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25 **UNITED STATES DISTRICT COURT**

16 **DISTRICT OF NEVADA**

17 LISA MCALLISTER, an individual;
 18 BRANDON SUMMERS, an individual; and
 19 JORDAN POLOVINA, an individual,

20 vs.
 21 Plaintiffs,

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

24 Defendant.

25 Case No.: 2:24-cv-00334

**PLAINTIFFS' RESPONSE TO MOTION
 FOR LEAVE TO FILE BRIEF
 OF AMICUS CURIAE, NEVADA RESORT
 ASSOCIATION, IN SUPPORT OF
 DEFENDANT CLARK COUNTY,
 NEVADA'S MOTION FOR SUMMARY
 JUDGMENT [112]**

23 Plaintiffs LISA MCALLISTER, BRANDON SUMMERS, and JORDAN POLOVINA
 24 (collectively "Plaintiffs"), by and through their counsel of record, oppose Nevada Resort
 25

1 Association's motion for leave to file a brief in support of Defendant Clark County's motion for
 2 summary judgment.

3 **MEMORANDUM OF POINTS AND AUTHORITIES**

4 **I. INTRODUCTION**

5 The proposed Nevada Resorts Association (NRA) brief is not an amicus brief. Clocking in at
 6 25-pages with 18 supporting exhibits and retreading every element that the County must prove, the
 7 NRA's proposed brief is a second motion for summary judgment. Even worse, the NRA, a non-party,
 8 tries to insert itself into the position of supplementing the expert and discovery disclosures made by
 9 the parties over the past year. An amicus is not entitled to address such discovery and factual matters;
 10 amicus briefs "filed by allies of the litigant" that "duplicate the arguments made in the litigants briefs,
 11 in effect merely extending the length of the litigant's brief" are abusive, not useful and thus should
 12 not be admitted. *Long v. Coast Resorts, Inc.*, 49 F. Supp. 2d 1177, 1178 (D. Nev. 1999).

13 In addition to addressing factual and discovery matters that an amicus cannot engage in, the
 14 amicus brief also fails to satisfy any of the purposes amici can serve and thus does not meet the
 15 threshold showing for an amicus. *United States ex rel. Guardiola v. Renown Health*, 2016 U.S. Dist.
 16 LEXIS 158634, *6-7 (D. Nev. November 15, 2026) (determining that courts have "normally"
 17 admitted amicus briefs when (1) the party supported is either unrepresented or represented by
 18 incompetent counsel, (2) amicus curiae are parties to another matter that will be impacted by the
 19 litigation's outcome, or (3) amicus curiae offer unique perspective or information "that can help the
 20 court beyond the help that the lawyers for the parties are able to provide."). The NRA does not claim
 21 that the County is unrepresented or that the Clark County District Attorney's Office is incompetent.
 22 The NRA does not identify an ongoing case that may be affected by this litigation. The NRA does
 23 not identify any relevant, substantive law that this Court is unaware of. And the NRA fails to offer a
 24 perspective that the County is unable to provide, which is unsurprising since the NRA hand-picked
 25

1 the County's expert and had significant influence over the development of the ordinance at issue in
2 this case.

3 Despite its actions to the contrary, the NRA is not a party to this matter. At least since March
4 14, 2024, when it filed its first motion for leave, the NRA knew that litigation was ongoing, yet it
5 never made any effort to intervene. Since it is not a party, NRA does not have the authority to file a
6 motion for summary judgment, and it should not be allowed to file one now under the false label
7 "amicus brief". While it may have had the power to control the development of CCC 16.13.030, this
8 Court should not indulge the NRA's efforts to control this litigation as if it is a party.

