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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

LISA MCALLISTER, an individual; BRANDON SUMMERS, an individual; and JORDAN POLOVINA, an individual,

Plaintiffs,

vs.

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

Defendant.

Case No.: 2:24-cv-00334

PLAINTIFFS' RESPONSE TO DEFENDANT CLARK COUNTY'S MOTION FOR SUMMARY JUDGMENT [ECF No. 103]

[ORAL ARGUMENT REQUESTED]

Plaintiffs LISA MCALLISTER, BRANDON SUMMERS, and JORDAN POLOVINA (collectively "Plaintiffs") responds to Defendant Clark County's Motion for Summary Judgment

[ECF No. 103]. This response is based on this notice, the memorandum of points and authorities filed herein, the declarations filed by Plaintiffs, the exhibits filed herein, the statement of uncontroverted facts and conclusions of law, the pleadings previously filed in this action, and any oral argument permitted at the hearing on this motion.

DATED this 27th day of February , 2026.

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

I. INTRODUCTION

In its Motion for Summary Judgment, the County clings to the belief that every statement made by its allies and its own Board members advocating for CCC 16.13.030 during the legislative process is admissible to justify the ordinance's restrictions on First Amendment activities, satisfies its burdens, and cannot be disputed by the Plaintiffs. As this Court first observed in denying the County's motion to dismiss Plaintiffs' constitutional claims (ECF No. 51, 38:5–39:1) and then again in addressing the County's failure to disclose discovery (ECF No. 81, 4:1 – 4:15), this belief is not supported by law. But the County still ignores its evidentiary burden, as reflected in its abject failure to provide a concise statement of undisputed facts to support its Motion as required by LR 56–1. And not only is the County's approach procedurally improper, its "Background Information" and "Subject Ordinance and the Legislative History" ignore undisputed facts that favor Plaintiffs' position, and are replete with disputed claims and inadmissible evidence.

The complete and accurate factual record—-including the County's 2022 pedestrian study that the County failed to disclose to the public prior to passing CCC 16.13.030—makes clear that the pedestrian bridges are traditional public fora and that CCC 16.13.030's restrictions broadly impact Plaintiffs' (and others') protected First Amendment activity. In contrast, the County relies on unsubstantiated opinions and fatally flawed data to claim that CCC 16.13.030's ban—imposed on all bridges at all times—was necessary to protect public safety and reduce. And the County has no evidence at all that reasonable, obvious less restrictive alternatives would have failed to address its concerns or that the remaining sidewalks offer adequate alternative channels for communication as required under First Amendment scrutiny. The County also fails to explain how CCC 16.13.030 is not constitutionally vague when the County itself cannot consistently define "stopping" and embraces LVMPD's policy targeting First Amendment activities for enforcement, which is selective

prosecution banned by the Fourteenth Amendment. In short, the puffery and unsubstantiated opinions filling CCC 16.13.030's legislative record is insufficient to satisfy the County's burden.

II. LEGAL STANDARD

Summary judgment is proper only when a "movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." FRCP 56(a). The court must view the evidence in the light most favorable to the non-moving party, drawing all "justifiable inferences" in its favor. *Lister v. City of Las Vegas*, No. 2:21-cv-00589-CDS-MDC, 2024 U.S. Dist. LEXIS 31013, at *5 (D. Nev. Feb. 23, 2024). A party moving for summary judgment bears both the ultimate burden of persuasion and the initial burden of producing the portions of the record that show the absence of a genuine issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). "In order to carry its ultimate burden of persuasion on the motion, the moving party must persuade the court that there is no genuine issue of material fact," otherwise summary judgment must be denied. *Nissan Fire & Marine Ins. Co. v. Fritz Cos.*, 210 F.3d 1099, 1102 (9th Cir. 2000).

