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10 UNITED STATES DISTRICT COURT

11 DISTRICT OF NEVADA

12 LISA MCALLISTER, an individual; and)
 BRANDON SUMMERS, an individual;)
 13 JORDAN POLOVINA, an individual,)

Case No: 2:24-cv-00334

14 Plaintiffs,)

DEFENDANT CLARK COUNTY'S
RESPONSE TO PLAINTIFFS'
MOTION FOR SUMMARY
JUDGMENT [105]

15 vs.)

16 CLARK COUNTY, a political subdivision)
 of the state of Nevada.)

17)
 18 Defendant(s).)
 19 _____

20 Defendant CLARK COUNTY, by and through its counsel of record, hereby files this
 21 Response to Plaintiffs' Motion for Summary Judgment [105].

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

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I.**

3 **NATURE OF RESPONSE**

4 Plaintiffs’ Motion for Summary Judgment [105] (hereinafter “Motion” or “Plaintiffs’
5 Motion”) begins by unilaterally and subjectively declaring that the “pedestrian bridges [...]
6 have always been considered [...] arguably, the most important, public forum in Nevada”
7 without any citation or evidence in support. [105] at 1:3-8. However, as the pedestrian bridges
8 have not “always” existed and most major protests in recent memory like the BLM protests in
9 2020, anti-ICE protests in 2026, the “No Kings” protest of 2025, etc. have occurred at locations
10 other than the pedestrian bridges like downtown, on the steps of the courthouses, at Boca Park,
11 and/or at public schools across the Valley—Plaintiffs’ characterization of the pedestrian
12 bridges’ supreme importance is hyperbolic at best.

13 These sorts of hyperbolic statements, designed to appeal to emotions rather than the
14 facts of the case, sets the tenor for Plaintiffs’ Motion and it carries through into Plaintiffs’
15 fact section which misrepresents and cherry-picks facts, declaring them “undisputed,” when
16 the facts, as framed, are neither material to the issues before the Court for a Fed. R. Civ. P. 56
17 analysis, nor are they undisputed by Clark County. [105] at 2:6-8:14.

18 Ultimately, at the heart of these curated facts and the First Amendment arguments put
19 forth by Plaintiffs is their impermissible request that the Court ignore the separation of powers
20 doctrine and place itself in the position of a super legislature by reevaluating and reweighing
21 evidence of pedestrian traffic studies and crime statistics on the Strip and to come to a different
22 conclusion than the Board of County Commissioners (“BCC”)—a legislative body which
23 already wrestled with these questions for years, first contemplating proposed legislation to
24 amend Chapter 16.11 to address concerns of congestion, disorder, and crime on the pedestrian
25 bridges in 2022 and, finally, after delaying any legislation in order to review additional
26 LVMPD data, enacting CCC 16.13.030 to preclude stopping and standing on pedestrian
27 bridges in 2024. *See, e.g.*, [105] at 4:3-5:25, 6:16-7:25, 9:9-11:15.

28 Plaintiffs’ Due Process arguments are no less devoid of merit than their overbreadth

1 arguments—seeking to have the Court find that because County Commissioners and LVMPD
2 officials don’t believe that CCC 16.13.030 extends to insubstantial stopping—instead
3 targeting a more substantial failure to move along—that it makes CCC 16.13.030
4 impermissibly and unconstitutionally vague. [105] at 8:2-14, 22:12-25. But just because the
5 ordinance is not intended to be enforced as strict liability for unintentional and insubstantial
6 stops while crossing the pedestrian bridges, it hardly makes the ordinance unconstitutionally
7 vague and a person of ordinary intelligence is easily capable of understanding this distinction.

8 Accordingly, Defendant humbly requests the Honorable Court deny Plaintiffs’ Motion
9 for Summary Judgment [105] and grant Defendant Clark County’s competing Motion for
10 Summary Judgment [103] as a matter of law.

11 II.

12 **RESPONSE TO PLAINTIFFS’ SO-CALLED UNDISPUTED FACTS**

13 **A. Pedestrian Bridges are not Sidewalks merely because they are Part of the** 14 **Sidewalk System**

15 Plaintiffs cited deposition testimony from one of Clark County’s 30(b)(6) witnesses to
16 support their contention that the pedestrian bridges are part of the Resort Corridor’s sidewalk
17 system. [105] at 2:6-10. This is consistent with the purpose section provided in Chapter 16.13
18 which provides in relevant part that “The pedestrian bridges are part of the sidewalk system
19 of the Las Vegas Strip.” CCC 16.13.010.

20 Just because they are part of an interconnected system, however, does not mean that
21 one can conflate pedestrian bridges with sidewalks anymore than one could conflate capillaries
22 with arteries merely because they are both part of the same circulatory system or the heart with
23 the lungs because they are both part of the same cardiopulmonary system. Pedestrian bridges,
24 crosswalks (which are also part of the same system), and sidewalks are distinct in terms of
25 structure, elevation, proximity to vehicular traffic, and points of ingress and egress. *See, e.g.,*
26 [103] at 23:4-7; [103-5] at CC 2501-CC 2515.

27 As a result of these unique characteristics, they pose distinct challenges which cannot
28 be handled uniformly. Highlighting these distinctions, CCC 16.13.010 further provides that

1 pedestrian bridges “were created for the purpose of separating pedestrian traffic from vehicular
2 traffic to facilitate pedestrians crossing in those locations.” CCC 16.13.010.

3 This is the lens through which the pedestrian bridges must be viewed—merely being
4 part of the sidewalk system does not mean they are sidewalks nor does it mean that they should
5 be considered a public forum by the Court coextensive with sidewalks.

6 **B. Plaintiffs Misrepresent Clark County’s 30(b)(6) Deposition Testimony**
7 **which was Consistent with a Policy that CCC 16.13.030 is not intended to be**
8 **enforced for unintentional and insubstantial stopping**

9 In support of their position that the subject ordinance is vague, Plaintiffs contrast a
10 public relations statement on the passing of CCC 16.13.030 which provided that CCC
11 16.13.030 was “not interpreted to mean that tourists and locals cannot take photos along the
12 Boulevard while on a pedestrian bridge” with statements taken out of context from the Clark
13 County 30(b)(6)¹ deposition which they contend stand for the opposite proposition. [105] at
14 2:12-3:1.

15 Messaging on how CCC 16.13.030 is to be enforced, however, has been sufficiently
16 consistent and clear from the beginning. The purpose section of CCC 16.13.010 clearly
17 provides that the parameters for the pedestrian bridges “included that pedestrians **would not**
18 **stop, stand or congregate for other than for incidental and fleeting views of the Las Vegas**
19 **Strip** from the pedestrian bridge.” CCC 16.13.010 (emphasis added). This is in line with the
20 public relations statement on Clark County’s social media issued the day after the ordinance’s
21 passage. [105] at 2:16-20.

22 During the legislative session on CCC 16.13.030, LVMPD representatives indicated
23 that their primary focus was going to be to educate the populace and to seek voluntary
24

25 ¹ It should be noted that while the answers provided by the Clark County 30(b)(6) witnesses represent the County staffs’
26 position on the subject ordinance, it is not representative of the motivations, deliberations, or legislative intent of the
27 Clark County Commissioners who passed the ordinance. Because such inquiries are impermissible under the separation
28 of powers doctrine and legislative and deliberative process privileges no commissioners were consulted in the drafting of
these answers. *Lee v. City of Los Angeles*, 908 F.3d 1175, 1187 (9th Cir. 2018) (“[...] judicial inquiries into legislative or
executive motivation represent a substantial intrusion such that calling a decision maker as a witness is therefore ‘usually
to be avoided.’”); *see also Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 268 n.18, 97 S.Ct. 555, 50
L.Ed.2d 450 (1977).

1 compliance and only move to enforcement when individuals failed to comply after being
2 informed of the law. *See, e.g.*, [103-19] at CC-104-105. Commissioners McCurdy and Jones
3 were adamant that the law be enforced equally to all people and wanted to confirm that the
4 signage would be prominently posted and that markings around the pedestrian bridges were
5 clearly marked to avoid finding someone unaware of being in violation of the ordinance. [103-
6 19] at CC-110. Commissioner Gibson confirmed this intent when he stated on the record that
7 it is:

8 [...] essential to us that we provide the tools to the Police
9 Department to be able to do what needs to be done **in the rare**
10 **occasion that someone is going to object, where someone is**
11 **going to refuse to abide by an ordinance that is a lawful**
12 **ordinance**, that makes all the sense in the world and has **its**
13 **objective to keep every pedestrian that would move along**
14 **around those bridges up and down the elevator safe.**

15 *Id.* at CC-111 (emphasis added).