9 **II. STATEMENT OF RELEVANT FACTS**

10 As laid out in the NRA's motion for leave, the NRA collaborated with the County in drafting
11 the bill that became CCC 16.13.030 and has taken advantage of every opportunity to ensure that the
12 County would represent the NRA's interests. The NRA participated in the working group that made
13 the recommendations that lead to the enactment of CCC 16.13.030. ECF No. 112, Motion for Leave
14 to File Brief of Amicus Curiae, Nevada Resort Association, In Support of Defendant Clark County,
15 Nevada's Motion for Summary Judgment ("NRA Second Motion for Leave") at 2:5–2:14. It
16 presented testimony multiple times before the Board of County Commissioners through its president
17 Virginia Valentine and its attorney Mitchell Langberg promoting restrictions on the pedestrian
18 bridges and in favor of CCC 16.13.030. *Id.* at 2:20–3:2, 3:10–3:11, 4:8–4:11 n.15 (citing to
19 Langberg's testimony before the Board as its own). It also sent a letter to the Board explaining in
20 detail the NRA's interest in banning stopping and standing on the pedestrian bridges. *Id.* at 3:6–10.

21 In addition to these public-facing avenues, the NRA has taken advantage of opportunities not
22 available to the public. The NRA, through Mr. Langberg, identified Dr. Sousa as a potential expert
23 witness to defend CCC 16.13.030 and referred him directly to the County's attorneys. (Ex. 1,
24 Deposition of William H. Sousa ("Sousa Deposition") at 257:3 – 257:14; Ex. 2, Defendant Clark
25

1 County's Responses to Plaintiffs' Third Set of Request for Admission, Request for Admission No.
2 38.). When the Culinary Union indicated that it considered opposing what would become CCC
3 16.13.030, it was the NRA, not the County, that drafted potential amendments to address the union's
4 concern. (Ex. 3, Email exchange between Virginia Valentine to Lisa Logsdon at CC 348684–686).
5 And it was counsel for the NRA, not the County, that provided an extended legal analysis to the union
6 explaining why the stopping ban would not violate the First Amendment, which the County's
7 attorneys then shared among each other after CCC 16.13.030 was enacted into law and Plaintiffs'
8 filed this suit. (Ex. 4, Email from Lisa Logsdon to Joel Browning, forwarding email from Virginia
9 Valentine at CC 385911–915).

10 **III. PROCEDURAL HISTORY**

11 Plaintiffs McAllister and Summers filed this action on February 14, 2024, and then a motion
12 for preliminary injunction on February 22, 2024. ECF No. 1, Complaint; ECF No. 4, Motion for
13 Preliminary Injunction. In turn, the County filed a motion to dismiss plaintiffs' complaint and a
14 response to the motion for preliminary injunction on March 14, 2024. ECF No. 9, Defendant Clark
15 County's Motion to Dismiss Complaint; ECF No. 10, Defendant Clark County's Response to
16 Plaintiff's Motion for Preliminary Injunction and Motion for Temporary Restraining Order. The same
17 day the County filed its motion and response, the NRA filed a motion for leave to file an amicus brief
18 in support of the County. ECF No. 11, Motion for Leave to File Brief as Amicus Curiae. As Plaintiffs
19 did not oppose, the Court granted this motion for leave filed on March 14, 2024, but "construe[d] the
20 proposed amicus brief as supporting Clark County's opposition to plaintiffs' TRO and PI motions"
21 to "prevent[] evidence external to the complaint from permeating the motion-to-dismiss
22 proceedings." ECF No. 22, Order Granting Motion for Leave to File Amicus Curiae Brief, at 1:18–
23 2:2).

24 This Court issued a discovery plan and scheduling order in this matter on September 5, 2024.
25

1 ECF No. 54. The parties continuously engaged in discovery until September 23, 2025. ECF No. 88,
 2 Order to Extend Time to Extend Discovery Deadlines at 8. Other than exhibits attached to the
 3 County's initial expert witness disclosures, the parties bate stamped all documents disclosed during
 4 the discovery period, including documents from third-parties provided pursuant to subpoenas. (See
 5 Ex. 5, Plaintiffs' Fourth Supplement to Initial Disclosures at 17–24 (Plaintiffs disclosed documents
 6 marked with bate stamp "M – S" or "LVMPD" then number); Ex. 6, Defendant Clark County's
 7 Twenty-Fourth Supplemental Disclosure and Production of Documents and Witnesses Per FRCP
 8 26(a)(1) at 3–15 (Defendant Clark County's disclosed documents marked with "CC" then number))
 9 The parties then filed cross motions for summary judgment on December 18, 2025. ECF No. 103,
 10 Defendant Clark County's Motion for Summary Judgment; ECF No. 105, Plaintiffs' Motion for
 11 Summary Judgment. At no time has the NRA filed a motion to intervene in this matter.