III. DISPUTED MATERIAL FACTS

Plaintiffs dispute multiple factual representations made in the County's motion but note that the County has failed to clearly delineate the facts the County considers undisputed and material to the disposition of its motion. LR 56-1 requires that a party moving for summary judgment "include a concise statement setting forth each fact material to the disposition of the motion that the party claims is or is not genuinely in issue." Instead of following the rules and identifying what proffered facts it asserts are undisputed, admissible, and relevant to its motion, the County just provides an extensive recitation of CCC 16.13.030's legislative history (ECF No. 103, Clark County's motion for summary judgment ("MSJ") at 11:13-16:3) and makes multiple references to the pedestrian bridge studies completed at its own behest (*id.*, 3:20-7:16).

Considered practically, the County's failure to comply with LR 56–1 makes it impossible for

the Plaintiffs to succinctly and clearly respond to the County's factual allegations. For example, the Plaintiffs do not dispute that "NPOs on the Strip decreased generally in the 2022 [pedestrian study]" (*see* MSJ, 7:3), but the County goes on to say "such a decrease is unsurprising given that 2022 had fewer tourists than either 2012 or 2015 and, after two years of COVID-related restrictions and decreased tourist numbers, many vendors, solicitors, and performers likely moved on to more consistent sources of income," a theory couched as fact. (*Id*., 7:3-7:7). Neither of the exhibits (ECF No. 103–9, Exhibit H, CC416 and ECF No. 103–2, Exhibit A) the County relies on supports its theory, says anything about COVID-19 or offer any explanation for why the number of NPOs decreased from the previous pedestrian studies. (*Id.*).

The County does not remedy its failure to provide the required statement of undisputed facts by identifying undisputed facts in its argument. In total, the County offers four factual record citations in its argument section. (*See* MSJ, 23:2; 23:7; 23:12; 24:5). Three citations are linked to specific, facts offered by the County (*see id.*, 23:2; 23:7; 23:12), but the fourth is only offered for the general contention that misconduct occurs on the pedestrian bridges rather than to support a specific fact that can be confirmed or challenged by Plaintiffs. (*See id*., 24:5). The County also fails provide any factual support for the broad factual claims it makes. (*See, e.g.* 25:27–26:3 (referring to "ample evidence" in the legislative history without explaining who provided the evidence); 25:13–25:18 (referring to "data" without explaining who provided the data)).

With that said, Plaintiffs dispute factual representations in the "Background Information" and "Subject Ordinance and the Legislative History" sections that appear material to the County's motion.

A. Comparisons between the pedestrian bridges and the total sidewalk system.

The County repeatedly represents that the "pedestrian bridges mak[e] up less than 6% of the Las Vegas Strip sidewalk network." (*Id.*, 3:26–28, 11:27–12:2). It extrapolates from this claim to claim that 94% of the sidewalks in the Strip Corridor are available for First Amendment activity (*see*

id., 21:21–21:24) and that the pedestrian bridges suffer from higher rates of disorder than grade-level sidewalks. (*See id*., 11:27–12:4). Plaintiffs dispute the validity of each of these statistics comparing the sidewalks impacted by CCC 16.13.030 to the remaining sidewalks in the Strip Corridor.

The County's representation that the sidewalks impacted by CCC 16.13.030 only account for 6% of the overall sidewalk system is flawed for many reasons. First, the County 30(b)(6) representative testified that the calculation that the County relies upon in reaching its 6% conclusion is based on linear feet rather than square footage. (ECF No. 128-1, Deposition of Kaizad Yazdani, Clark County 30(b)(6) Designee (Complete Transcript) ("Yazdani Depo. (Complete)") at 116:2-120:13).[1] However, he also testified that his *original* calculations comparing the pedestrian bridges to the grade-level sidewalks determined that the bridges comprised 18% of the total sidewalks in the Corridor, and that he in fact used square footage for this calculation rather than linear feet. (*See id*., 129:12-134:21). While the County's representative walked back this 18% calculation, claiming that he "misunderstood" the County's request and that he did not believe the calculation included all sidewalks within the Corridor (*see id.*, 120:14-122:6, 132:7-139:17), he also confessed that he did not have any basis to believe the calculation was inaccurate and did not have an alternative calculation to offer regarding surface area. (*See id*., 146:19-148:19). And while the County claims that linear feet are better than square footage to compare the impacted sidewalks to unimpacted sidewalks (*see id*., 133:2-16), this claim fails to reconcile that its calculations to determine LOS, which is how the County measures congestion, is necessarily based on two dimensions: traffic flow along a bridge's length compared to the bridge's effective width, *i.e.*, a calculation more accurately based on square footage rather than mere linear footage. (*See id*., 269:14-19). Notably, the County also uses square