16 In its written discovery responses, Clark County confirmed that, because the terms
17 “stop” or “stand” were undefined in ordinance, they should be attributed their plain meaning
18 at law. Using a dictionary definition, the County indicated in its written discovery responses
19 that “stop” meant “to cease to move on.” [103-10] at 8:24-9:14.

20 In misrepresenting Clark County’s 30(b)(6) testimony, however, Plaintiffs only
21 disclosed excerpts of the deposition transcript. *See, e.g.*, [106-3]. But even in this excerpt Clark
22 County’s 30(b)(6) witness, Deputy County Manager Abigail Frierson (“DCM Frierson”),
23 confirmed that people would only be cited **“if their intent is to stop moving** and their intent
24 **is to stop someone else from moving.”** [106-3] at 107:19-23 (emphasis added). DCM Frierson
25 attempted to communicate to Plaintiffs’ counsel that even though the ordinance did not
26 expressly provide that the prohibition on stopping and standing required intent—that such
27 requisite general intent was still a requirement for a violation because of the disfavored nature
28 of strict liability crimes. *See* Deposition Transcript for Abigail Frierson, attached hereto as
Exhibit A, at 118:11-119:4 (“Right. Stop -- well, you have to have the intent -- you have the
-- the requisite criminal intent but, yes, to stop -- so it's not just stopping. You have to have

1 the intent to stop, I think, actually.”). Accordingly, someone who takes a picture *while* walking
2 across the pedestrian bridge—without the requisite intent to completely stop moving along—
3 would not be in violation of CCC 16.13.030. Contrast that with a scenario where someone sets
4 up a photoshoot—with lighting and props and whose intent is to remain on the bridge for an
5 extended period of time—that would be subject to citation under the ordinance.

6 The County’s interpretation in this regard is consistent with Supreme Court Case law
7 on the topic:

8 There can be no doubt that this established concept has influenced
9 our interpretation of criminal statutes. Indeed, we have noted that
10 **the common-law rule requiring *mens rea* has been “followed
11 in regard to statutory crimes even where the statutory
12 definition did not in terms include it.”**

13 *Balint, supra*, at 251–252, 42 S.Ct., at 302. Relying on the strength
14 of the traditional rule, we have stated that offenses that require no
15 *mens rea* generally are disfavored, *Liparota, supra*, at 426, 105
16 S.Ct., at 2088, and have suggested that **some indication of
17 congressional intent, express or implied, is required to
18 dispense with *mens rea* as an element of a crime. Cf. *United
19 States Gypsum, supra*, at 438, 98 S.Ct., at 2874; *Morissette, supra*,
20 at 263, 72 S.Ct., at 249–250.**

21 *Staples v. United States*, 511 U.S. 600, 605–06, 114 S. Ct. 1793, 1797, 128 L. Ed. 2d 608
22 (1994) (emphasis added).

23 The idea that someone is going to be cited for taking a photograph or even incidental
24 stopping to tie a shoe or to adjust a bag is a fiction created whole cloth by the ACLU and its
25 supporters in an attempt to misrepresent the County’s position and the language of the
26 ordinance through a strict liability statutory interpretation that is disfavored under the law. *See*,
27 *e.g.*, [105] at 2:21-24.

28 **C. Plaintiffs’ Performances Create a Risk of Disorder and Congestion and
Plaintiffs may Continue to Engage in their Respective Activities in the Resort
Corridor on the at-grade Sidewalk regardless of the enactment of CCC 16.13.030**

1 Clark County does not dispute that Plaintiffs Summers and Polovina have regularly
2 performed in the Resort Corridor for years on the sidewalks and, prior to the enactment of
3 CCC 16.13.030, the pedestrian bridges. [105] at 3:3-7. Plaintiffs Summers and Polovina
4 contend that they make an effort to “avoid impeding pedestrian traffic”, but also concede their
5 goal is to draw a crowd and solicit donations. *Id.* The reality is that their presence and the
6 crowds they draw do impede and obstruct traffic and have the potential to foment greater
7 disorder. *Id.*

8 Clark County disclosed videos of Plaintiff Summers performing outside of the
9 pedestrian flow zones on the sidewalk near Harmon and Las Vegas Blvd in its Motion for
10 Summary Judgment [103]. *See* [103-22] at 0:08-3:30. This video clearly shows Plaintiff
11 Summers blocking the path behind him near the road and the landscaping with his cart, amp,
12 chair, and equipment and drawing a crowd in front of him—circled around him anywhere from
13 three to ten feet back. *Id.* The functional width of the sidewalk at this location has now been
14 reduced by nearly 20 feet because of his performance (and the subsequent breakdancing
15 performances it gave rise to) and the gathering crowd. *Id.* Even on a sidewalk of 25 to 30 feet
16 that is major impediment. On a pedestrian bridge that only has functional width of 16 feet that
17 would constitute the entire bridge. Videos disclosed by both Defendant and Plaintiff Summers
18 confirm that he regularly plays his instrument at-grade on the sidewalks in the Resort Corridor
19 and that these locations are heavily traveled by visitors of the Las Vegas Strip. *See, e.g.*, [103-
20 22]; *see also* “True Talent in Las Vegas” CC 4042, manually submitted and referenced herein
21 as **Exhibit B**; 48 Summers Video B, manually submitted and referenced herein as **Exhibit C**;
22 49 Summers Video C, manually submitted and referenced herein as **Exhibit D**; 51 Summers
23 Video E, manually submitted and referenced herein as **Exhibit E**.

24 Plaintiff Polovina’s performances are no different. When Plaintiff Polovina performs
25 on the bridges--even when he hugs the wall to attempt to “avoid impeding traffic”—his body,
26 his cello, his cello stand, his amp, and his donation box extend approximately five feet out
27 from the wall. *See, e.g.*, [103-26]. Already by himself, Plaintiff Polovina occupies
28 approximately one-third of the functional width of a pedestrian bridge—but when the so-called

1 shy distance² and a potential crowd are considered Plaintiff Polovina’s bridge performances
2 also have the potential to block functionally all of the bridge width on the 16-foot bridges and
3 the majority of the bridge width on the bridges with a 20-foot width. Plaintiff Polovina
4 confirmed he also has regularly played his cello on the at-grade sidewalks for the same
5 pedestrians he would have performed for on the pedestrian bridges. *See, e.g.*, 38 Polovina
6 Instagram A, manually submitted and referenced herein as **Exhibit F**; 40 Polovina Instagram
7 C, manually submitted and referenced herein as **Exhibit G**; 46 Polovina Video E, manually
8 submitted and referenced herein as **Exhibit H**.

9 A recent incident that occurred on or around January 18, 2026, on the Strip highlights
10 the type of disorder that can arise when crowds are allowed to gather, to block pedestrian lanes
11 of travel, and to put people in close physical proximity as they try and navigate through a
12 crowd.³ Video of the crowd which gathered prior to the incident provides a clear visualization
13 of what can happen when performers gather a crowd. *See, e.g.*, video of crowd gathering on
14 January 18, 2026, incident, manually submitted and referenced herein as **Exhibit I**. A band
15 featuring drums, a trombone, a trumpet, a tuba, etc. took position on an approximately 29-
16 foot-wide section of sidewalk near Paris Las Vegas. **Exhibit I**; *see also* Google Maps
17 Measurement of Subject Section of Sidewalk, attached hereto as **Exhibit J**. On a sidewalk that
18 would ordinarily support 4 or 5 people walking abreast each direction, the crowd forms around
19 the band, including a circular shy distance around the performers, and quickly spreads all the
20 way to the back wall leaving only a single pathway for pedestrians heading both ways to inch
21 their way through the gathered crowd as they dodge each other. **Exhibit I**.

22 While Plaintiffs claim they cannot perform their art if they are not allowed to be
23

24 ² “Shy distance” is a term of traffic engineering art used to refer to the phenomenon when pedestrians avoid obstacles
25 like fire hydrants, other people, holes, hazards, etc. in order to avoid conflict and potential injury. *See, e.g.*, [103-13] at
74:11-76:12.

26 ³ “Vegas Cops Arrest 11 People After Breaking Up ‘Unruly Crowd’”, NEWS.COM.AU,
27 ([https://www.news.com.au/national/vegas-cops-arrest-11-people-after-breaking-up-unruly-
crowd/video/c4512cc77713b485cd66203638a8a919](https://www.news.com.au/national/vegas-cops-arrest-11-people-after-breaking-up-unruly-crowd/video/c4512cc77713b485cd66203638a8a919)) (Last Accessed February 23, 2026); “Police Arrest 11 from
28 disruptive crowd on the Las Vegas Strip, Fox 5 KVVU-TV, ([https://www.fox5vegas.com/2026/01/18/police-arrest-11-
disruptive-crowd-las-vegas-strip/](https://www.fox5vegas.com/2026/01/18/police-arrest-11-disruptive-crowd-las-vegas-strip/)) (Last Accessed February 23, 2026); “Court records show man charged in weekend
Las Vegas Strip incident”, 3 News January 19, 2026, ([https://news3lv.com/news/local/court-records-show-man-charged-
in-weekend-las-vegas-strip-incident](https://news3lv.com/news/local/court-records-show-man-charged-in-weekend-las-vegas-strip-incident)) (Last Accessed February 23, 2026).