12 On December 22, 2025, the NRA filed yet another motion for leave to file. ECF No. 112,
 13 NRA Second Motion for Leave. Pursuant to its motion, the NRA has requested to file an "Amicus
 14 Brief" in support of the County's motion for summary judgment. *Id.* at i:22–i:23. The proposed brief,
 15 attached as Exhibit A to the motion, is 25 pages long and is supported by 18 exhibits. ECF No. 112–
 16 1, Ex. A, Brief of Amicus Curiae, Nevada Resort Association, in Support of Defendant Clark County,
 17 Nevada's Motion for Summary Judgment ("Proposed Brief"). 15 of the exhibits attached to the
 18 NRA's proposed brief appear to be new and are not exhibits the County offered in support of its
 19 motion for summary judgment. *Compare id.* at 27 (NRA Proposed Brief's Index of Exhibits) with
 20 ECF No. 103–1, Index of Exhibits (listing exhibits supporting Clark County's motion for summary
 21 judgment); ECF No. 106, Appendix of Exhibits to Plaintiffs' Motion for Summary Judgment Volume
 22 I of V (listing exhibits supporting plaintiffs' motion for summary judgment).¹ None of the

23
 24 ¹ It appears that the 2015 Clark County Pedestrian Study and the legislative history from the May 3,
 25 2022, are listed in both the NRA and the County's indexes, though the NRA's versions do not use

1 documentary exhibits offered by the NRA have been bate stamped by the parties or anyone else. *See*
 2 ECF No. 112-3–ECF No. 112-19.

3 Plaintiffs oppose the NRA’s second motion for leave for the reasons below.

4 **IV. LEGAL STANDARD**

5 “A court may grant leave to appear as an *amicus* if the information offered is ‘timely and
 6 useful.’ *Long v. Coast Resorts, Inc.*, 49 F. Supp. 2d 1177, 1178 (D. Nev. 1999). However, “[t]here
 7 is no inherent right to file an *amicus curiae* brief with the Court.” *Id.* Rather, “[i]t is left entirely to
 8 the discretion of the Court.” *Id.*

9 “An *amicus* brief should normally be allowed when a party is not represented competently or
 10 is not represented at all, when the *amicus* has an interest in some other case that may be affected by
 11 the decision in the present case, or when the *amicus* has unique information or perspective that can
 12 help the court beyond the help that the lawyers for the parties are able to provide.” *United States ex*
 13 *rel. Guardiola v. Renown Health*, 2016 U.S. Dist. LEXIS 158634, *6-7 (D. Nev. November 15, 2026)
 14 (citing *Cnty. Ass’n for Restoration of Env’t (CARE) v. DeRuyter Bros. Dairy*, 54 F. Supp. 2d 974,
 15 975 (E.D. Wash. 1999)). Conversely, *amici* briefs are generally disfavored at the trial court level
 16 because briefs that duplicate what a party should file are not permitted. As one court explained, such
 17 briefs are unfair to litigants:

18 The vast majority of *amicus curiae* briefs are filed by allies of litigants
 19 and duplicate the arguments made in the litigants’ briefs, in effect
 20 merely extending the length of the litigant’s brief. Such *amicus* briefs
 21 should not be allowed. They are an abuse.

22
 23 *Long*, 49 F. Supp. 2d at 1178 (citing *Ryan v. Commodity Futures Trading Commission*, 125 F.3d
 24 1062, 1063 (7th Cir. 1997)).

25
 26 versions with the County’s bates number on them. The NRA also includes “CCC 16.13.010 - .050”
 27 in its index, which Clark County discusses to its motion as legal authorities rather than exhibits. *See*,
 28 *e.g.*, ECF No. 103, Defendant Clark County’s Motion for Summary Judgment, at 18:25–19:5 (citing
 29 to CCC 16.13.030 as a law).

