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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, )  
15 vs. )  
16 CLARK COUNTY, a political subdivision )  
16 of the state of Nevada. )  
17 )  
18 Defendant(s). )

19 Case No: 2:24-cv-00334

20 **DEFENDANT CLARK COUNTY'S**  
21 **REPLY TO PLAINTIFFS'**  
22 **RESPONSE [117] TO ITS MOTION**  
22 **TO DISMISS PLAINTIFFS' AS-**  
23 **APPLIED CHALLENGES [102]**

24 Defendant CLARK COUNTY, by and through its counsel of record, hereby files this  
25 Reply to Plaintiffs' Response [117] to its Motion to Dismiss [102] Plaintiffs' As-Applied  
26 Challenges.

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

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## **MEMORANDUM AND POINTS OF AUTHORITIES**

I.

### **NATURE OF REPLY**

In Plaintiffs' Response [117], Plaintiffs concede that because as-applied challenges preclude enforcement of an ordinance against plaintiffs under a specific set of facts that the challenges must be directed at an enforcement agency. [117] at 3:14-17. They similarly concede that LVMPD is not a party and that LVMPD is a separate legal entity. *Id.*

8 Plaintiffs' sole argument for why their as-applied challenges should not be dismissed,  
9 however, is that they contend, in addition to LVMPD, the Clark County District Attorney's  
10 Office also enforces CCC 16.13.030 through prosecution. [117] at 3:18-24. They contend  
11 erroneously that, because District Attorney's Office is a department within Clark County and  
12 not a legally distinct entity, an order from the Court directed at Clark County would also  
13 preclude prosecution of CCC 16.13.030 making any potential opinion more than just advisory.

14 While Clark County concedes that the District Attorney's Office is a department of  
15 Clark County for the purposes of employee benefits, collective bargaining, and personnel  
16 funding, etc.; Clark County and the Clark County Board of County Commissioners have no  
17 control over the charging decisions, prosecutorial discretion, or policy of the District  
18 Attorney's Office which is set by the district attorney—an elected official not subject to the  
19 control of the Clark County Board of County Commissioners. *See, e.g.*, NRS 252.010–190.

Decisions related to charging and prosecution are strictly within the statutory purview of Steven B. Wolfson, acting on behalf of the State of Nevada in criminal prosecution, as the elected District Attorney for Clark County and, like LVMPD, Steven B. Wolfson is not a named defendant in this matter. Accordingly, any attempt by the Court to issue an order precluding enforcement of CCC 16.13.030 would remain strictly advisory as neither Clark County nor the Clark County Board of County Commissioners have the power or authority to direct the Clark County District Attorney with respect to his prosecution of crimes.

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1 II.  
23 **LEGAL ARGUMENTS**  
45 **A. The Case Law Plaintiffs Cite Supports that it is the Clark County District  
6 Attorney who is the Final Policymaker on Prosecutorial Decisions not the  
7 Administrative department of the “District Attorney’s Office” funded by  
8 Clark County**

9 Plaintiffs contend that naming Clark County is sufficient for the Court to have  
10 jurisdiction over the Clark County District Attorney’s Office which is responsible for  
11 enforcement of CCC 16.13.030 along with LVMPD. Plaintiffs contend that Clark County “can  
12 certainly compel or direct its own district attorneys not to enforce 16.13.030 after an arrest or  
13 citation is issued.” [117] at 4:17-18. In support of this, Plaintiffs cite two unpublished  
14 decisions, a Ninth Circuit opinion, a Nevada Supreme Court opinion, and a District of Nevada  
15 Memorandum and Order that they contend stand for the proposition that the District Attorney’s  
16 Office and Clark County are coextensive and, accordingly, naming Clark County is sufficient  
17 to avoid dismissal because any order directed at Clark County would be directed at the District  
18 Attorney’s Office. [117] at 2:19-23, 4:24-28. None of the cases cited by the Plaintiffs stand  
19 for the proposition for which they have been cited and all of them are clearly distinguishable  
20 from the facts in this case.