1 stationary, the majority of protected speech activities, including marching, carrying signs,
2 protesting, singing, etc. that do not require stopping or standing are unaffected by CCC
3 16.13.030. There is ample evidence to support that Plaintiffs can and will continue to perform
4 their stationary art on the 94% of adjacent at-grade sidewalks in the Resort Corridor that have
5 been left open for their performances despite the enactment of CCC 16.13.030 in the same
6 fashion as they have over the years. It is undeniable that stationary people, including those like
7 vendors and performers that encourage people to stop or force people into close quarters, have
8 the potential to contribute to crowds and disorder which can be disastrous in the uniquely
9 confined pedestrian bridges that have only limited points of ingress and egress.

10 **D. Pedestrian Study Data is Part of the Legislative Record and is Something**
11 **of Which the Court may Take Judicial Notice Anyway**

12 Plaintiffs' motion [105] cites pedestrian studies commissioned by Clark County in
13 2012, 2015, 2016 and 2022 and conducted by Kimley-Horn. [105] at 4:4-5:22. Plaintiffs
14 appear to cite the data in the studies to support their contention that the Level of Service
15 ("LOS") and issues of congestion on the pedestrian bridges in the 2022 study were less than
16 and in previous years and were in fact worse at certain locations on the at-grade sidewalks
17 than the pedestrian bridges in order to undermine the government interest underlying the
18 enactment of CCC 16.13.030. *Id.* Notably, Clark County conceded in its own Motion for
19 Summary Judgment that pedestrian traffic had decreased in the 2022 studies. [103] at 7:3-16.

20 Plaintiffs, however, do not point out that these studies have recommended since 2012
21 that pedestrian bridges be declared no obstruction zones, nor do they acknowledge that during
22 these limited observation windows Kimley-Horn observed unpredictable crowd surges on
23 pedestrian bridges following events. *See, e.g.*, [103-6] at CC 1118; [103-7] at CC 1334; [103-
24 14] at 177:9-25. Specifically, for more than a decade prior to the enactment of CCC 16.13.030,
25 these studies have recommended the following:

26 **The pedestrian bridges have constrained widths and are an**
27 **integral part of the pedestrian walkway system. Based upon**
28 **the observed pedestrian volumes, and walkway LOS, it is**
appropriate to designate the pedestrian bridges as no-

1 **obstruction zones.** Pedestrian bridges should be maintained free
2 of any obstructions, including obstructions like trash enclosures.
3 In addition the areas on and around stair landings, elevator waiting
4 areas, along with escalator approach and departure landing zones
should also be maintained free of any
obstructions.

5 [103-6] at CC 1118 (emphasis added).

6 While citing to the data from the study that Plaintiffs feel is beneficial to their position,
7 they simultaneously assert that Clark County may not rely on the Kimley-Horn pedestrian
8 studies in support of its own position because: 1. It is “outside the record the County is
9 confined to”; and 2. “[T]he Kimley Horn studies constitute expert witness testimony ‘based
10 on scientific, technical, or specialized knowledge.’” [105] at 17:19-18:3.

11 The former assertion is based on Clark County’s contention in this action since the
12 beginning that only limited discovery was necessary because in First Amendment
13 constitutional challenges which involve questions of law the Court looks only to: 1. The
14 language of the ordinance; 2. The legislative history; and 3. Issues of actual fact. *See, e.g.*, [70]
15 at 21:1-12; *see also Nixon v. Adm'r of Gen. Servs.*, 433 U.S. 425, 484, 97 S. Ct. 2777, 2811,
16 53 L. Ed. 2d 867 (1977); *Allstate Ins. Co. v. Serio*, No. 97-cv-620 (SS) (THK), 1998 WL
17 477961, at *5 (S.D.N.Y. Aug. 13, 1998). Plaintiffs’ arguments that the Kimley-Horn studies
18 should not be cited, however, are unavailing even under this standard.

19 First, the Kimley-Horn studies were referenced in the relevant legislative history for
20 the unsuccessful proposed amendment to Chapter 16.11 in 2022, the predecessor bill to CCC
21 16.13.030, and accordingly there is evidence in the legislative history that these studies were
22 contemplated by the County Commissioners as part of the legislative process. [103-11] at CC
23 3992-CC 3994 (Commissioner Kirkpatrick: “I feel that it’s important that maybe the history
24 kind of be told as to where the pedestrian bridges came from [...] **we spent a lot of money on**
25 **a study that showed obstructions as a whole** and I just think that **it’s important for the rest**
26 **of the Board to – to understand how all that came about long before us.”) (emphasis**
27 **added).**

1 Specifically, Director of Clark County Department of Public Works Denis Cederburg
2 testified:

3 And then we did a level of service calculation. Uh – **we actually**
4 **hired a consultant to go out there and do certain times of day,**
5 **two weekends, a holiday weekend, and a regular weekend and**
6 **count pedestrians – count pedestrians on the sidewalk,**
7 **compute the sidewalk width, and determined on the speed of**
8 **a – a pedestrian what the level of service would be.** Uh – we did
9 that in 2012 was the first one. We updated that in 2015 and we
10 developed we – that’s when we started updating the maps. ‘Cause
11 the map was about 20 years old before that level of service study
12 and it just identified those intersections and driveways. And so,
13 we have the level of service – uh – if the map was adopted, we
14 went out there and put up signs.

15 As she mentioned, two or three of the bridges have high level of
16 service (unintelligible) during certain time periods and during
17 certain days. Some of ‘em are holiday, some of ‘em are weekends,
18 some of ‘em are dif- just different times of days, five to nine or
19 something like that, and we put all those signs up back in 2012,
20 2013 – uh – we updated again in 2016. **So, there are certain areas**
21 **that we did identify based upon the counts, the width of the**
22 **sidewalks, the widths of the bridges where there are certain**
23 **times where there are no – none obstruct – no obstructive uses.**

24 [103-11] at CC 3993-CC 3994 (emphasis added).

25 But even if these studies hadn’t been expressly discussed in the legislative history and
26 incorporated by reference therein, the Court could still take judicial notice of them as they are
27 official government documents posted on a government website⁴ thereby constituting “actual
28 fact” that the Court may consider in making a constitutional ruling. *See, e.g., Dudum v. Arntz*,
640 F.3d 1098, 1101 n. 6 (9th Cir.2011) (citing *Daniels–Hall v. Nat’l Educ. Ass’n*, 629 F.3d
992, 998–99 (9th Cir.2010))

29 Plaintiffs’ second for precluding the Kimley-Horn studies, by asserting they contain
30 technical information and the County did not disclose an expert to testify about their contents,

⁴ See Clark County Department of Public Works’ Las Vegas Boulevard Pedestrian Study Website,
(https://www.clarkcountynv.gov/government/departments/public_works_department/las-vegas-blvd) (Last accessed
February 24, 2026).

1 is more problematic and is emblematic of the way Plaintiffs have attempted to conflate the
2 pure questions of law at issue in this case with issues of fact, thereby inviting the Court to
3 impermissibly act as a super legislature and reevaluate the weight of the evidence already
4 considered by the County Commissioners.

5 At the onset during the FRCP 26 call on the discovery plan and scheduling order, Clark
6 County informed Plaintiffs' counsel that expert discovery in this matter would be
7 inappropriate because it involved only pure questions of law. Plaintiffs initially agreed with
8 this position but then changed position a few days later thereby requiring Clark County to file
9 a motion for protective order [72] seeking to preclude expert discovery. [72] at 25:1-28.
10 Unfortunately, however, as no order was issued on Clark County's motion for protective order
11 prior to the expert discovery deadlines, Clark County was forced to assume its motion would
12 be denied and disclosed Dr. Sousa and his report presented to the Board of County
13 Commissioners in 2024 out of an abundance of caution on the belief that Plaintiffs also
14 intended to disclose an expert of their own—which they did not.

15 Ultimately the whole question of whether a court may consider technical information
16 in ruling on these questions of law is not a meaningful one as the question at issue is not
17 whether the Court can understand the technical information or data in the reports presented to
18 the commissioners, but whether the Court can see that the legislature relied on competent
19 evidence of a significant government interest during the legislative session when enacting
20 CCC 16.13.030. Requiring questions of law and constitutionality to be litigated in a battle of
21 the experts after legislation has been enacted would run counter to public policy as it would
22 result in substantial costs to legislative bodies in defending legislation and place the ultimate
23 legislative decision-making authority with the Court and not the elected legislators.