1 “An amicus curiae is not a party to litigation and courts rarely give party prerogatives to those
2 not formal parties; petition to intervene and its express or tacit grant are prerequisites to that
3 treatment.” *United States v. Kovar*, 2025 U.S. Dist. LEXIS 114888, *4 (D. Nev. June 17, 2024)(citing
4 *Wildearth Guardians v. Jeffries*, 370 F. Supp. 3d 1208, 1228 (D. Or. 2018). As such, an amicus's role
5 is not to provide additional evidence or present new issues but is only in “assisting in a case of general
6 public interest, supplementing the efforts of counsel, and drawing the court's attention to law that
7 escaped consideration.” *Wildearth Guardians v. Jeffries*, 370 F. Supp. 3d 1208, 1228 (D. Or. August
8 17, 2018). An amicus does not have the authority to submit extra-record evidence. *Id.*

9 **V. ARGUMENT**

10 The Court should deny the NRA’s motion for leave to file its brief as the proposed brief
11 includes impermissible material and serves none of the purposes that amicus briefs are meant to serve.

12 The NRA’s proposed brief is not an amicus brief but rather a second motion for summary
13 judgment in that it offers its own evidence into the record and re-litigates every element of the
14 County’s burden. The NRA cannot offer extra-record evidence as amicus, but in attaching 18 exhibits
15 to its “amicus” brief while arguing for these documents’ admissibility, the NRA is trying to do
16 precisely that. Only a party can supplement the factual record or file a motion for summary judgment,
17 and NRA is not a party to this case. Aside from impermissibly trying to offer evidence to this Court,
18 the NRA’s brief also fails to serve this Court in any of the ways an amicus brief should. The NRA
19 does not claim that the County’s counsel is incompetent. The NRA does not identify another case it
20 is involved in that may be impacted by the Court’s adjudication of the County’s motion for summary
21 judgment. The NRA’s motion for leave fails to identify any unique information or perspective that
22 the County cannot provide.

23 As the NRA’s brief goes well beyond the permissible bounds of an amicus brief and fails to
24 serve a useful purpose, this Court should not grant the NRA’s motion for leave.

A. The Proposed Brief Improperly Seeks to Submit Extra-Record Evidence as Amicus Curiae, Which Is Not Permitted.

Amicus curiae are not parties and cannot submit extra-record evidence. *Wildearth Guardians*, 370 F. Supp. 3d at 1228 (D. Or. August 27, 2018). In *Wildearth Guardians v. Jefferies*, under similar circumstances as this matter, parties filed cross motions for summary judgment, and an amicus curiae filed an “Motion to Submit Extra-Record Evidence” seeking to bring in evidence not introduced by the parties. *Wildearth Guardians*, 370 F. Supp. 3d at 1224, 1228 (D. Or. August 27, 2018). The *Wildearth Guardian* court determined that the amicus curiae’s motion was “improper” because “an amicus curiae is not a party to litigation.” *Id.* As the amicus curiae in *Wildearth Guardians* had not intervened as a party, it “[did] not have the prerogatives of a proper party in [the] action, such as filing a motion to consider extra-record evidence.” *Id.*

Discovery in this case lasted for over a year and is now closed, but the NRA as a non-party asks to admit 18 exhibits as evidence in support the County’s motion. At least 15 of the NRA’s proposed exhibits are unlike the documents previously introduced into the record by either party in filing their respective motions for summary judgment. None of the NRA’s documentary exhibits are date stamped, indicating that none were disclosed during the discovery period. And the NRA clearly intends for the Court to consider these new, previously undisclosed documents as evidence in support of the County’s motion, with the NRA going so far as to explain why its exhibits would be admissible under the Federal Rules of Evidence. *See, e.g.*, ECF No. 112–1 at 3 n. 12 (arguing that “[t]he Nevada Department of Transportation’s publication is presumed authentic under FRE 902(5) and is admissible under the hearsay rules pursuant to FRE 803(8) as a record of a public office.”).

The situation here is the same as in *Wildearth Guardians*. The NRA seeks to submit extra-record evidence at the summary judgment stage even though it has not intervened as a party. As the NRA has not intervened, it cannot now offer evidence as if it is a party to this litigation. As such, the motion for leave must be denied.