21 One of the cases cited by Plaintiffs was *Wormwood v. North Las Vegas Police*  
22 *Department*. [117] at 2:19-23. In *Wormwood*, the Court dismissed “all claims against the Clark  
23 County District Attorney’s Office, and all official-capacity claims against District Attorney  
24 Wolfsen and Deputy D.A.s Sweeten and Thurnell because **these claims are redundant** to the  
25 claims against Clark County.” *Wormwood v. N. Las Vegas Police Dep’t*, No.  
26 215CV01438JADGWF, 2016 WL 6915300, at \*3 (D. Nev. Nov. 22, 2016) (emphasis added).  
27 In this regard, the court in *Wormwood* was merely pointing out that the plaintiff had named  
28 various entities and parties in his *Monell* claims based on policy and procedure and that **these**  
**claims were duplicative** and unartfully alleged—not that Clark County, Clark County District  
Attorney’s Office, District Attorney Wolfsen and Deputy DAs Sweeten and Thurnell were  
coextensive as entities and parties. *Id.*

1       Next, Plaintiffs cited *Williams v. Clark Cty.*, which also does not stand for the  
 2 proposition for which it was cited. [117] at 2:19-23. The Court in *Williams* specifically held  
 3 that “The Clark County District Attorney’s Office is immune from suit because it is not a  
 4 separate entity capable of being sued under Section 1983.” *Williams v. Clark Cnty.*, No.  
 5 222CV00045JADEJY, 2022 WL 2658978, at \*3 (D. Nev. June 16, 2022), report and  
 6 recommendation adopted, No. 222CV00045CDSEJY, 2022 WL 2657249 (D. Nev. July 8,  
 7 2022). The court in that regard was opining that the Clark County District Attorney’s office  
 8 was not subject to suit for 1983 claims (which may be only maintained against individuals and  
 9 not municipalities) and because claims alleged against departments are an improper way to  
 10 raise *Monell* claims—they need to either be directed at an entity like Clark County or the head  
 11 of an entity acting in their official capacity like District Attorney Steven B. Wolfson. *Id.* That  
 12 is because *Monell* claims are appropriately brought against public officials who have control  
 13 of the financial resources to make an injury whole or who are primarily responsible for the  
 14 policy and procedure which gave rise to the alleged constitutional deprivation—public  
 15 officials like the Board of County Commissioners and/or the Clark County District Attorney,  
 16 respectively. *See, e.g., Monell v. Dep’t of Soc. Servs. of City of New York*, 436 U.S. 658, 699,  
 17 98 S. Ct. 2018, 2040, 56 L. Ed. 2d 611 (1978); *Webb v. Sloan*, 330 F.3d 1158, 1164 (9th Cir.  
 18 2003).

19       Plaintiffs similarly cited *Webb v. Sloan* in support of the contention that the Clark  
 20 County District Attorney’s Office is the final policymaker on the decision to prosecute. [117]  
 21 at 4:24-28; *Webb v. Sloan*, 330 F.3d 1158, 1165 (9th Cir. 2003). But that is not what *Webb*  
 22 held. Plaintiffs clearly omitted critical language from the *Webb* holding which provides that  
 23 “Nevada **district attorneys** are final policymakers in the particular area or particular issue  
 24 relevant here: the decision to continue to imprison and to prosecute.” *Webb v. Sloan*, 330 F.3d  
 25 1158, 1165 (9th Cir. 2003) (emphasis added). Plaintiffs want the court to conflate district  
 26 attorney’s offices, administrative departments within their respective counties, with the actual  
 27 district attorney, the final elected decision maker on matters of prosecution and the person who  
 28 sets prosecutorial policy for all matters under his purview.

1       The Nevada Supreme Court case cited by Plaintiffs similarly supports Defendant's  
 2 position that it is the district attorney who is in complete control of prosecutions and not Clark  
 3 County or the Clark County Board of County Commissioners. [117] at 4:24-28. *Cairns*  
 4 unequivocably provides that "The matter of the prosecution of any criminal case is within the  
 5 **entire control of the district attorney**"—not Clark County or the Clark County Board of  
 6 County Commissioners. *Cairns v. Sheriff, Clark Cnty.*, 89 Nev. 113, 115, 508 P.2d 1015, 1017  
 7 (1973) (emphasis added).

