and that the determination is "mostly contextual." (*Id*. at 32:16–32:19.) Any type of activity, including activities protected by the First Amendment such as panhandling, soliciting, and street performing, that encourages people to stop or generally irritates a viewer constitutes disorder. (*Id*. at 36:16–37:2 (causing someone to stop), 40:14–41:4 (irritating).) Dr. Sousa believes encouraging people to stop is inherently what street performing, soliciting, and panhandling does. (*Id*. at 36:13–37:2.)

Dr. Sousa has no evidence that stopping or standing contributes to disorder or any other harm on the bridges. (*Id*. at 194:4–10 (no connection between stopping and disorder), 236:21–237:4 (data at all related to stopping on the bridges or its causal effect).) Sousa also has no evidence that disorder on the bridges has caused any crime. (*Id*. at 199:9–13.) As for pedestrian congestion, Dr. Sousa admits he did not review any data related to crowd density on the bridges nor does he have any evidence that congestion is an issue. (Ex. 18, Sousa Deposition at 224:7-224:11.). Dr. Sousa also does not know what level of service is. (Ex. 18, Sousa Deposition at 103:12–24).

No crowd crush incident has ever occurred on the pedestrian bridges, and the County has no evidence that crowd density on the bridges ever reached levels where crowd crush could have occurred. (Ex. 1, Yazdani 30(b)(6) Deposition at 103:10– 3, 113:6–9, 215:15–18, 252:4–11.) Likewise, the County is unaware of any time where emergency personnel could not access the

pedestrian bridges. (*Id*. at 51:17–20.)

G. Enforcement policy and exemptions to CCC 16.13.030's ban on stopping and standing.

LVMPD is the law enforcement agency that enforces CCC 16.13.030 on the pedestrian bridges in the Resort Corridor. (Ex. 19, Deposition of Andrew Walsh, 30(b)(6) Designee for Non-Party Las Vegas Metropolitan Police Department ("Walsh Deposition") at 29:4-31:1. LVMPD has established a policy that it does not enforce CCC 16.13.030 against people for "incidental stops". (*Id*. at 35:6–35:11; 49:24–50:2.) In training its officers on this policy, LVMPD does not define "incidental stop" by a length of time; instead it exempts specific activities from enforcement including taking photographs or stopping to take in views of the Strip. (*Id*. at 37:16–37:19, 37:20–38:13, 50:3–51:5.)

While LVMPD is a government entity separate from Clark County, it has expressly based its policy on Clark County's language in CCC 16.13.010 describing the purpose of the ordinance as well as Clark County's representations at the time CCC 16.13.030's passage. (*Id*. at 38:15–40:14; 162:8–163:8.)

III. LEGAL STANDARD

Summary judgment is appropriate if there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. *See* Fed. R. Civ. P. 56(a). As this Court has recently observed in a separate matter:

> Who bears the burden of proof on the factual issue in question is critical as to the legal standard on summary judgment. When the party moving for summary judgment would bear the burden of proof at trial (typically the plaintiff), he "must come forward with evidence [that] would entitle [him] to a directed verdict if the evidence went uncontroverted at trial." *C.A.R. Transp. Brokerage Co. v. Darden Rests., Inc*., 213 F.3d 474, 480 (9th Cir. 2000) (quoting *Houghton v. South,* 965 F.2d 1532, 1536 (9th Cir. 1992) (citation and quotations omitted)). Once the moving party establishes the absence of a genuine issue of fact on each issue material to its case, "the burden then moves to the opposing party, who must present significant probative evidence tending to support its claim

> or defense." *Intel Corp. v. Hartford Accident & Indem*. Co., 952 F.2d 1551, 1558 (9th Cir. 1991) (citation omitted). In such instances, the responding party cannot point to mere allegations or denials contained in the pleadings; it is not enough for the non-moving party to produce a mere "scintilla" of evidence. *Celotex Corp*., 477 U.S. at 252. Instead, the responding party must set forth, by affidavit or other admissible evidence, specific facts demonstrating the existence of an actual issue for trial. *KRL v. Moore*, 384 F. 3d 1105, 1110 (9th Cir. 2004).