B. The Proposed Brief Does Not Satisfy Any of the Permitted Purposes for an Amicus Brief.

To participate as an amicus, the NRA would typically need to show one of the following: (1) the County is either unrepresented or represented by incompetent counsel, (2) the NRA is a party to another matter that will be impacted by the litigation’s outcome, or (3) the NRA offers a unique perspective or information “that can help the court beyond the help that the lawyers for the parties are able to provide.” *United States ex rel. Guardiola*, 2016 U.S. Dist. LEXIS 158634, *6-7. The NRA’s brief does not qualify for admission under any of these avenues.

In its motion for leave, the NRA does not claim that the County is unrepresented or represented by incompetent counsel. It does not identify any litigation the NRA is a part of that will be impacted by the County's motion for summary judgment. As such, it must show that its proposed brief is useful to Court beyond the help the County or Plaintiffs can provide.

While broadly claiming “[it] is uniquely qualified to help the Court understand the background of this case as well as the significant government interest at stake in tourist safety and its effect on Nevada’s economy,” ECF No. 112 at 6:4–6:6, the NRA fails to explain why its “perspective” cannot be adequately represented by the County. It does not identify any facts that the County cannot provide this Court if the County deems them relevant, and it does not identify any substantive law overlooked by the parties or this Court.

1. The Brief Does Not Offer Unique Information.

In its motion for leave, the NRA does not actually explain what specific, “unique” information its proposed brief provides. In fact, its argument for why the Court should consider its “amicus” brief is only four paragraphs long.

The NRA first talks about its role as an “advocate” for the “gaming industry” and as a “repository” of information, but it does not explain what, if any, information in its “repository” is relevant here and unavailable to the County. ECF No.112 at 6:5–15. The NRA then provides statistics

1 about tourism in Nevada, ECF No. 112 at 6:15–20, but the County opens its motion for summary
2 judgment with essentially the same information and argument as that offered by the NRA. ECF No.
3 103 at 2:4–2:11. The NRA follows on by saying it has collected reports from unnamed tourists that
4 have felt “afraid to use the pedestrian bridges,” but the NRA also says that it “shared a summary of
5 these visitors’ concerns with the Board [of County Commissioners],” meaning that the County
6 already has access to this information. ECF No. 112 at 6:21–6:26. As such, the NRA’s motion for
7 leave does not identify any “useful” information contained in its proposed brief, such as relevant
8 substantive law, that has escaped consideration by the parties or this Court.

9 Turning to the proposed brief itself, it further evidences that the NRA does not have any
10 unique information that merits the NRA’s participation on summary judgment. The brief offers no
11 unique factual insight. Instead, it summarizes public testimony presented before the County and
12 publicly available documents, including documents the County itself created. ECF No. 112-1
13 Proposed Brief at 3:14 – 4:7 (talking about the County’s Resorts Corridor Working Group), 4:8–4:17
14 (talking about the County’s 2012 pedestrian study), 4:18–5:3 (talking about a publication by William
15 Sousa, who the County has noticed as an expert in this matter). It discusses at length the same County
16 Commission testimony presented in support of CCC 16.13.030 as the County does in its motion for
17 summary judgment. *Compare* ECF No. 112-1, Proposed Brief at 5:10–12:10 (rehashing the
18 testimony of LVMPD, Williams Sousa, and Virginia Valentine) *with* ECF No. 103, Defendant Clark
19 County’s Motion for Summary Judgment at 7:17–16:3. Once it finishes retreading the same facts the
20 County either presented or could have presented in its motion for summary judgment, the proposed
21 brief then re-litigates every element that the County must satisfy under the motion for summary
22 judgment standard. *See* ECF No. 112-1 at 12:14–25:12 (rearguing the County’s burden to establish
23 CCC 16.13.030 is a reasonable time, place, and manner restriction). This duplicative, fact-laden
24 presentation is precisely the type of brief *Long* warns about “filed by allies of the litigant” that “merely

25

1 extends the litigant's brief" without assisting the Court.

2 **2. The NRA's Perspective is Adequately Represented by the County.**

3 "In the absence of a very compelling showing to the contrary, it will be presumed that a state
4 adequately represents its citizens when the applicant shares the same interest." *Prete v. Bradbury*,
5 438 F.3d 949, 956 (9th Cir. 2006) (considering the adequacy of government representation in the
6 context of intervention).