8       The last case Plaintiff relies upon, *Johnson v. Reno Police Chief*, is inapplicable to the  
 9 facts in this case. [117] at 4:20-22. Plaintiffs contend that *Johnson* stands for the proposition  
 10 that the municipality (rather than the individual prosecutors) are the real parties in interest  
 11 when prosecutorial policies are challenged—but *Johnson* says nothing of the sort. *Johnson v.*  
 12 *Reno Police Chief*, 718 F. Supp. 36, 38 (D. Nev. 1989). *Johnson* stands for the proposition  
 13 that quasi-judicial immunity/prosecutorial immunity does not extend to *Monell* claims for the  
 14 promulgation of policies because policies are not promulgated by individuals. In that case, the  
 15 use of the word "municipality" does not refer to an actual municipality but instead refers to  
 16 the *Monell* term-of-art distinguishing individual capacity claims from official  
 17 capacity/municipal claims, aka, *Monell* claims, against an organization. The only time a city  
 18 or county could be a real party in interest for a prosecutor's policies or prosecutorial discretion  
 19 within Plaintiffs' meaning is if said prosecutor were appointed and served entirely at the  
 20 pleasure of the board or city council of her respective jurisdiction—like in City of Las Vegas  
 21 or Henderson. When a district attorney is elected and answerable only to the electorate, the  
 22 real party in interest is the elected-official district attorney who answers exclusively to the  
 23 public absent malfeasance.

24       Accordingly, if Plaintiffs wanted to preclude enforcement or prosecution of CCC  
 25 16.13.030 they needed to have named either Clark County District Attorney Steven B.  
 26 Wolfson or LVMPD<sup>1</sup> as parties and, as they have failed to do so, the fact remains that any  
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28 <sup>1</sup> While the County concedes that Plaintiffs as-applied challenges could have moved forward if they had named the  
 district attorney as party, only naming the district attorney would lead to an absolutely absurd result whereby LVMPD

1 order of this Court attempting to preclude enforcement of CCC 16.13.030 against them in their  
 2 specific factual circumstances would serve as nothing more than an advisory opinion.

3 **B. Clark County's Role with the District Attorney's Office is Limited to Human  
 4 Resources, Collective Bargaining Negotiations, Employee Benefits  
 5 Administration, Facility Maintenance, etc. as a Funding Agent and not  
 6 Prosecutorial Oversight**

7 NRS 252.010, et seq. indicates which processes of the District Attorney's Office are  
 8 Subject to Clark County control and which are not.

9 For example, the Board of County Commissioners may:

10     • “[...] authorize the district attorney to rent, equip and operate, at public  
 11           expense, one or more branch offices in the county.” NRS 252.050 (emphasis  
 12           added).

13     • Approve “appoint[ment] [of] such clerical, investigational and operational staff  
 14           as the execution of duties and the operation of his or her office may require.”  
 15           NRS 252.070 (emphasis added).

16     Accordingly, the County's control with respect to the District Attorney's Office is  
 17     strictly limited to the provision of financial resources for the lease and operation of office  
 18     space and equipment and the hiring, retention, and provision of staff to work in the office as a  
 19     funding agent.

20     Clark County has the ability to request defense or prosecution of civil matters by the  
 21     District Attorney—as a client to its attorney—but it has no ability to direct the district attorney  
 22     with regard to criminal prosecution. NRS 252.110.

23     There is nothing under law authorizing the County to direct the conduct of the District  
 24     Attorney for any criminal matter or prosecution and, absent such statutory authority, Clark  
 25     County could not compel the district attorney to cease prosecuting cases under CCC 16.13.030  
 26     in response to an order from this Court.

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28     would be allowed to cite and arrest individuals under CCC 16.13.030, but those people could never be charged  
 29     criminally for the associated charges.