Estate of Taschek v. Fidelity Life Association, 740 F.Supp.3d 1072, 1083 (D. Nev. 2024). As detailed below, Plaintiffs meet their burdens and the County cannot meet theirs.

IV. ARGUMENT

A. Plaintiffs are entitled to summary judgment on their First Amendment overbreadth claims.

As this Court already observed in these proceedings, determining whether an ordinance violates the First Amendment is a multiple step process. (Order Denying Plaintiffs' Motion for Injunctive Relief, Granting in Part Defendant's Motions to Dismiss, and Denying Defendant's Motion to Stay Discovery, ECF No. 51 at 18:5–7.) The plaintiff has the initial burden to show that the restriction at issue implicates the First Amendment; this requires the plaintiff to establish that the law impacts a constitutionally-protected activity taking place in a protected forum. ECF No. 51 at 18:6–7 (citing *Moody v. Netchoice, LLC*, 144 S. Ct. 2383, 2394 (2024)..) In a facial challenge, the plaintiff must also show that the restriction burdens "a substantial amount of protected [activity], judged in relation to its plainly legitimate sweep." ECF No. 51 at 18:7–9 (citing *Virginia v. Hicks*, 539 U.S. 113, 118–119 (2003).

The burden then shifts to the government to show that the restriction imposed is a "reasonable restriction on the time, place, or manner of protected speech," assuming that the restriction is content neutral.[2] *Ward v. Rock Against Racism*, 491 U.S. 781, 791 (1989). This requires the government to

[2] Between Dr. Sousa's testimony indicating that the "disorder" the County intended to abate included First Amendment activity and the Kimley Horn pedestrian studies indicating that only First

establish that "the restrictions are justified without reference to the content of the regulated speech, that they are narrowly tailored to serve a significant governmental interest, and that they leave open ample alternative channels for communication of the information." *McCullen v. Coakley*, 573 U.S. 464, 477 (2014). If the government defendant fails to establish that its restriction is narrowly tailored to serve a significant government interest, the restriction is unconstitutional even if the restriction leaves open alternative channels for communication. *See id.*, 573 U.S. at 496 n. 9 ("Because we find that the Act is not narrowly tailored, we need not consider whether the Act leaves open ample alternative channels of communication.").

Based on the undisputed facts, Plaintiffs satisfy their threshold burden and the County cannot meet its burdens. The United States Court of Appeals for the Ninth Circuit has previously determined the sidewalk system in the Resort Corridor is a traditional public forum, and Clark County has always considered the pathways over the pedestrian bridges part of this sidewalk system. CCC 16.13.030 impacts First Amendment activities such as street performing, soliciting, panhandling, and any activity that involves either one-on-one communication or drawing an audience. The County's pedestrian studies, which provide the only systemic data available about who was stopping and standing on the pedestrian bridges before CCC 16.13.030's ban went into effect, establish unequivocally that CCC 16.13.030 burdens a substantial amount of First Amendment activity compared to its scope because, according to the data, everyone stopping on the bridges was also engaging in some sort of protected activity. Likewise, the "disorder" that the ordinance is aimed at getting rid of expressly includes protected activity such as panhandling and street performing.

Amendment activity would be impacted by CCC 16.13.030, there is some evidence the County directly intended CCC 16.13.030 to restrict First Amendment activity, subjecting CCC 16.13.030 to strict scrutiny. (*See* Ex. 18, Sousa Deposition at 36:13-37:2, 40:14-41:4; *see also* Ex. 11, Moore Deposition at 47:10–47:14.); *United States v. Dumas*, 64 F.3d 1427, 1429 (9th Cir. 1995) ("[A] facially neutral law is nonetheless subject to strict scrutiny if it is an obvious pretext for discrimination."). However, in relying undisputable facts, Plaintiffs apply intermediate scrutiny for the purposes of this motion.