7 The NRA has taken many steps to ensure that the County will represent its interests. It sent a
8 letter to the Board of County Commissioners providing in-depth support for the bill that became CCC
9 16.13.030, offered public testimony through its president Virginia Valentine and its attorney Mitchell
10 Langberg, and actively participated on the working group that directly led to County enacting CCC
11 16.13.030.

12 Furthermore, the NRA as inserted itself into the defense of CCC 16.13.030 in ways
13 unavailable to the everyday public. The NRA, through Mr. Langberg, hand-picked the County's
14 expert in this case, Dr. Sousa. (Ex. 1, Deposition of William H. Sousa ("Sousa Deposition") at 257:3
15 – 257:14; Ex. 2, Defendant Clark County's Responses to Plaintiffs' Third Set of Request for
16 Admission, Request for Admission No. 38.). The NRA, rather than the County, drafted amendments
17 ensuring that the Culinary Union did not oppose CCC 16.13.030 when the bill went before the Board
18 of County Commissioners. (Ex. 3, Email exchange between Virginia Valentine to Lisa Logsdon at
19 CC 348684–686) (incorrectly opining that the Culinary Union's street-level protests would be
20 exempted from punishment despite the fact the Ordinance makes it a crime to cause people to stop
21 on the bridges.) Mr. Langberg, again on behalf of the NPRA, also appears to have developed the
22 legal theory underpinning CCC 16.13.030's defense that the County ultimately adopted. (Ex. 4, Email
23 from Lisa Logsdon to Joel Browning, forwarding email from Virginia Valentine CC 385911–915.
24 (forwarded email contains Mitchell Langberg's communication with the union's representatives

1 including extensive legal analysis). Considering that the County adopted the ordinance that the NRA
2 wanted and then closely collaborated with the NRA preparing to defend this litigation, there is no
3 meaningful difference between the NRA’s perspective from the County’s.

4 Finally, and perhaps most important, the NRA itself fails to explain how its perspective is
5 unrepresented; after all, it’s the NRA’s burden to explain why its proposed brief would be useful.
6 While it may be dissatisfied with how the County litigates, the NRA has no right to file its own motion
7 for summary judgment, yet the brief it offers this Court is such a motion, not an amicus brief. As the
8 proposed brief offers no new perspectives or undiscovered substantive law, it is not useful as an
9 amicus brief and merely functions to extend the County’s motion by 25 pages, essentially giving the
10 County twice the pages it is entitled to while burdening Plaintiffs with responding to a second, full-
11 length brief.²

12 In all, it is an understatement to say the role the NRA has played so far cuts against the
13 traditional notion that “‘*amicus curiae*’ means friend of the court, not friend of a party,” *Long*, 49 F.
14 Supp. 2d at 117. The Court should not allow the NRA act as a shadow party to this case in its final
15 stages.

16
17
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19 [Remainder of page left intentionally blank]
20
21
22

23 ² At 25 pages, the NRA’s proposed brief exceeds the page limit imposed by this Court on any motion
24 other than a motion for summary judgment or related response. LR 7-3(a)-(b)(“All other motions
[besides motions for summary judgment], responses to motions, and pretrial and post-trial briefs are
limited to 24 pages, excluding exhibits.”).

1
2 **VI. CONCLUSION**

3 The NRA's proposed brief does not offer any information that the County could not provide
4 this Court. It largely retreads publicly available information and reargues the County's position in the
5 County's motion for summary judgment. Its second proposed brief does not act like an amicus brief
6 and functions like a second motion for summary judgment, being so bold as to offer additional
7 evidence into the record. Having to address it improperly burdens this Court and Plaintiffs. The
8 NRA's brief is thus not useful and far exceeds the acceptable boundaries of an amicus brief. For these
9 reasons, Plaintiffs respectfully request that the Court deny the NRA's motion for leave.

10 Dated: January 5, 2026

11 **ACLU OF NEVADA**

12 */s/ Christopher Peterson* _____
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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing **PLAINTIFFS' OPPOSITION TO
MOTION FOR LEAVE TO FILE BRIEF OF AMICUS CURIAE, NEVADA RESORT
ASSOCIATION, IN SUPPORT OF DEFENDANT CLARK COUNTY, NEVADA'S 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 January 5, 2026. 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