24 Accordingly, the Court should disregard Plaintiffs' position that the studies are
25 inadmissible and consider them as appropriate in ruling on the constitutional issues in this
26 matter as the BCC was familiar with these studies, considered and discussed them during the
27 hearing on the unsuccessful proposed amendment to Chapter 16.11 in 2022, and are matters
28 of which the Court may take judicial notice. To be certain, these studies support the position

1 that declaring the bridges and the area around the bridges as no obstruction zones has been a
2 recommended and reasonable course of action for more than a decade.

3 **E. Evidence Cited by Plaintiff supports that First Amendment Impact from**
4 **the Enforcement of CCC 16.13.030 has been Minimal**

5 Plaintiffs claim to cite to LVMPD arrest records showing arrests of individuals for First
6 Amendment activities, but the Exhibit K filed by Plaintiffs with the Court is actually entitled
7 “Traffic Characteristics” and appears to be an excerpt of the MUTCD or some other traffic
8 manual. *See* [110-2]. It is upon information and belief that Plaintiffs intended to attach the
9 document entitled “Pedestrian Bridge Arrests – PC Only.” *See* Pedestrian Bridge Arrests – PC
10 Only, attached hereto as **Exhibit K**. This document contains a summary of arrests on
11 pedestrian bridges prepared by LVMPD. Plaintiffs claim that this record documents 16 times
12 people were arrested for purported First Amendment protected activities (“including playing
13 music, soliciting money, filming music videos, and vending”) between February 14, 2024, and
14 October 3, 2024, or roughly one arrest/citation every 14.5 days (232 days / 16 arrests) or two
15 arrests per month on the pedestrian bridges in some way relating to First Amendment activity.

16 Unfortunately, however, in addition to not attaching the correct document, Plaintiffs
17 also do not identify which arrests it believes are First Amendment related, depriving Clark
18 County of an opportunity to meaningfully respond. A cursory look at the list of the incidents
19 cited by Plaintiffs includes far more than just speech related activities—including past
20 citations and other offenses for which stops were initiated and arrests made including
21 contraband, weapons, and outstanding warrants. *See generally* **Exhibit K**.

22 Even if we were to adopt Plaintiffs’ theory that 16 incidents in that time period were
23 speech⁵ related, however, Plaintiffs still conceded in their Motion for Summary Judgment
24 [105] that “the **vast majority** of other enforcement measures [under CCC 16.13.030] were
25 **taken against people who were actually obstructing the sidewalk**, i.e., sleeping, lying

26 _____
27 ⁵ Notably, none of the arrests resulting in arrest involved speech intended to contribute to the marketplace of ideas.
28 Soliciting, busking, unlicensed vending, etc. all are primarily intended to benefit the speaker, rather than society at large,
by using land dedicated for public use in furtherance of a self-interested profit venture. Accordingly, there are good faith
public policy arguments which support treating these types of speech as more akin to commercial speech—which is entitled
to less deference—than other sorts of political or ideological speech.

1 down, or sitting on the sidewalk” and not engaged in First Amendment activities. [105] 6:7-
2 11 (emphasis added). That means more than 82% of the arrests under CCC 16.13.030 have
3 been directed at conduct which Plaintiffs concede have no speech component.

4 Accordingly, even in the data cited by Plaintiffs it is evident that impact of CCC
5 16.13.030 on speech is minimal and “the vast majority of” enforcement implicates no
6 protected speech at all.

7 **F. The Harms Referenced in Support of the Enactment of CCC 16.13.030 are**
8 **Real, Supported by both Anecdotal and Empirical Evidence, and based on**
9 **Predictable Scenarios Given Prior Incidents and Patterns of Pedestrian Conduct**

10 Plaintiffs have taken the position that CCC 16.13.030 was enacted based entirely on the
11 opinion of Dr. Sousa and that Dr. Sousa’s opinions lack evidence or support. *See* [105] at 6:17-
12 8:1. Plaintiffs’ position in this regard is untenable given the substantial evidence—both
13 anecdotal and empirical—discussed in the legislative history on the unsuccessful proposed
14 amendment to Chapter 16.11 in 2022 and the successful enactment of CCC 16.13.030 in 2024.

15 In 2022, LVMPD provided a presentation containing graphic depictions of the types of
16 behavior that were being witnessed on the pedestrian bridges. *See, e.g.*, [103-11] at CC 3979-
17 CC 3984; [103-12] at timestamp 03:00-21:37; [103-15]. The presentation showed large
18 number of individuals stopping or standing on the bridge forcing pedestrians into narrow lanes
19 of traffic, often in conflict with other pedestrians; including homeless individuals who had off-
20 leash dogs, had large items or tables, were intoxicated, were causing pedestrians to stop, were
21 engaging in unlicensed vending, were urinating or defecating in public, were using narcotics,
22 were pickpocketing, were engaging in lewd acts, were conducting illegal table games, were
23 soliciting donations based on fraudulent representations, were engaging in physical
24 altercations, were camping on or vandalizing County property, were blocking access to
25 elevators and escalators thereby precluding ADA access, and were engaging in arson. *See*
26 *generally id.* These harms are not theoretical nor are they insignificant given the unique
27 structural characteristics of the bridge which make these behaviors difficult to visualize for
28 law enforcement patrols at-grade and potentially hazardous in a chaotic emergency. *Id.*

1 LVMPD representatives testified that these gatherings on the bridges were leading to more
2 crime and enforcement and that they were concerned it could also lead to obstruction in mass
3 casualty events or keep emergency responders from gaining access. *Id.*

4 LVMPD's comments were echoed by representatives of local businesses who said that
5 the recent state of the pedestrian bridges had degraded to the point where it was harming
6 guests, visitors, and employees because they have no alternative but to use these pedestrian
7 bridges when moving up and down Las Vegas Blvd and that was in turn hurting the economic
8 viability of the Resort Corridor. *See, e.g.*, [103-11] at CC 4004-CC 4005.

9 Commissioner McCurdy acknowledged that the conduct depicted in the LVMPD
10 presentation **was horrendous**. *See, e.g.*, [103-11] at CC 3988. Commissioners Gibson and
11 Naft both expressed deep concern over how the LVMPD presentation highlighted the impact
12 loiterers were having on the ADA infrastructure on the bridges. *Id.* at CC 3996. Commissioner
13 Gibson testified that because the Strip was in his jurisdiction he had been actively working
14 with LVMPD on the issue and that he had personally viewed **hours of video tape of similar**
15 **conduct that did not make the presentation**. *Id.* at CC 3997. He indicated that regardless of
16 what specific data might show, there was a real threat to tourism and to locals and that an
17 ordinance keeping these bridges safe was warranted based on what he'd seen. *Id.*

18 Following public comment, Commissioner Gibson reiterated that it was not the
19 intention of the BCC to make it unlawful to perform, but that something needed to be done
20 about the crime, ADA obstruction, and damage to County property that was happening on
21 these pedestrian bridges. [103-11] at CC 4015-CC 4016. All this evidence and data of disorder
22 and crime on the pedestrian bridges was available to and known by the BCC long before Dr.
23 Sousa was ever retained to analyze LVMPD crime data for the pedestrian bridges.
24 Accordingly, Plaintiffs' representation that the County's position hinges entirely on Dr. Sousa
25 and his opinions is disingenuous at best.

26 Despite the mountain of evidence presented in 2022, Commissioners wanted to see
27 statistical data from LVMPD before taking any action on the pedestrian bridges and,
28 accordingly, Dr. Sousa was retained to work with LVMPD to compile and analyze data on

1 crime and disorder on the pedestrian bridges which culminated in a final report entitled,
2 “Questions Related to Public Safety on Pedestrian Bridges”. *See* [103-18]. The data obtained
3 from LVMPD and analyzed by Dr. Sousa confirmed calls for service on Las Vegas Boulevard
4 had increased **by more than 1700% between 2018 and 2022**. *See* [103-18] at CC 138. The
5 data also confirmed that a disproportionately high number of calls for service for disorder calls
6 had originated on the pedestrian bridges—or a whopping 11% of all calls. *Id.* This was
7 particularly significant as the pedestrian bridges make up less than 6% of the sidewalk network
8 on the Strip and an even smaller percentage of the area included in the area analyzed by
9 LVMPD which included all private buildings with a Las Vegas Blvd address in the Resort
10 Corridor. *Id.* These means that not only had calls for service increased dramatically before and
11 after COVID—but among those calls, **disorder calls for service to the pedestrian bridges**
12 **were about twice as likely than calls for other sidewalk locations/addresses**. *Id.* This data
13 confirmed the anecdotal data already reviewed by the BCC in 2022.

14 Based on his research in the field of disorder and crime, Dr. Sousa opined that, if left
15 unchecked, these minor incivilities or quality of life concerns that were being witnessed on
16 the pedestrian bridges would tend to “lead to citizen fear, to more disorder, and to serious
17 crime” and that these conditions were amplified because of the constrained widths and unique
18 confined structure. [103-18] at CC 133-CC 134.