By comparison, the County cannot show that CCC 16.13.030 is narrowly tailored to serve a significant government interest. First, the County cannot show that CCC 16.13.030 is related to any real government interest because it has no evidence that the pedestrian bridges were suffering or at risk of suffering from any actual harm such as crime or crowding prior to the enactment of CCC 16.13.030. Even if the alleged harms were real, the County cannot meet its burden of showing that CCC 16.13.030 alleviated these harms in a direct and material way because it has no evidence stopping or standing caused any harm of any sort, let alone the harms CCC 16.13.030 was intended to alleviate. Finally, the County has no evidence that obvious less-restrictive alternatives such as using the preexisting obstruction ordinances or imposing time-based restrictions targeting known high-volume periods, bridge-specific restrictions targeting bridges with known crowding issues, or bans with an exemption for First Amendment activity would have failed to address its concerns.

As the Defendant cannot meaningfully dispute the evidence satisfying Plaintiffs' burden and has not produced evidence satisfying any of the three elements it has the burden to show to establish that the restriction is narrowly tailored, Plaintiffs are entitled to summary judgment on their First Amendment and related Nevada constitutional claims.

1. The pedestrian bridges in the Resort Corridor are a traditional public forum.

"Sidewalks, of course, are among those areas of public property that traditionally have been held open to the public for expressive activities and are clearly within those areas of public property that may be considered, generally without further inquiry, to be public forum property." *United States v. Grace*, 461 U.S. 171, 179 (1983). Traditional examples of public fora include streets, parks, and sidewalks—publicly owned spaces which, for 'time out of mind, have been used for purposes of assembly, communicating thoughts between citizens, and discussing public questions.'" *Id.* at 1108 (quoting *Perry Educ. Ass'n v. Perry Loc. Educators' Ass'n*, 460 U.S. 37, 45 (1983). The United States Court of Appeals for the Ninth Circuit has expressly held that "[t]he sidewalks along the Las Vegas

Strip dedicated to public use are public fora." *Santopietro v. Howell*, 73 F.4th 1016, 1024 (9th Cir. 2023); *Venetian Casino Resort, LLC v. Loc. Joint Exec. Bd. of Las Vegas*, 257 F.3d 937, 943–44 (9th Cir. 2001).

As made clear by its designee, the County unequivocally considers the pedestrian bridges to be part of the wider sidewalk system within the Corridor, which is consistent with those pathways legal character. And as documented in the County's pedestrian studies, Nevadans have openly engaged in First Amendment activities on the pedestrian bridge sidewalks for years. There is no genuine issue of material fact as to whether the sidewalks on the pedestrian bridges are traditional public fora.

2. Plaintiffs meet their burden.

a. CCC 16.13.030 implicates First Amendment activity.

If an otherwise facially neutral restriction "regulates conduct that has an expressive element," that restriction is subject to First Amendment scrutiny. ECF No. 51, at 20:9 – 10 (citing *Arcara v. Cloud Books, Inc.*, 478 U.S. 697, 703–04 (1986). And even if a restriction does not directly reference protected conduct, it is still subject to First Amendment scrutiny if it "impose[s] a disproportionate burden upon those engaging in protected First Amendment activities." (*Id.*) In other words, if a regulation targets conduct "integral, or commonly associated" with First Amendment activity, it receives First Amendment scrutiny. *See Roulette v. City of Seattle*, 97 F.3d 300, 303 (9th Cir. 1996) (determining whether an ordinance is subject to scrutiny by looking at whether the regulated conduct is "integral, or commonly associated" with First Amendment activity). An indirect restriction may also be subject to scrutiny if "it restricts access to the traditional public fora." *McCullen*, 573 U.S. at 474. CCC 16.13.030 is subject to First Amendment scrutiny because it bans two activities that implicate the First Amendment: stopping and standing on the pedestrian bridges and activities that cause other people to stop and stand on the bridges. Additionally, CCC 16.13.030's ban on

encouraging people to stop also directly regulates conduct that has an expressive element since it bans communication asking people to stop.

Stopping is integral to First Amendment activities. Many, if not most, street performers like Mr. Summers and Mr. Polovina cannot play while moving; most performances are traditionally carried out while standing or sitting, and it would be hard to imagine Mr. Polovina marching up-and-down the bridge with cello in hand. Except for under unusual circumstances, performers using amplified sound cannot play while dragging their speakers, no matter how small, after them. In turn, people watching street performers like Mr. Summers and Mr. Polovina must stop to enjoy them. Soliciting and other one-on-one communications such as signing petitions necessarily involve stopping for conversation and possibly taking out a wallet or pen. And there is no way that anyone could engage in all three activities simultaneously, like Mr. Summers and Mr. Polovina do, while marching along. CCC 16.13.030 does not only "disproportionately impact" these activities, it prevents them from occurring on the bridges at all.