[1] Plaintiffs previously provided only the relevant deposition sections as exhibits. (*See* ECF No. 106-1 (Yazdani Depo.) at 96:22–97:4). However, since the County has recently accused Plaintiffs of taking statements made by its deponents "out of context" (ECF No. 123 at 4:12 – 4:14), Plaintiffs provide full deposition transcripts moving forward.

footage rather than linear feet in its motion when it compares the pedestrian bridges to the entire Clark County sidewalk system. (*See* MSJ, 11:27-12:2). The County also repeatedly emphasizes the pedestrian bridges' widths, rather than lengths, when arguing that the bridges run greater risk of congestion than surface level sidewalks. (*See id*., 3:7-4:18, 23:4-7). As the County's 6% calculation is in dispute, it cannot rely on that statistic to claim that there are sufficient alternative channels for communication or that bridges suffer from higher levels of disorder.

Furthermore, despite its claims to the contrary, the County appears to have only measured the elevated portion of the pedestrian bridges and did not measure the grade-level sidewalks included in each pedestrian flow zone that are subject to CCC 16.13.030 when reaching its 6% conclusion. The County's representative testified that he measured the bridge decks, the elevators, and 20 feet of the landing for each of the pedestrian bridges when he determined that the bridges comprised 6% of the overall sidewalk system. (ECF No. 128-1, Yazdani Depo. (Complete) at 40:15–41:6). To make these measurements he used a program called Nearmap but explained that Nearmap was functionally the same as Google, going so far as to state "If I didn't have [Nearmap], I would have just done it on Google." (*Id.*, 42:17–42:18). He memorialized his measurements for each of the pedestrian bridges in an email to District Attorney Lisa Logsdon, which was then provided to Dr. Sousa. (Ex. 1, Email exchange between William Sousa, Lisa Logsdon, and Kaizad Yazdani at CCC 348256–257).

Following the County representative's testimony, Plaintiffs attempted to verify the County's measurements using Google by measuring each of the bridges discussed in the email exchange between Dr. Sousa and the County. (Ex. 2, Jacob Valentine Declaration, ¶ XXXX; Ex. 3, Screenshots from Google Maps). Plaintiffs started by measuring only the bridge decks, excluding the escalators and any grade-level sidewalks that comprised the landings. (Ex. 2, Jacob Valentine Declaration, ¶ XXXX). Even excluding the escalators and landings, every measurement taken by Plaintiffs using Google maps exceeded the measurement provided by the County to Dr. Sousa. (Ex. 2, Jacob

Valentine Declaration, ¶ XXXX). Considering that Plaintiffs have been unable to recreate the County's measurements using a program comparable to that used by the County, they dispute the County's representations regarding the overall length of the pedestrian bridges or that the County included the grade level sidewalks in its calculations.