19 By cherry-picking portions of Dr. Sousa’s deposition, Plaintiffs have attempted to paint
20 disorder as an amorphous, abstract concept that defies description and that is nothing more
21 than a pretext for the enactment of CCC 16.13.030. But a thorough reading of Dr. Sousa’s
22 deposition transcript demonstrates that to be false:

23 A. So disorder is often dis -- it is – the academic literature will
24 distinguish between two types of disorder. There's social disorder
25 and then there's physical disorder. Social disorder is associated
26 with specific behaviors. So drug use in public, alcohol use in
27 public, prostitution, aggressive panhandling. These types of active
28 behaviors. Physical disorder are more or less existing conditions.
So the examples of that would be things like graffiti, trash and
litter, broken windows, broken glass, locations where there's
evidence of public urination or public defecation. Places like that.

1 See Deposition Transcript for Dr. Sousa, attached hereto as **Exhibit L**, at 30:8-21.

2 The concept of disorder—while certainly backed by peer-reviewed research—is not
3 that mysterious. It’s intuitive that people will feel stress and anxiety when they are surrounded
4 by people, being harassed, in an unkempt environment, or in a confined environment with few
5 avenues of escape—it’s biological and it’s hardly an unfamiliar concept. See, e.g., **Exhibit L**
6 at 30:8-48:19. It is also common-sensical that an environment that allows lewd behavior,
7 public defecation and urination, crowds, litter, graffiti, harassment, drunk and intoxicated
8 behavior, etc. will inevitably result in more disorder and crime and, both the LVMPD
9 presentation in 2022 and the data compiled and analyzed by Dr. Sousa for the 2024 legislative
10 hearing, support this conclusion.

11 After arguing that Dr. Sousa’s report should be disregarded, Plaintiffs point to Clark
12 County’s 30(b)(6) statements that Clark County does not have any data of crime or evidence
13 of crowd crush conditions on the pedestrian bridge in an attempt to undermine concerns raised
14 by the BCC in enacting CCC 16.13.010—the purpose section for CCC 16.13.030. But again,
15 these misrepresentations are easily explained in context.

16 First, crime data is tracked and compiled by LVMPD and presented to commissioners
17 in briefings and in BCC meetings like it was in the 2022 legislative session on the proposed
18 amendment to Chapter 16.11 and the 2024 session for the enactment of CCC 16.13.030. It is
19 not the sort of data that the Department of Public Works would track or maintain. Not having
20 that data as a Clark County record is not coextensive with Plaintiffs’ position that such data
21 does not exist or that the BCC was unaware of such data when it unanimously enacted CCC
22 16.13.030. This is particularly so when one considers that the BCC received presentations
23 from LVMPD in 2022 and the BCC also received copies of Dr. Sousa’s report and
24 presentations from LVMPD about the associated data in the 2024 legislative session prior to
25 the enactment of CCC 16.13.030.

26 The issue of crowd crush is a little different from the issue of crime. Plaintiffs point to
27 the County’s inability to point to past crowd crush events in an attempt to show that
28

1 considerations of crowd crush on the pedestrian bridges is not a legitimate concern. It is
 2 indisputable that no major crowd crush events have occurred in Las Vegas to date and that
 3 considerations of crowd crush in CCC 16.13.030 are preventative in nature—designed to avoid
 4 tragedy before it occurs.

5 Prior to October 29, 2022⁶, Seoul’s Itaewon district had experienced no crowd crush
 6 event either. But that did not stop a crowd crush event from occurring—an event that would
 7 take the lives of 159 people and injure another 196. On October 29, 2022, following a release
 8 of COVID restrictions in South Korea, thousands of people gathered in the narrow alleys of
 9 Itaewon to celebrate and soon found themselves surrounded wall-to-wall by other people in
 10 confined spaces with limited points of ingress and egress—just like the pedestrian bridges
 11 along the strip. “Just after 10pm, chaos erupted. Witnesses reported seeing crowds surging in
 12 different directions and people losing their footing on the slope, causing a domino effect.”⁷
 13 The end result was tragedy, and it left people asking a lot of questions about how it happened
 14 and whether the crowd crush was predictable and preventable by Seoul authorities.⁸

15 While Clark County has no evidence of crowd crush previously occurring on the Las
 16 Vegas Strip—it is aware that the Strip is subject to large shoulder-to-shoulder crowds
 17 associated with events like F1, the NFL Draft, the Super Bowl, New Year’s Eve, CES, UFC
 18 fight nights, BTS concerts, Golden Knight Hockey games, etc. It is also aware that when these
 19 events let out it leads to crowd surges in the vicinity of the event—including on pedestrian
 20 bridges. *See, e.g.*, [103-14] at 177:9-25; *see also* Fusion Watch video of crowds forming on
 21 and near pedestrian bridges following the conclusion of an event on September 14, 2025,
 22 submitted manually, but referenced herein as **Exhibit M**, at timestamp 00:00-00:10.

23 The Strip has also seen its share of mass casualty and panic events including, but not
 24 limited to the MGM Grand Fire, the October 1 Mass Shooter Event, and a myriad of micro

25 _____
 26 ⁶ “Seoul Halloween crowd crush,” WIKIPEDIA, (https://en.wikipedia.org/wiki/Seoul_Halloween_crowd_crush) (last
 accessed February 25, 2026).

27 ⁷ A visual guide to how the Seoul Halloween crowd crush unfolded”, THE GUARDIAN,
 ([https://www.theguardian.com/world/2022/oct/31/how-did-the-seoul-itaewon-halloween-crowd-crush-happen-unfolded-
 a-visual-guide](https://www.theguardian.com/world/2022/oct/31/how-did-the-seoul-itaewon-halloween-crowd-crush-happen-unfolded-a-visual-guide)) (last accessed on February 25, 2026).

28 ⁸ “More than 150 killed in Seoul crowd crush” at timestamp 2:40-3:04, ABC NEWS,
 (https://www.youtube.com/watch?v=rcYC_6HZt-Y) (Last Accessed on February 25, 2026).

1 1186, 1189 (9th Cir.1990). Summary judgment is appropriate if the evidence viewed in the
2 light most favorable to the nonmoving party reveals no remaining genuine issues of material
3 fact and the district court applied the relevant substantive law. *Tzung v. State Farm Fire &*
4 *Casualty Co.*, 873 F.2d 1338, 1339–40 (9th Cir.1989); *Valley Bank of Nevada*, 914 F.2d at
5 1189 (9th Cir. 1990).

6 IV.

7 LEGAL ARGUMENTS

8 **1) PLAINTIFFS' FACIAL CHALLENGES REMAIN DISFAVORED AND THE BAR** 9 **TO PROVING THEM REMAINS HIGH**

10 Plaintiffs have asserted facial constitutional challenges to CCC 16.13.030 asserting that
11 it is “overbroad under the First Amendment of the United States Constitution” and “under
12 Article 1, Section 9 of the Nevada Constitution.” *See, e.g.*, [61] at 3:13-18, 18:1-26:9.

13 “Even in the First Amendment context, facial challenges are disfavored[.] [...]” *Moody*
14 *v. NetChoice, LLC*, 603 U.S. 707, 744 (2024). “Facial challenges are disfavored for several
15 reasons.” *Washington State Grange v. Washington State Republican Party*, 552 U.S. 442, 450,
16 (2008). For one, they frequently rely on speculation or interpretation of ordinances “on the
17 basis of [a] factually barebones records.” *Sabri v. United States*, 541 U.S. 600, 609 (2004)
18 (internal quotation marks and brackets omitted). Furthermore, declaring ordinances
19 unconstitutional on their face and in the abstract “frustrates the intent of the elected
20 representatives of the people.” *Regan v. Time, Inc.*, 468 U.S. 641, 652 (1984) (plurality
21 opinion); *see also Ayotte v. Planned Parenthood of N. New England*, 546 U.S. 320, 329–31,
22 (2006). Because a “facial challenge seeks to strike down a law in its entirety [it] must therefore
23 meet a more rigorous standard.” *Project Veritas v. Schmidt*, 125 F.4th 929, 940 (9th Cir.), cert.
24 denied sub nom. *Project Veritas v. Vasquez*, 146 S. Ct. 90 (2025).