Like stopping and standing, encouraging people to stop is integral to many protected activities. "A fundamental principle of the First Amendment is that all persons have access to places where they can speak and listen, and then, after reflection, speak and listen once more," *Packingham v. North Carolina*, 582 U.S. 98, 104 (2017) (cited by ECF No. 51 at 24:1–24:2). And as this Court observed before, "[a]n ordinance that prohibits a speaker from encouraging passerby to stop and listen or engage in a dialogue has real First Amendment implications." ECF No. 51 at 24:2–24:4. In fact, the County's own proposed expert Dr. Sousa agrees that encouraging people to stop is integral to street performing, panhandling, and soliciting, all activities protected under the First Amendment.

However, encouraging people to stop is not only integral to First Amendment activity but also is itself protected by the First Amendment. Speech and other conduct is entitled to protection under the First Amendment "when it is intended to convey a particularized message and the likelihood is

great that the message would be so understood. *Porter v. Martinez*, 64 F.4th 1112, 1121 (9th Cir. 2023); *Hilton v. Hallmark Cards*, 599 F.3d 894, 904 (9th Cir. 2010). While encouraging someone else to stop may take many forms – a salutation, a raised hand, a cardboard sign, a jingled tip jar – such encouragement is a clear communication of the same, particularized message every time: please stop. It is this message that is criminalized by CCC 16.13.030. As such, CCC 16.13.030 not only targets conduct integral to First Amendment activity, it also targets conduct directly protected by the Constitution as well.

b. CCC 16.13.030 impacts a substantial amount of protected activity in comparison to its legitimate scope.

To make a facial challenge to a restriction, a plaintiff must establish that "a substantial number of its applications are unconstitutional, judged in relation to the statute's plainly legitimate sweep." *United States v. Stevens*, 559 U.S. 460, 473 (2010). In other words, there must be "a realistic danger that the statute itself will significantly compromise recognized First Amendment protections of parties not before the Court." *Marquez-Reyes v. Garland*, 36 F.4th 1195, 1201 (9th Cir. 2022) (quotation omitted). The overbreadth is determined from the text of the law and from actual fact. *N.Y. State Club Ass'n v. City of New York*, 487 U.S. 1, 14 (1988) (cited by ECF No. 51 at 25:15–25:17).

"[T]he first step in overbreadth analysis is to construe the challenged statute; it is impossible to determine whether a statute reaches too far without first knowing what the statute covers." *Stevens*, 559 U.S. at 474. CCC 16.13.030's plain language bans all stopping and standing on the pedestrian bridges except for "waiting for access to an elevator or escalator for purposes of entering or exiting a pedestrian flow zone" and any activity intending to cause other people to stop. Though it made contrary representations in previous filings, *see, e.g.,* Clark County's Motion to Dismiss, ECF No. 9 at 14:25 – 15:7 (stating that "incidental" stops are not prohibited under CCC 16.13.030), Clark County's position now is that ban applies to anyone intentionally stopping and standing for any

purpose, no matter how "incidental", other than the exception expressly provided.

As discussed above, this ban *de facto* prohibits a substantial amount of First Amendment activity. Stopping is integral to both protected activities that draw crowds like street performing or protesting to more intimate communication such as soliciting, panhandling, or gathering petitions. And since the intent behind these activities is to encourage people to stop and engage, they are necessarily banned by CCC 16.13.030's prohibition on activities intending to cause other people to stop on the bridges.

Turning from the text to "actual fact", the County commissioned four pedestrian traffic studies from Kimley Horn that tracked people stopping on the bridges in 2012, 2015, 2016, and 2022. According to the County, there is no other systemic data available related to people stopping on the bridges besides what is contained in these studies. (Ex. 1, Yazdani 30(b)(6) Deposition at 104:2–104:11.) The studies documented hundreds of instances where people stopped on the bridges to engage in First Amendment activity, and there is no data about anyone else stopping on the bridges for any other purpose. In other words, according to the data available, CCC 16.13.030 not only banned a substantial amount of First Amendment activity, it *only* banned First Amendment activity.