1                   **C. The District Attorney is an Elected Official exclusively endowed by Statute**  
 2                   **with Prosecutorial Authority and Discretion and this Authority is not Subject**  
 3                   **to the Control of Clark County**

4                   NRS 252.010, et seq. also contains the statutory requirements to serve as a district  
 5                   attorney and the scope of statutory authority granted to district attorneys in Nevada. *See, e.g.*,  
 6                   NRS 252.010–190.

7                   First, to serve as a district attorney, a person must be “[a]n attorney duly licensed and  
 8                   admitted to practice law in all courts of [Nevada].” NRS 252.010. This should be the first  
 9                   indication as to why the district attorney is not answerable to the Board of County  
 10                   Commissioners or Clark County for his official duties as there is no requirement that county  
 11                   commissioners or management be attorneys and non-attorneys are prohibited from engaging  
 12                   in the unauthorized practice of law. *See, e.g.*, NRS 244.020; NRS 7.285.

13                   “District attorneys [are] elected by qualified electors of their respective counties”  
 14                   making them politically accountable to the citizens where they live and not subject to any other  
 15                   authority absence malfeasance. NRS 252.020. It is the district attorney alone who is tasked  
 16                   with filing informations and drawing indictments, serving as public prosecutors, attending  
 17                   courts for the transaction of criminal business, prosecuting crimes, and setting policy with  
 18                   respect to charging and prosecution. *See, e.g.*, NRS 173.045; NRS 252.080; NRS 252.090;  
 19                   NRS 252.110; *Webb v. Sloan*, 330 F.3d 1158, 1165 (9th Cir. 2003); *Cairns v. Sheriff, Clark*  
 20                   *Cnty.*, 89 Nev. 113, 115, 508 P.2d 1015, 1017 (1973).

21                   Accordingly, and by statute, no order directed at Clark County could compel the district  
 22                   attorney to alter or amend his criminal prosecution policy or conduct as a matter of law as all  
 23                   such authority is statutorily vested in the district attorney—not Clark County. To maintain a  
 24                   viable as-applied challenge, Plaintiffs must necessarily have included either LVMPD or the  
 25                   district attorney as defendants and a failure to do so is fatal to their as-applied challenges.

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1                   **D. As Plaintiffs have not Named the Two Entities Solely Responsible for Enforcing**  
 2 **CCC 16.13.030 as Parties to this Lawsuit, any Order Issued by the Court Attempting to**  
 3 **Preclude Enforcement of CCC 16.13.030 would be Strictly an Impermissible Advisory**  
 4 **Opinion**

5                   Plaintiffs' opposition concedes that there are only two entities responsible for the  
 6 enforcement of CCC 16.13.030—the entities responsible for street level law enforcement and  
 7 the entity responsible for criminal prosecution. [117] at 1:18-2:3 ("in the Clark County  
 8 criminal justice system, the people are represented by two separate yet equally important  
 9 groups: LVMPD, who investigates crime; and *the Clark County District Attorneys, who*  
 10 *prosecute offenders.*") (emphasis in original). Accordingly, it follows that if neither of the  
 11 entities responsible for directing law enforcement and/or prosecution policies is named in the  
 12 lawsuit then the Court has no power to grant an as-applied challenge precluding enforcement  
 of CCC 16.13.030.

13                   Imagine a scenario where Plaintiffs had, instead of naming Clark County, named the  
 14 Nevada State Legislature or Governor Lombardo as a defendant and sought an order from the  
 15 Court compelling Attorney General Ford to abstain from criminal prosecution of certain  
 16 offenses because all three are part of the same "State of Nevada." The very notion of such an  
 17 action seems absurd—but that is the exact same rationale Plaintiffs seek to have the Court  
 18 apply in this case.

19                   While LVMPD and the District Attorney's Office personnel and their associated pay  
 20 and benefits are all largely funded and/or managed by Clark County as the primary political  
 21 subdivision in the region—each of them is headed by separate public officials who set policy  
 22 for their respective agencies and who are answerable only to the people who elect them to  
 23 fulfill these roles through the appointed political process.