25 The constitutional mandate to the courts encourages judicial restraint such that the
26 courts refrain from “rewrit[ing] state law to conform it to constitutional requirements....”
27 *Ayotte*, 546 U.S. at 329–31 (citing *Virginia v. American Booksellers Assn., Inc.*, 484 U.S. 383,
28 397 (1988)). Invalidating an ordinance in its entirety, without taking into consideration the

1 intent and desire of the legislature, circumvents the purpose of the legislature. *See Califano v.*
2 *Westcott*, 443 U.S. 76, 94 (1979) (Powell, J., concurring in part and dissenting in part); *see*
3 *also Dorchy v. Kansas*, 264 U.S. 286, 289–290 (1924) (opinion for the Court by Brandeis, J.);
4 *Minnesota v. Mille Lacs Band of Chippewa Indians*, 526 U.S. 172, 191 (1999); *Alaska*
5 *Airlines, Inc. v. Brock*, 480 U.S. 678, 684 (1987).

6 Accordingly, the Supreme Court of the United States has “made facial challenges hard
7 to win.” *Moody*, 603 U.S. at 723; *see also Arizona Att'ys for Crim. Just. v. Mayes*, 127 F.4th
8 105, 110 (9th Cir. 2025) (finding that even under the Speech Clause, facial challenges are hard
9 to win because they often rest on speculation about the law's coverage and its future
10 enforcement.); *Simon v. City & Cnty. of San Francisco*, 135 F.4th 784, 797 (9th Cir. 2025).

11 **2) PLAINTIFFS AS-APPLIED CHALLENGES, WHICH WOULD BE ANALYZED**
12 **UNDER THE SAME FRAMEWORK AS THE FACIAL CHALLENGES BECAUSE**
13 **THEY DIFFER ONLY IN REMEDY, ARE NOT JUSTICIABLE**

14 In addition to their facial constitutional challenges, Plaintiffs have also alleged “as-
15 applied” challenges as it pertains to Plaintiffs Summers and Polovina based on allegations that
16 they are deterred from performing on the pedestrian bridges or, in the case of Defendant
17 Polovina, have been cited for performing thereon. [61] at 3:15-20, 19:8-22:20.

18 [The] distinction between facial and as-applied challenges is not so well defined that it
19 has some automatic effect or that it must always control the pleadings and disposition in every
20 case involving a constitutional challenge.” *Citizens United v. Fed. Election Comm'n*, 558 U.S.
21 310, 331 (2010). The distinction between facial and as-applied challenges “goes to the breadth
22 of the remedy employed by the Court, not what must be pleaded in a complaint.” *Id.*

23 In defining what an “as-applied challenge” is, the courts have indicated that “An as-
24 applied challenge contends that the law is unconstitutional as applied to the litigant's particular
25 speech activity, even though the law may be capable of valid application to others.” *Foti v.*
26 *City of Menlo Park*, 146 F.3d 629, 635 (9th Cir. 1998). “A successful as-applied challenge
27 bars a law's enforcement against a particular plaintiff[.]” *Bruni v. City of Pittsburgh*, 824 F.3d
28 353, 362 (3d Cir. 2016) (emphasis added).

1 Here, Plaintiff failed to name an entity responsible for enforcement—either LVMPD
 2 or the Clark County District Attorney’s Office—as a party to the action and, accordingly,
 3 Defendant Clark County moved for dismissal on Plaintiffs’ as-applied challenges on
 4 justiciability grounds because, even if Plaintiffs prevailed on their as-applied challenges, no
 5 order of this Court could preclude enforcement against them. *See, e.g.*, [102].

6 Regardless of whether the Court grants Defendant Clark County’s Motion to Dismiss
 7 the As-Applied Challenges or not, however, the underlying constitutional standard for
 8 analyzing the facial and as-applied challenges is the same and, accordingly, only a single
 9 analysis will be conducted in the instant response. *Legal Aid Servs. of Oregon v. Legal Servs.*
 10 *Corp.*, 608 F.3d 1084, 1096 (9th Cir. 2010) (“The underlying constitutional standard, however,
 11 is no different than in a facial challenge.”); *Regino v. Staley*, 133 F.4th 951, 967 (9th Cir. 2025)
 12 (“Regardless of the type of challenge, however, the underlying constitutional standard remains
 13 the same.”)

14 **3) PLAINTIFFS MOTION FOR SUMMARY JUDGMENT IMPROPERLY PRE-**
 15 **SUPPOSES THAT CCC 16.13.030 IS NARROWLY DIRECTED AT SPEECH,**
 16 **OVERBURDENS SPEECH IN RELATION TO ITS LEGITIMATE SWEEP, AND**
RESTRICTS ACCESS TO A PUBLIC FORUM

17 **A. CCC 16.13.030 is not Narrowly and Specifically Directed at Conduct**
 18 **Commonly Associated with Speech**

19 Under the first prong of the Court’s First Amendment Analysis, there needs to be an
 20 initial inquiry as to whether CCC 16.13.030 implicates the First Amendment at all. [51] at
 21 18:6-7. In this case, the subject ordinance does not “by [its] terms” seek to regulate “spoken
 22 words” or patently “expressive or communicative conduct” nor does it “purport to regulate the
 23 time, place, and manner of expressive or communicative conduct.” *Broadrick v. Oklahoma*,
 24 413 U.S. 601, 613, 93 S. Ct. 2908, 2916, 37 L. Ed. 2d 830 (1973); *see also Roulette v. City of*
 25 *Seattle*, 97 F.3d 300, 303 (9th Cir. 1996), as amended on denial of reh’g and reh’g en banc
 26 (Sept. 17, 1996).

27 CCC 16.13.030 provides in its entirety:
 28

1 16.13.030 – Pedestrian Flow Zones. To maintain the safe and
2 continuous movement of pedestrian traffic, it is unlawful for any
3 person to (1) stop or stand within any Pedestrian Flow Zone, or (2)
4 engage in any activity while within a Pedestrian Flow Zone with
5 the intent of causing another person who is within a Pedestrian
6 Flow Zone to stop or stand. A person is not in violation of this
7 Section if they stop or stand while waiting for access to an elevator
8 or escalator for purposes of entering or exiting a Pedestrian Flow
9 Zone.

10 CCC 16.13.030.

11 From the language of the ordinance it is clear that CCC 16.13.030 does not seek to
12 regulate spoken words. There is no prohibition on speaking, using a bullhorn to convey ideas,
13 wearing a t-shirt with a message, carrying a sign with an irreverent slogan or a religious
14 thought or handing out pamphlets to people as they walk across the pedestrian bridges. *Id.*
15 Despite the enactment of CCC 16.13.030, the pedestrian bridges remain free speech spaces
16 where people may contribute in a variety of ways to the marketplace of ideas.

17 The next question is then whether “stopping” and “standing” are patently expressive or
18 communicative conduct. *Roulette*—which upheld a ban on lying down and sitting on portions
19 of the sidewalk—tells us that it isn’t. 97 F.3d at 303–304 (“it prohibits only sitting or lying on
20 the sidewalk, neither of which is integral to, or commonly associated with, expression.”).
21 While sitting—the conduct banned in *Roulette*—may make it easier to gather signatures or to
22 express one’s message for a prolonged period—it’s not essential for expression. One can still
23 convey their opinion on abortion or ICE enforcement activities in Chicago without sitting
24 down; much the same way someone can march across the pedestrian bridges protesting unfair
25 labor practices at local businesses or Clark County property taxes without stopping or
26 standing.

27 The core act of expression of these opinions does not require stopping and standing any
28 more than they do sitting or lying down. And, accordingly, Plaintiffs fail to demonstrate how
29 their constitutional challenge should move into an intermediate scrutiny analysis when CCC
30 16.13.030 leaves the freedom to express oneself on the bridges intact.

**B. CCC 16.13.030 does not Impact a Substantial Amount of Protected Activity in
Comparison to its Legitimate Scope**

1
2 Alternatively, Plaintiffs bear the burden of establishing that the law punishes a
3 “substantial amount of protected free speech, judged in relation to the statute's plainly
4 legitimate sweep[.]” *Virginia v. Hicks*, 539 U.S. 113, 118–19 (2003) (internal quotation marks
5 and citations omitted); [51] at 18:7-9, 25:15-17 (“The burden is on the plaintiff to demonstrate
6 “from the text of [the law] and from actual fact” that substantial overbreadth exists”) (citing
7 *N.Y. State Club Ass’n, Inc. v. City of N.Y.*, 487 U.S. 1, 14 (1988)). This analysis is performed
8 by determining the full set of applications of the law and determining which are constitutional
9 and which are not. *See, e.g., Moody v. NetChoice, LLC*, 603 U.S. 707, 718 (2024).

10 Plaintiffs demonstrated clearly in their motion [105] that CCC 16.13.030 is not
11 burdening a substantial amount of speech in comparison to its legitimate sweep. Even under
12 Plaintiffs’ interpretation of the arrest data, only 16 of 90 arrests purportedly implicated free
13 speech activities or less than 18%. *See, e.g.,* [105] at 6:2-12. That means that more than 82%
14 of enforcement action under CCC 16.13.030 implicates non-speech related activities—a fact
15 that Plaintiffs concede [105] at 6:9-12 (“Over that same period of time, the vast majority of
16 other enforcement measures were taken against people who were actually obstructing the
17 sidewalk, i.e., sleeping, lying down, or sitting on the sidewalk.”).