In addition to the pedestrian studies, records from LVMPD establish that CCC 16.13.030 has had an impact on First Amendment activity. People have openly arrested or cited under CCC 16.13.030 for playing music, soliciting, and protesting on the pedestrian bridges.

The scope of CCC 16.13.030's stopping ban and the data available related to people stopping on the bridges prior to CCC 16.13.030's passage are undisputable. CCC 16.13.030 restricts a substantial amount of First Amendment activity in relation to its legitimate scope.

3. The County cannot meet its burden.

Again, for an interest to be "legitimate", the government must "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.**"** *Porter*, 68 F.4th at 443.

For a restriction to be narrowly tailored to a significant government interest, the restriction must not "burden substantially more speech than is necessary to further the government's legitimate interests." *McCullen*, 573 U.S. at 486. While a restriction need not be the least restrictive or least intrusive means of serving the government's interests, "the government must [still] demonstrate that alternative measures that burden substantially less speech would fail to achieve the government's interests, not simply that the chosen route is easier." *Id.*, at 467.

CCC 16.13.030 restrictions stopping and encouraging other people to stop are not narrowly tailored. First, the County has no evidence that the harms that CCC 16.13.030 are meant to prevent, *i.e.*, crowding and threats to public safety, are more than speculative. Second, the County has no evidence that CCC 16.13.030's ban on stopping and standing solves these harms because the County has no evidence that stopping or standing causes any harm at all on the bridges. Finally, the County has no evidence that obvious alternatives that burden substantially less speech, including the preexisting obstruction ordinance, time-based restrictions, bridge-based restrictions, or even a straight exemption for First Amendment activity would be inadequate to address County's cited harms.

a) The County has no evidence that stopping or standing causes any harm on bridges.

The harm the County seeks to remedy is "disorder." This is reflected in CCC 16.13.010, which states that the County has banned all stopping and all activities encouraging people to stop on the pedestrian bridges because "stopping on the bridges creates conditions that can foment disorder which, in turn, can lead to crime and other serious safety issues."

The alleged existence of a problem with "disorder" rests entirely on Dr. Sousa's report submitted to the County during the proceedings and his related testimony. Even assuming that Dr.

Sousa's testimony is admissible,[3] it does not establish that the County has any legitimate interest in regulating undifferentiated "disorder." While it is the County's purported reason for passing CCC 16.13.030, "disorder" is vague and ill-defined, if defined at all. "Disorder" is not based on any objective standard and is so vague as to render it meaningless. (*See* Ex. 3, Frierson 30(b)(6) Deposition at 181:27–182:1, 189:16–189:17, 194:20–194:22, 196:14–196:18, 197:19–197:25, 209:15–209:17 (providing wide ranging descriptions of what constitutes disorder, including "incivilities", "things that solicit fear", and "aggressive anything")).

While the term is vague, it is clear that "disorder" encompasses First Amendment activity such as street performing, soliciting, and panhandling. But stopping street performers and the other First Amendment activity Dr. Sousa indicates as part of his "disorder" is of course an impermissible aim.

As for the other harms purportedly encompassed in "disorder" such as crime, potential crowd crush, emergency personnel access, and pedestrian congestion, they are conjectural and speculative. The County does not have any evidence that the pedestrian bridges suffered from any of these harms in any significant way, let alone more than any other sidewalk prior to passing CCC 16.13.030. The County has no evidence regarding crime on the pedestrian bridges. As for pedestrian congestion, Dr. Sousa admits he did not review any data related to crowd density on the bridges nor does he have any evidence that congestion is an issue.

To the extent the County believes that its pedestrian studies indicate that the bridges suffered from congestion, the LOS calculations in the pedestrian studies and the conclusions drawn from those calculations are inadmissible; not only is it outside the record the County is confined to, the Kimley Horn studies constitute expert witness testimony "based on scientific, technical, or specialized

[3] Plaintiffs intend to file a motion to exclude Dr. Sousa's testimony pursuant to Fed. R. Evid. 701.

knowledge." Fed. R. Evid. 701 (prohibiting lay witnesses from offering opinions based on scientific, technical, or other specialized knowledge within the scope of Rule 702). The County noticed only Dr. Sousa as an expert, and he does not know what LOS is.