B. Whether the bridges suffer from more disorder than grade-level sidewalks.

Plaintiffs also dispute whether the bridges have higher levels of "disorder" as the County relies on an inaccurate and unreliable calculation by Dr. William Sousa to make this claim. Using aerial images, the Clark County Public Works Division "very roughly" calculated the length of the overall sidewalk system along Las Vegas Boulevard in the Resort Corridor and the length of the sidewalk on the public pedestrian bridges within that system as discussed above. (ECF No. 128-1, Yazdani Depo. (Complete) at 40:15–42:18). In calculating total sidewalk length, the County measured the length of all publicly accessible sidewalks, publicly or privately owned, street level or on a pedestrian bridge. (*See id*., 133:2–134:10). In the calculation for pedestrian sidewalk length used by Sousa, County only considered the publicly owned pedestrian bridges in the Corridor; it did not calculate sidewalk length on the privately owned bridges. (*Id*., 117:19–118:1**)**.

At Sousa's request and without coordinating with the County, LVMPD compiled calls for service made to LVMPD made under specific "codes", including calls unrelated to criminal activity. (ECF No. 131-1, Deposition of William H. Sousa (Complete Transcript) ("Sousa Depo. (Complete)") at 65:22 - 66:23). LVMPD organized the calls into four categories: "402-447 Calls for Service", "U Calls for Service Only", "Disorder Calls for Service", and "Officer Initiated 467–468". (ECF No. 109-2, Email from Gina Fackrell to William Sousa, April 27, 2023, CC6070–6072). LVMPD assigns its calls for service three digit numbers known as "IDF codes", and it categorized the calls for Sousa as "Disorder Calls For Service" if the call had been assigned one of the following codes: 408, drunk; 410, reckless driver; 416, fight; 416A, juvenile disturbance; 416B, other disturbance; 425, suspicious

situation; 425A, suspicious person; 425B, suspicious vehicle; 440, wanted suspect; 441, malicious destruction of property; or 446, narcotics. (ECF No. 131-1, Sousa Depo. (Complete) at 115:8–121:5 (explaining IDF codes and disorder codes), 179:6–179:22 (correcting list of codes considered disorder)). LVMPD further categorized these calls by location: "Events that occurred on Pedestrian Bridges", "Events that occurred on Las Vegas Blvd", and "Events that occurred in CCAC".[2] (ECF No. 110-1, Email from Gina Fackrell to William Sousa, April 27, 2023, CC6070). LVMPD's method did not distinguish between publicly and privately owned pedestrian bridges. (ECF No. 129-1, Deposition of Gina Fackrell, 30(b)(6) Designee of Non-Party Las Vegas Metropolitan Police Department (Complete Transcript) ("Fackrell Depo. (Complete)") at 77:4–77:12, 151:10–152:15 (discussing methodology used to calculate how many calls for service came from the pedestrian bridges)).

LVMPD determined that calls for service came from a pedestrian bridge if the related Computer Assisted Dispatch (CAD) logs commentary included keywords "pedestrian bridge" or "ped bridge".[3] (*Id*., 77:4-77:12). LVMPD did not review the actual reports related to the relevant incidents to confirm that alleged disorder connected to the call in fact occurred and that it occurred on a bridge. (*Id.*, 151:10–152:15). LVMPD acknowledges that using keyword searches is overinclusive compared to having an IDF code for incidents occurring on bridges. (*Id*., 172:13–172:21). As it turns out, this over inclusivity concern was not merely theoretical: according to the raw data disclosed by LVMPD, LVMPD inadvertently claimed disorder calls had come from the pedestrian bridges in the statistics it provided Sousa where in fact the underlying event had not occurred on a bridge but the underlying report referred to a bridge as a landmark, and also included events for entries that only listed "bridge"

[2] "CCAC" refers to LVMPD's Convention Center Area Command. (*See* ECF No. 129-1, Fackrell Depo. (Complete) at 118:12–118:14).

[3] Gina Fackrell from LVMPD confirmed that this methodology of using keywords was bad because keywords were inaccurate. (*See* ECF No. 129-1, Fackrell Depo. (Complete) at 172:13-21.)

rather than "pedestrian bridge" or "ped bridge". (ECF No. 130-2, Declaration of Jacob T. S. Valentine in Support of Plaintiffs' Motion to Exclude Defendant's Expert William Sousa, ¶ 16).