18 Given that the data cited showed less than one arrest every two weeks on the pedestrian
19 bridges for purportedly speech related activity and only implicates less than 6% of the
20 sidewalk system and includes no citations for free speech activities performed while walking
21 across the bridge, Plaintiffs own evidence concedes that there is far more legitimate
22 enforcement of the statute that doesn’t implicate speech at all—which is to say nothing of the
23 fact that the ordinance doesn’t even affect the remaining 94% of the sidewalk along the Las
24 Vegas Strip, the 99.65% of the sidewalk in the Resort Corridor, or the 99.99903% of the
25 sidewalk network in unincorporated Clark County. [103-4] at CC 2498-CC 2499.

26 Accordingly, not only is the speech on the bridges a very small percentage of speech
27 occurring thereon, but in geographical context the ordinance itself only applies to a very
28 miniscule portion of the sidewalk network in the County.

1 **C. Pedestrian Bridges are not Traditional Public Forums because they are**
 2 **Functionally Elevated Crosswalks and the Acquiescence to Stopping and**
 3 **Standing in the Past does not Alter their Original Function**

4 In order to reach intermediate scrutiny through an alternative method, Plaintiffs also
 5 contend that pedestrian bridges in the Resort Corridor are a traditional public forum because
 6 they are part of the sidewalk network—functionally conflating pedestrian bridges with
 7 sidewalks. [105] at 11:17-24.

8 In its own motion for summary judgment [103], Clark County did a more thorough
 9 analysis of what is required for a space to be considered a “traditional public forum”, and an
 10 explanation of why those requirements are not satisfied in this case, accordingly, it will not
 11 belabor those arguments here, but instead will address only those arguments raised by
 12 Plaintiffs. *See, e.g.*, [103] at 22:1-23:18.

13 Plaintiffs cited to several cases which stand for the proposition that “sidewalks” are
 14 public forums. [105] at 11:17-12:3 (citing *United States v. Grace*, 461 U.S. 171, 179 (1983)
 15 and *Santopietro v. Howell*, 73 F.4th 1016, 1024 (9th Cir. 2023)). But none of the cases stand
 16 for the proposition that pedestrian bridges are public forums. *Id.* Even Plaintiffs own list of
 17 examples of public fora do not include pedestrian bridges, instead including only “streets,
 18 parks, and sidewalks, publicly owned spaces which, for ‘**time out of mind**, have been used
 19 for purposes of assembly, communicating thoughts between citizens, and discussing public
 20 questions.’” *Id.* at 11:20-22 (citing *Grace*, 461 U.S. 171, 179 (1983)) (emphasis added).

21 But therein lies the problem. Pedestrian bridges have not existed since “time out of
 22 mind.”¹¹ Pedestrian bridges did not exist in Clark County prior to about 35 years ago when
 23 they replaced at-grade crosswalks—which also prohibited stopping and standing and were not
 24 public forums. In fact, many parts of the street and sidewalk system which are specialized in
 25 purpose like freeways, on- and off-ramps, and crosswalks are not considered public forums
 26 because their purpose is primarily to facilitate speedy movement rather than to serve as a

27 ¹¹ The entry for “Time out of Mind” in Merriam-Webster Dictionary refers one to “time immemorial” which is defined
 28 as “time so long past as to be indefinite in history or tradition.” *See* Merriam-Webster Dictionary at
<https://www.merriam-webster.com/dictionary/time%20out%20of%20mind> and <https://www.merriam-webster.com/dictionary/time%20immemorial>.

1 leisurely space for people to interact and engage with one another.

2 The Government, “no less than a private owner of property, **has the power to preserve**
3 **the property under its control for the use to which it is lawfully dedicated.**” See United
4 States v. Grace, 461 U.S. 171, 178 (1983) (emphasis added); *see also Jacobsen v. Bonine*, 123
5 F.3d 1272, 1274 (9th Cir. 1997) (holding that sidewalks at freeway rest stops are not public
6 forums because of their character and traditional use). The Supreme Court held in *Kokinda*
7 that “the location and purpose of a publicly owned sidewalk is critical to determining whether
8 such a sidewalk constitutes a public forum.” *United States v. Kokinda*, 497 U.S. 720, 728–29,
9 110 S. Ct. 3115, 3121, 111 L. Ed. 2d 571 (1990).

10 Accordingly, as the pedestrian bridges are replacements for crosswalks, have not
11 always been public forums, and have unique characteristics and purposes primarily facilitating
12 the separate of pedestrian and automotive traffic and facilitating street crossings, they should
13 not be considered public forums under an analysis by the Court.

14 **D. As Plaintiffs cannot Demonstrate the foregoing, they Must Demonstrate that**
15 **CCC 16.13.030 is Impermissibly Vague in All of its Applications which they**
16 **Concede it is Not**

17 If Plaintiffs fail to demonstrate the foregoing, they must then demonstrate that “the
18 enactment [of CCC 16.13.030] is **impermissibly vague in all of its applications**” to reach
19 intermediate scrutiny. *Vill. of Hoffman Ests. v. Flipside, Hoffman Ests., Inc.*, 455 U.S. 489,
20 494–95 (1982) (emphasis added).

21 But as was discussed, *supra*, Plaintiffs have already conceded that the vast majority of
22 CCC 16.13.030--more than 82%--implicate legitimate obstructive conduct unrelated to speech
23 in any way. [105] at 6:9-12 (“Over that same period of time, the vast majority of other
24 enforcement measures were taken against people who were actually obstructing the sidewalk,
25 i.e., sleeping, lying down, or sitting on the sidewalk.”). Accordingly, this is where the Court’s
26 analysis should end.

27 **4) EVEN UNDER AN INTERMEDIATE SCRUTINY ANALYSIS, CCC 16.13.030 IS A**
28 **CONSTITUTIONAL TIME, PLACE OR MANNER RESTRICTION BECAUSE THE**
ORDINANCE IS CONTENT NEUTRAL, NARROWLY TAILORED TO SERVE A

1 **SIGNIFICANT GOVERNMENTAL INTEREST, AND LEAVES OPEN AMPLE**
2 **CHANNELS FOR COMMUNICATION**

3 **A. CCC 16.13.030 is Indisputably Content Neutral**

4 Plaintiffs do not appear to dispute that CCC 16.13.030 is content neutral on its face.
5 *See generally* [105]. Plaintiffs only use the phrase “content neutral” one time indicating that
6 in intermediate scrutiny, the burden shifts to the “government to show that the restriction
7 imposed is a reasonable restriction on the time, place, or manner of protected speech,”
8 assuming that the restriction is content neutral. [105] at 9:20-22 (citing *Ward v. Rock Against*
9 *Racism*, 491 U.S. 781, 791 (1989)).

10 CCC 16.13.030 does not regulate speech, it does not regulate viewpoint, it does not
11 regulate opinion or position. It only makes it “unlawful for any person to (1) stop or stand
12 within any Pedestrian Flow Zone, or (2) engage in any activity while within a Pedestrian Flow
13 Zone with the intent of causing another person who is within a Pedestrian Flow Zone to stop
14 or stand.” CCC 16.13.030.

15 At best this constitutes an ordinance which does not burden speech at all and, at worst,
16 it constitutes an ordinance which impacts only the manner of speech—limited specific speech
17 activities which absolutely require stopping or standing.

18 Accordingly, the first part of the intermediate scrutiny analysis is satisfied as CCC
19 16.13.030 is clearly content neutral—a point which Plaintiffs do not appear to dispute.

20 **B. The Pedestrian Flow Zone Ordinance is Narrowly Tailored to Serve a**
21 **Significant Government Interest of which there is Substantial Evidence**

22 Plaintiffs contend that “the County cannot show that CCC 16.13.030 is related to any
23 real government interest [...] because **it has no evidence that the pedestrian bridges were**
24 **suffering** or at risk of suffering from actual harm such as crime or crowding prior to the
25 enactment of CCC 16.13.030” or that CCC 16.13.030 alleviated these harms in any direct and
26 material way. [105] at 11:1-7 (emphasis added).

27 It is difficult to know how to even respond to an argument that willfully refuses to
28 acknowledge the existence of evidence—which has been provided in spades—in arguing for

1 motion for summary judgment. It is more baffling when one considers that the burden on the
2 County to establish this significant government interest is not a heavy one. [51] at 32:6-13.