Even if the LOS calculations in the pedestrian traffic studies are admissible, the pedestrian studies do not reflect that the LOS is a particular problem to all pedestrian bridges but rather that it is only problem on some bridges at particular times of day. The studies only documented LOS dropping below an acceptable level at any point on three out of the seventeen bridges in the Resort Corridor. According to the County, LOS is acceptable at A, B, or C levels, which the pedestrian studies recommend as well. In multiple pedestrian studies, researchers identified both when and where LOS degraded below level C during their observation period. In the most recent pedestrian study from 2022, researchers identified many instances where street level sidewalks dropped below level C, with some disruptions lasting as long as 8 hours and LOS dropping as low as level F. By comparison, researchers only identified three pedestrian bridges that dropped below LOS C at any time, and only one bridge saw LOS drop below C for longer than 15 minutes. At no point did the levels drop lower than D on any of the bridges.

Moreover, the County also has no admissible data indicating that pedestrian congestion is a particular problem on the pedestrian bridges, especially compared to street-level sidewalks. The studies in fact show that not only is congestion only an issue on some bridges at some times of day but also that it is an issue on some bridges *along with some sidewalks.*

No crowd crush incident has ever occurred on the pedestrian bridges, and the County has no evidence that crowd density on the bridges ever reached levels where crowd crush could have occurred. Likewise, the County is unaware of any time where emergency personnel could not access the pedestrian bridges.

While Plaintiffs recognize that public safety is generally a legitimate interest, as the above

reflects, the County has not met is burden of showing that there are non-conjectural harms such as more arrests or citations on the pedestrian bridges than the rest of the sidewalk system, or other problems it refers to within the vague term "disorder".

b) The County has no evidence that banning stopping and standing fits its alleged harms

For CCC 16.13.030's ban to be constitutional, the County must not only show that the harms it seeks to remedy are not merely conjectural (a burden it cannot meet) but also that banning stopping and standing will relieve these harms in a direct and material way. As this Court previously explained, even if the harms the County points to are real,

> ... the court's "inquiry does not end there, because when the government seeks to regulate expression, even incidentally, to address anticipated harms, it must '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.'" Courts "may not simply assume that the ordinance will always advance the asserted state interests sufficiently to justify its abridgement of expressive activity" rather, they "must be persuaded that the law actually furthers the [government's] asserted interest."

ECF No. 51 at 30:8–31:3. Here, the County has no evidence that stopping or standing on the pedestrian bridges causes "disorder", crime, "serious safety issues", or any other harm. The County's claim that stopping is linked to disorder rests entirely on Dr. Sousa's report and testimony. But Dr. Sousa never had any evidence that stopping or standing on the pedestrian bridges causes disorder or any other harm. (Ex. 18, Sousa Deposition at 195:15–196:14.) To the extent the County claims that the Kimley Horn's calculations shows that people stopping on the bridges causes congestion, this analysis is inadmissible as it is expert witness testimony "based on scientific, technical, or specialized knowledge." Fed. R. Evid. 701 (prohibiting lay witnesses from offering opinions based on scientific, technical, or other specialized knowledge within the scope of Fed. R. Evid. 702). Again, the County

has only noticed Dr. Sousa as an expert, and he does not know what LOS is. (Ex. 18, Sousa Deposition at 103:12–24.)

c) The County failed to establish reasonable, less burdensome alternatives were unavailable.

"To meet the requirement of narrow tailoring, the government must demonstrate that alternative measures that burden substantially less speech would fail to achieve the government's interests, not simply that the chosen route is easier." *McCullen*, 573 U.S. at 495 (2014). The government cannot just claim that an alternative measure would be inadequate, it must offer some evidence to support its contention. *See id.*, 573 U.S. at 494 ("In short, the Commonwealth has not shown that it seriously undertook to address the problem with less intrusive tools readily available to it."). CCC 16.13.030 banned all stopping and all activities encouraging people to stop all the time on all pedestrian bridges within the Resort Corridor. There are obvious, less burdensome alternative measures that the County had its disposal to address the harms it believed were occurring on the bridges, and the County cannot show that these measures would have been inadequate.