Sousa did not use any other data besides the County's length calculations and LVMPD's call for service statistics in compiling his report or reaching his conclusions.[4] (ECF No. 131-1, Sousa Depo. (Complete) at 114:8–114:21). In using LVMPD's statistics in developing his opinions, Sousa only used the page of statistics provided by LVMPD and did not review any of the raw data that LVMPD used to generate the statistics, such as CAD logs or police reports. (*Id*. at 143:8–144:5). He did not visit the bridges. (*Id*. at 176:15 – 176:17). He did not request and ultimately did not have any data related to crowding, pedestrian traffic, crowd density, crowd crush, the bridges' design or construction, or even simply of people stopping or standing on the pedestrian bridges. (*Id*. at 171:16 – 173:11 (pedestrian traffic, stopping standing), 176:18–176:20 (crowding), 174:25–175:11 (consultation with experts on bridge design or construction), 176:21–177:5 (physical design); 177:6–177:8 (pedestrian traffic) 178:15–178:18 (crowd crush)).

To determine that the pedestrian bridges had a higher rate of disorder, Sousa compared the percentage of "Disorder Calls for Service" related to events that LVMPD asserted occurred on "Pedestrian Bridges" versus "Las Vegas Blvd" to how much of the total sidewalk system along Las Vegas Boulevard the pedestrian bridges accounted for according the County's length calculation. (*Id*. at 105:12–105:17). As noted, Sousa did not review any of the raw data, such as police reports or CAD log, to verify LVMPD's numbers. (*Id*. at 143:8 – 144:5).

[4] During his deposition Sousa repeatedly suggested that he had "anecdotal" information that supported his conclusions. (*See e.g.* ECF No. 131-1, Sousa Depo. (Complete) at 195:15–195:20 ("Q: Do you have any evidence that people trying to convince other people to stop contributed to disorder on the pedestrian bridges? A: Again, if you're asking for anecdotal, then I have. If you're asking for systematic, then no.")). However, Sousa did not include any anecdotes in his expert witness report, (ECF No. 127-7, Defendant Clark County's Expert Disclosures), and he testified not have relied on anecdotes to reach his conclusions as they are "unreliable". (ECF No. 131-1, Sousa Depo. (Complete) at 89:8–90:4).

In sum, there were two significant differences in how LVMPD determined "pedestrian bridge" from the County. First, LVMPD's method did not distinguish between publicly and privately owned sidewalks. Second, and much more importantly, LVMPD did not rely on maps at all; rather, it categorized a call for service as coming from a pedestrian bridge if the LVMPD log related to the call used the key words "pedestrian bridge" or "ped bridge". Neither Sousa nor LVMPD confirmed whether the call actually came from the area measured by the County in its length calculation by looking at the underlying reports. Indeed, not only did some of the events included in LVMPD's "Events that occurred on the Pedestrian Bridge" data set occur outside the zone measured by the County, some occurred off of the bridges entirely.

For LVMPD's statistics and the County's calculations to be compatible, the term "pedestrian bridge" must remain constant between the two. As is, no one, not Sousa, LVMPD, or the County, confirmed that LVMPD's "pedestrian bridge" calls for service occurred in the area measured by the County. Without that confirmation, Sousa's method to determine that a higher rate of disorder occurred on the pedestrian bridges prior to passage of CCC 16.13.030 is unreliable, and Plaintiffs dispute that there are higher levels of disorder on the pedestrian bridges than grade-level sidewalks.

IV. UNDISPUTED FACTS SUPPORTING PLAINTIFFS' RESPONSE

A. The pedestrian bridges are part of the Resort Corridor sidewalk system.

There are 17 pedestrian bridges that are part of the Resort Corridor's sidewalk system. (ECF No. 128-1, Yazdani Depo. (Complete) at 24:5–8; 27:7–10).) Clark County acknowledges the pedestrian bridges "for the most part" serve the same purposes as the grade-level sidewalks. (*Id.* 226:8–226:14).