3 The legislative history of the proposed amendment to Chapter 16.11 and enactment of
4 CCC 16.13.030, the LVMPD presentation on the bridges, the Kimley-Horn pedestrian studies,
5 Plaintiffs' own videos, Dr. Sousa's report, the testimony of the Kimley-Horn 30(b)(6)
6 witnesses, lawsuits against the County for bridge-related incidents, daily inspection reports
7 showing the impact on infrastructure, and testimony of the proponents of the ordinance all
8 constitute substantial and competent evidence of significant issues with the pedestrian bridges
9 when CCC 16.13.030 was enacted in 2024. *See, e.g.*, [103-6]; [103-7]; [103-8]; [103-11];
10 [103-12]; [103-13]; [103-14]; [103-15]; [103-16]; [103-17]; [103-18]; [103-19]; [103-20];
11 [103-21]; [103-22]; [103-23]; [103-24]; [103-25]; [103-26]. These identified harms are
12 already recognized as significant government interests by the courts. *See Madsen v. Women's*
13 *Health Ctr., Inc.*, 512 U.S. 753, 768 (1994) (“[government] has a strong interest in ensuring
14 the public safety and order [and] in promoting the free flow of traffic on public streets and
15 sidewalks”).

16 To address these concerns—which are unique to the bridges because of their narrow,
17 elevated construction and purpose—CCC 16.13.030 is narrowly tailored to include only the
18 area covering these pedestrian bridges and limited space around the touchdown structures
19 where people enter and exit the bridge's elevators and escalators which accommodate ADA
20 access.

21 To qualify as narrowly tailored, an ordinance “**need not be the least speech-restrictive**
22 **means** of advancing the Government's interests.” *Turner Broad. Sys., Inc. v. F.C.C.*, 512 U.S.
23 622, 662 (1994) (emphasis added). “Rather, the requirement of **narrow tailoring is satisfied**
24 **so long as the ... regulation promotes a substantial government interest that would be**
25 **achieved less effectively absent the regulation.**” *Ward*, 491 U.S. at 799 (internal quotation
26 marks and citations omitted) (emphasis added). Plaintiffs argue that Chapter 16.11's
27 obstruction ordinance could solve all of the problems CCC 16.13.030 was intended to solve—
28 but Chapter 16.11 was in effect at the time and the problems identified persisted.

1 Plaintiffs argue that Clark County should have restricted only certain times or left open
2 exceptions for First Amendment activities, but Clark County has no way to predict when
3 crowd surges will occur, and stationary street performers would inhibit traffic flows in an
4 emergency to the same extent, if not more, than a person sleeping on the bridge. Accordingly,
5 these alternatives or accommodations were incompatible with addressing the harms identified
6 by Clark County when enacting this ordinance and the Court should find that it is narrowly
7 tailored and constitutional as a valid time, place and manner regulation.

8 **C. CCC 16.13.030 Leaves Open Ample Channels for Expressive Conduct of the**
9 **Type which May be Affected by the Ordinance**

10 The final element a time, place, or manner restriction must satisfy to pass constitutional
11 muster is that “it must ‘leave open alternative channels for communication of the
12 information.’” *Berger*, 569 F.3d at 1036 (quoting *Ward*, 491 U.S. at 791).

13 Under CCC 16.13.030, those engaged in free speech which does not require stopping
14 or standing are wholly unaffected by the subject ordinance. For those few individuals who,
15 like Plaintiffs Summers and Polovina, assert their expression can only be performed by
16 stopping or standing for extended periods of time, then the remaining 94.3% of the Las Vegas
17 Strip sidewalk and 99.65% of the Resort Corridor sidewalk remain open for them to engage
18 in free expression while stopping and standing. [103-5] at CC 2497-CC 2498.

19 They reach the same audience. [103-22]; [103-23]. The bridge itself has no relation to
20 their message and CCC 16.13.030 does not inhibit people from spontaneously showing up to
21 engage in speech on the sidewalks or to protest, while moving, across the pedestrian bridges.
22 In fact, because the sidewalks are located at-grade—they are even more easily accessible to
23 those wishing to engage in their First Amendment protected rights. Accordingly, CCC
24 16.13.030 leaves open ample alternative channels to communicate the types of speech which
25 Plaintiffs contend are impacted by CCC 16.13.030 so it passes constitutional muster.

26 **5) CCC 16.13.030 IS NOT UNCONSTITUTIONALLY VAGUE BECAUSE IT**
27 **PROVIDES FAIR NOTICE OF PROHIBITED ACTIVITY AND REASONABLE**
28 **GUIDELINES FOR LAW ENFORCEMENT AND TRIERS OF FACT**

1 In support of their vagueness arguments, Plaintiffs contend that CCC 16.13.030 is “so
2 standardless that it authorizes or encourages seriously discriminatory enforcement. Thus it
3 (sic) no surprise that LVMPD openly admits that it engages in discriminatory enforcement,
4 ignoring whole categories of people who stop for ‘incidental viewing purposes.’” [105] at
5 23:18-21. But Plaintiffs’ arguments in this regard conflate “discriminatory enforcement” with
6 citing someone who has the requisite *mens rea*, i.e., probable cause for citation.

7 An ordinance is not void for vagueness where the prohibitions are “clearly defined.”
8 *See Grayned v. City of Rockford*, 408 U.S. 104, 108 (1972). While “stand” and “stop” are not
9 defined in ordinance, meaning that they should be attributed their plain meaning at law, CCC
10 16.13.010 does provide clear guidance regarding what constitutes “stopping” and “standing”
11 *See, e.g.*, CCC 16.13.010. The pedestrian bridges were designed so that pedestrians “would
12 not stop, stand or congregate other than for incidental and fleeting viewing of the Las Vegas
13 Strip from the pedestrian bridge.” CCC 16.13.010 (emphasis added). Accordingly, those who
14 do not have the requisite intent to cease moving on will not be subject to citation because
15 LVMPD lacks probable cause. This does not make the ordinance confusing or vague—if
16 anything it makes it less restrictive as it is only to be applied in situations where a person
17 clearly intends to make a substantial stop on the bridge and/or refuses to move along having
18 been previously prompted. Nothing could be simpler.

19 Vagueness doctrine requires that an ordinance or statute provide “fair notice or
20 warning” to potential violators and “reasonably clear guidelines for law enforcement officials
21 and triers of fact in order to prevent arbitrary and discriminatory enforcement.” *Smith v.*
22 *Goguen*, 415 U.S. 566, 572–74 (1974) (internal quotation marks and citations omitted). The
23 lack of ambiguity in the terms “stop” and “stand” and the supporting language provided in the
24 purpose section, CCC 16.13.010, provide this necessary guidance and the LVMPD training
25 materials disclosed confirm that LVMPD’s and the County’s understanding of the ordinance
26 and how it is to be enforced are aligned.

27 Accordingly, LVMPD and triers of fact alike have reasonable guidelines provided to
28 apply when enforcing and evaluating enforcement of CCC 16.13.030. Therefore CCC

1 16.13.030 is not unconstitutionally vague—even when applied to Plaintiffs Polovina and
2 Summers and the Court should grant summary judgment in favor of Clark County.

3 **6) BECAUSE CCC 16.13.030 SURVIVES THE OVERBREADTH AND VAGUENESS**
4 **CHALLENGES UNDER THE U.S. CONSTITUTION, IT ALSO SURVIVES THE**
5 **CHALLENGES BROUGHT UNDER THE NEVADA STATE CONSTITUTION**

6 Nevada Courts have held, and Plaintiffs conceded in their First Amended Complaint,
7 that the protections offered by Article I, Section 9 of the Nevada State Constitution are
8 coextensive with those of the First Amendment and that the Nevada due process clause, Article
9 I, Section 8 is coextensive with those found in the United States Constitution. *See* [61] at
10 17:21-24, 26:5-7; *see also Hernandez v. Bennett-Haron*, 128 Nev. 580, 587, 287 P.3d 305,
11 310 (2012); *S.O.C., Inc. v. Mirage Casino-Hotel*, 117 Nev. 403, 415, 23 P.3d 243, 251 (2001).

12 Accordingly, Plaintiffs’ failure to establish that CCC 16.13.030 is unconstitutional
13 under the federal standard applies equally to their state law constitutional claims which must
14 also be denied.

15 V.

16 **CONCLUSION**

17 Based on the foregoing, Defendant humbly requests the Honorable Court deny
18 Plaintiffs’ Motion for Summary Judgment [105] and grant Defendant’s Motion for Summary
19 Judgment [103] instead.

20 DATED this 26th day of February, 2026.

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CERTIFICATE OF ELECTRONIC SERVICE

I hereby certify that I am an employee of the Office of the Clark County District Attorney and that on this 26th day of February, 2026, I served a true and correct copy of the foregoing **DEFENDANT CLARK COUNTY’S RESPONSE TO PLAINTIFFS’ MOTION FOR SUMMARY JUDGMENT [105]** (United States District Court Pacer System or the Eighth Judicial District Wiznet), by e-mailing the same to the following recipients. Service of the foregoing document by e-mail is in place of service via the United States Postal Service.

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