First, the County had anti-obstruction ordinances already on the books. *See* CCC 16.11.040 (banning obstructions on public sidewalks). The County appears to rely on Dr. Sousa's report to claim that these ordinances were inadequate to address its concerns related to the bridges, but Dr. Sousa admits he had no evidence to support his claim that these ordinances were inadequate. (Ex. 18, Sousa Deposition at 234:17–235:8.)

Second, the County could have imposed time-based or bridge-specific restrictions rather than bans imposed all the time on every bridge. According to the most recent data available from the 2022 Pedestrian Study related to pedestrian traffic, congestion, and people stopping on the pedestrian bridges in the Resort Corridor, high levels of congestion only occur on three bridges over limited periods of time. And while it does not do so on the pedestrian bridges, the County actually implements

time-based restrictions on portions of the grade-level sidewalks in the Resort Corridor. (Ex. 1, Yazdani 30(b)(6) Deposition at 187:10–189:7). The County has no data that a stopping ban in effect during specific times or on specific bridges would have been ineffective in addressing its concerns. (Ex. 3, Frierson 30(b)(6) Deposition at 241:6–13 (no data on bridge-specific restrictions), 244:16–245:8 (only information on time-based restrictions from Metro presentation); *see* Ex. 19, Walsh Deposition at 131:7–19 (the County never asked LVMPD about the effect of time- or bridge- based restrictions)).

Finally, the County could have carved out an exception for First Amendment activities as it has done in other ordinances. *See* CCC 16.11.020(e)(1) (only considering certain activities obstructive if they are not otherwise protected by the First Amendment). The County has no evidence that it could have achieved the goals of CCC 16.13.030 while exempting First Amendment activities from the prohibition on stopping or encouraging other people to stop. (Ex. 3, Frierson 30(b)(6) Deposition at 152:4–154:3.)

B. Plaintiffs are also entitled to summary judgment on their as-applied challenge.

Under the First Amendment plaintiffs may pair facial challenges with as-applied challenges. *Real v. City of Long Beach*, 852 F.3d 929, 933 (9th Cir. 2017). To succeed with an as-applied challenge, a plaintiff must only show that the government unconstitutionally regulates their own speech. *Italian Colors Rest. v. Becerra*, 878 F.3d 1165, 1175 (9th Cir. 2018). As applied to Plaintiffs Summers and Polovina, CCC 16.13.030 obviously impacts their First Amendment activities. Summers has always played his violin standing still, as is typical for violinists, and Polovina cannot move and play his cello at the same time. Both use small amplifiers while playing that neither performer can use while moving. Both solicit with signs asking people for tips, and it is not practical for either to solicit, perform, and move at the same time. As for the prohibition on encouragement, Summers and Polovina play to attract an audience – they want people to listen to their music – and

for people passing by to stop to drop money into their tip jars. They are deterred from their First Amendment activities for fear of prosecution under the ordinance.

As discussed above, the County cannot show that CCC 16.13.030 has been narrowly tailored. The County has no evidence that stopping or standing causes any harm on the pedestrian bridges or that the harms it passed CCC 16.13.030 to address are more than speculative. The County also failed to consider many reasonable, less burdensome alternatives that would have allowed Plaintiffs Summers and Polovina to continue performing on the bridges: exempting First Amendment activities from the no stopping ban, enforcing the preexisting anti-obstruction ordinances, or passing time- or bridge-based restrictions rather than a blanket ban on all bridges at all times.

C. Plaintiffs are entitled to summary judgment for their First and Second Causes of Action pursuant to the Fourteenth Amendment and Article 1, Section 8 of the Nevada Constitution.