B. Data on people stopping on the pedestrian bridges.

Clark County has commissioned four pedestrian traffic studies in the Resort Corridor that

include information about traffic on the pedestrian bridges.[5] (ECF No. 128-1, Yazdani Depo. (Complete) at 96:22–97:4). These studies, completed by the firm Kimley Horn in 2012, 2015, 2016, and 2022, include surveys of the pedestrian bridges (*Id.*). While the 2022 pedestrian study was only published to the public after the County passed CCC 16.13.030, the County had the data and analysis prior to passing the ordinance. (*Id.* at 157:5–20, 160:1–161:23). These studies contain the only data about pedestrian traffic on the bridges in the Resort Corridor within the last 30 years, and to the County's knowledge, the studies are accurate. (*Id.* at 96:13–97:7).

As part of their pedestrian bridge surveys, the studies documented Non-Permanent Obstructions (NPOs) on the bridges. (ECF No. 107-1, Clark County Pedestrian Study, December 2022 ("2022 Pedestrian Study") at CC 383907; ECF No. 108-1, Clark County Pedestrian Study, November 2012 ("2012 Pedestrian Study") at CC 1072; ECF No. 109-1, Clark County Pedestrian Study, 2015 Update ("2015 Pedestrian Study Update") at CC 1241; ECF No. 109-2, Pedestrian Study, 2016 Update of Non-Permanent Obstructions ("2016 Pedestrian Study Update") at CC 4268). Every person designated as an NPO by the studies engaged in one of four activities in addition to stopping: street performing, handbilling, soliciting, or vending. (*Id.*). The studies only designated a person an NPO if they stopped while engaging in one of these activities. (ECF No. 128-1, Yazdani Depo. (Complete) at 105:19–22; Ex. 4, Deposition of Devlin Val Moore, 30(b)(6) Designee for Non-Party Kimley-Horn (Complete Transcript) ("Moore Depo. (Complete)") at 35:16–36:2). The studies did not document anyone stopping on the pedestrian bridges other than to perform, handbill, solicit, or vend. (*Id.*, 47:10). Over two decades, researchers documented hundreds of instances of people street performing, handbilling, soliciting, and vending on the pedestrian bridges within the Resort Corridor while conducting the studies. (ECF No. 107-1, 2022 Pedestrian Study at CC 383974–75; ECF No.

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

108-1, 2012 Pedestrian Study at CC 1072; ECF No. 109-2, 2016 Pedestrian Study Update at CC 4282).

C. Congestion on the pedestrian bridges compared to grade-level sidewalks.

The County's pedestrian studies assessed Level of Service ("LOS") on the sidewalks, including all pedestrian bridges, within the Resort Corridor. (ECF No. 128-1, Yazdani Depo. (Complete) at 86:20-89:13; ECF No. 107-1, 2022 Pedestrian Study at 383881-882, 383985, 383911; ECF No. 108-1, 2012 Pedestrian Study at CC 983-984; ECF No. 109-1, Pedestrian Study, 2015 Update at CC 1216, 1250–1251). The County uses LOS to determine whether a particular walkway is over congested. (ECF No. 128-1, Yazdani Depo. (Complete) at 86:20-89:13). LOS is calculated by comparing the effective width of the walkway to the number of pedestrians that pass by in a 15-minute increment. (ECF No. 107-1, 2022 Pedestrian Study at CC 383889). According to the County, a LOS of A, B, or C is acceptable, and LOS worse than C (*i.e.*, D, E, or F) should be avoided. (*Id.*) (explaining the LOS C is the County's acceptable level of service). For the 2012, 2015, and 2022 studies, Kimley Horn identified the locations where the calculated LOS dropped below C and documented how long the disruption lasted. (ECF No. 107-1, 2022 Pedestrian Study at CC 383985-383989; ECF No. 108-1, 2012 Pedestrian Study at CC 1116–1117; ECF No. 109-1, Pedestrian Study, 2015 Update at CC 1326–28). Over the three studies, the researchers only identified three bridges that ever suffered an LOS worse than C (*id.*), and during the latest 2022 study, the researchers only identified one disruption on a bridge that lasted longer than 15 minutes. (ECF No. 107-1, 2022 Pedestrian Study at CC 383987-383989). According to that 2022 study, LOS never dropped below D on any of the bridges. (*Id.*) By comparison, the researchers conducting the 2022 study identified multiple grade-level sidewalks where LOS dropped as low as F and disruptions lasted up to 8 hours. (*Id.*)