24                   The Clark County Board of County Commissioners can no more tell LVMPD and  
 25 Sheriff McMahill how to enforce crimes than they can tell District Attorney Wolfson how to  
 26 prosecute them. If they could, there would be no reason for those positions to exist and no  
 27 reason for the Nevada Revised Statutes to define the roles and powers of these bodies in such

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1 detail relative to each other. *See, e.g.*, NRS Chapter 252 – District Attorneys; NRS Chapter  
 2 248 – Sheriffs; NRS Chapter 244 – Counties: Government.

3 Because as-applied challenges seek to preclude unconstitutional enforcement of a  
 4 criminal statute or ordinance under a specific set of circumstances, they must necessarily be  
 5 directed at the entities responsible for establishing policy for enforcement and directing  
 6 enforcement activities. *Fed. Election Comm'n v. Wisconsin Right To Life, Inc.*, 551 U.S. 449,  
 7 481, 127 S. Ct. 2652, 2673, 168 L. Ed. 2d 329 (2007); *see also, e.g.*, *Real v. City of Long*  
 8 *Beach*, 852 F.3d 929, 932 (9th Cir. 2017); *Fed. Election Comm'n v. Wisconsin Right To Life,*  
 9 *Inc.*, 551 U.S. 449, 481, 127 S. Ct. 2652, 2673, 168 L. Ed. 2d 329 (2007). Here those entities  
 10 are LVMPD and the Clark County District Attorney alone.

11 As neither Clark County nor the Clark County Board of County Commissioners has  
 12 any ability to direct or mitigate enforcement policy or activities for CCC 16.13.030  
 13 whatsoever, an order from the Court regarding the same would be strictly an impermissible  
 14 advisory opinion which presents insurmountable issues of subject matter jurisdiction and  
 15 justiciability. *Uzuegbunam v. Preczewski*, 592 U.S. 279, 291, 141 S. Ct. 792, 801, 209 L. Ed.  
 16 2d 94 (2021); *M.S. v. Brown*, 902 F.3d 1076, 1083 (9th Cir. 2018) (emphasis added); *Mayfield*  
 17 *v. United States*, 599 F.3d 964, 971 (9th Cir. 2010); *TransUnion LLC v. Ramirez*, 594 U.S.  
 18 413, 423, 141 S. Ct. 2190, 2203, 210 L. Ed. 2d 568 (2021); § 3:257. Prohibition on advisory  
 19 opinions in federal court, 2A Fed. Proc., L. Ed. § 3:257; *Ctr. for Biological Diversity v. U.S.*  
 20 *Forest Serv.*, 925 F.3d 1041, 1047 (9th Cir. 2019).

21 Accordingly, and as the Court lacks a justiciable issue for which Clark County can  
 22 provide redress with these so-called as-applied challenges, the Court should dismiss Plaintiffs'  
 23 as-applied challenges as against Clark County in this case.

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1 IV.

2 **CONCLUSION**

3 Based on the foregoing, Defendant Clark County humbly requests the Court dismiss  
4 Plaintiffs' as-applied challenges as against Clark County because Clark County is incapable  
5 of providing the redress sought by Plaintiffs in those claims.

6 DATED this 15<sup>th</sup> day of January, 2026.

7 STEVEN B. WOLFSON  
8 DISTRICT ATTORNEY

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## **CERTIFICATE OF ELECTRONIC SERVICE**

2 I hereby certify that I am an employee of the Office of the Clark County District  
3 Attorney and that on this 15th day of January, 2026, I served a true and correct copy of the  
4 foregoing **DEFENDANT CLARK COUNTY'S REPLY TO PLAINTIFFS' RESPONSE**  
5 **[117] TO ITS MOTION TO DISMISS PLAINTIFFS' AS-APPLIED CHALLENGES**  
6 **[102]** (United States District Court Pacer System or the Eighth Judicial District Wiznet), by e-  
7 mailing the same to the following recipients. Service of the foregoing document by e-mail is  
8 in place of service via the United States Postal Service.

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