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

"The fundamental rationale underlying the vagueness doctrine is that due process requires a statute to give adequate notice of its scope." *Botosan v. Paul McNally Realty*, 216 F.3d 827, 836 (9th Cir. 2000) (citing *Grayned v. City of Rockford*, 408 U.S. 104, 108 (1972)). "A statute is vague not when it prohibits conduct according 'to an imprecise but comprehensible normative standard, but rather in the sense that no standard of conduct is specified at all.'" *Id.* (quoting *Coates v. City of*

Cincinnati, 402 U.S. 611, 614 (1971)). "[V]agueness concerns are more acute when a law implicates First Amendment rights, and, therefore, vagueness scrutiny is more stringent." *Butcher v. Knudson*, 38 F.4th 1163, 1169 (9th Cir. 2022) (citing *Cal. Teachers Ass'n v. State Bd. of Educ.*, 271 F.3d 1141, 1150 (9th Cir. 2001)). A criminal regulation is unconstitutionally vague if the regulation "fails to provide a person of ordinary intelligence fair notice of what is prohibited" or is "so standardless that it authorizes or encourages seriously discriminatory enforcement." *Id.* (quoting *FCC v. Fox Television Stations, Inc.*, 567 U.S. 239, 254 (2012)). If the regulation fails to satisfy either standard, it is unconstitutional. *Id.*

As discussed above, Plaintiffs have established their initial burden to show that CCC 16.13.030 encompasses a substantial amount of constitutionally protected activity in relation to its legitimate scope. According to its plain text, its ban on stopping *de facto* prohibits any protected that activity that requires someone to stop such as playing instruments, using amplified sound, or engaging in one-on-one conversation, and its ban on encouraging other people to stop effectively prohibits any First Amendment that either intends to draw an audience or encourages people to stop to engage with a message such as solicitation or vending. The County's own studies show that these concerns are not theoretical; according to the County's available pedestrian traffic data, the people who stopped on a bridge did so to engage in protected activity.

Turning to the vagueness standard, CCC 16.13.030 is so standardless that it authorizes or encourages seriously discriminatory enforcement. Thus it no surprise that LVMPD openly admits that it engages in discriminatory enforcement, ignoring whole categories of people who stop for "incidental viewing purposes" on the bridges as a matter of policy while continuing to enforce the ordinance against people who engage street performing, soliciting, and other activities protected by the First Amendment. According to LVMPD, it does not base its "incidental stop" policy on how long someone stops but rather what people are doing, *per se* exempting people stopping to take

photographs or to take in a view of the Strip from CCC 16.13.030's prohibition. (Ex. 19, Walsh Deposition at 37:16–37:19, 37:20–38:13, 50:3–51:5.)

LVMPD is a separate government entity from the County, but its discriminatory enforcement is a function of the County's language in CCC 16.13.010 and the County's representations when CCC 16.13 was passed. The County also issued guidance through its official social media account that aligns with LVMPD's discriminatory policy. (Ex. 2.) As the County encourages and authorizes LVMPD to discriminate in enforcing the bans imposed on the pedestrian bridges, CCC 16.13.030 is unconstitutionally vague.

[Remainder of page left intentionally blank]

V. CONCLUSION

Plaintiffs have satisfied their burden and Defendants cannot meet their burdens. Thus, Plaintiffs are entitled to summary judgment for their First Amendment, Fourteenth Amendment, and related Nevada state constitutional law claims. CCC 16.13.030 impacts a significant amount of activity protected by the First Amendment in relation to its legitimate sweep. In turn, the County cannot show that the restriction imposed is narrowly tailored, rendering the provision unconstitutional under the First Amendment. The ordinance is also unconstitutional as applied to Plaintiffs. Furthermore, that CCC 16.13.030 allows for discriminatory enforcement restricting activity protected by the First Amendment while giving other, unprotected activities carte blanche renders it violative of the Fourteenth Amendment. As such, Plaintiffs request that this Court grant summary judgment in their favor.

Dated: December 18, 2025

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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing **Plaintiffs' Motion for Summary Judgment** with the Clerk of the Court for the United States District Court of Nevada by using the court's CM/ECF system on December 18, 2025. I further certify that all participants in the case are registered CM/ECF users and that service will be accomplished on all participants by:

☒ CM/ECF

☐ Electronic mail; or

☐ US Mail or Carrier Service

/s/ Christopher Peterson
An employee of ACLU of Nevada