D. Audience availability within the Corridor sidewalk system.

It does not appear that the County has any information on whether audiences are available for First Amendment activities away from the pedestrian bridges. However, without specifically considering audience availability, the studies did assess pedestrian traffic volume by counting pedestrians in 15-minute intervals at "count locations" along the Corridor. (*See, e.g.,* ECF No. 107-1, 2022 Pedestrian Study, CC 383905). The most recent 2022 study used 48 different count locations. (*Id*.). The sixteen bridges that existed at the time were all included as count locations. (*Id*.). The study also differentiated between an "inner" and "outer" corridor, with the stretch "from Tropicana Avenue to Spring Mountain Road" considered the "inner" corridor and the segments from Tropicana to Russell and Spring Mountain to Sahara considered the "outer" corridor. (*Id*. at CC 383881). According to the map provided by the study, the "Inner Study Corridor" comprised approximately a third of the Strip Corridor with the south and north "Outer Study Corridor[s]" comprising the other two-thirds respectively. (*Id*.). Of all the pedestrian bridges included in the study, only the Wynn Pedestrian Bridge appears to be outside of the Inner Study Corridor. (*See id*. at CC 383953).

The study found that the "Inner Study Corridor" experienced significantly more pedestrian traffic than the "Outer Study Corridor". "The maximum 15-minute pedestrian volume observed south of Tropicana Avenue was counted to be 162 at the Excalibur Hotel/Casino and the maximum 15-minute volume observed north of Spring Mountain Road was 373 near Fashion Show Drive." (*Id*., CC 383919). In contrast, the 15-minute maximum within the Inner Study Corridor peaked at 1,852 on bridges and 1,584 for grade-level sidewalks. (*Id*., CC 383912–13). Only four Inner Study Corridor locations within the saw 15-minute maximums under 400; two of those were pedestrian bridges located at Tropicana Avenue, the southernmost point of the Inner Study Corridor. (*Id*.).

E. Grade-level sidewalk widths.

Plaintiffs do not dispute the County's representations that the bridges have actual widths of

16' or wider. (*See* MSJ, 3:7-13). If the County's representations are accepted as accurate, the narrowest pedestrian bridge is still wider than 14 of the 32 grade-level locations in the Strip Corridor evaluated in the County's 2022 pedestrian studies. (*See* ECF No. 107-1, 2022 Pedestrian Study at CC 383920–929 (six Outer Corridor locations with actual width under 16'); 383931–952 (eight Inner Corridor locations with actual width under 16')).

In addition to actual width, the County's studies also determined the "effective width" for each bridge in existence when the study was conducted. (*See* ECF No. 108-1, 2012 Pedestrian Study at CC 1044-1057; ECF No. 109-1, 2015 Pedestrian Study Update at CC 1261, 1265, 1266, 1270; ECF No. 107-1, 2022 Pedestrian Study at CC 383954-383969). According to the 2022 Pedestrian Study, effective width is "[t]he portion of a walkway that can be used effectively by pedestrians." (ECF No. 107-1, 2022 Pedestrian Study at CC 383882). The 2022 Pedestrian study determined that the 16 pedestrian bridges that existed in 2022 all exceeded 11' in effective width, that 9 of the 16 bridges had effective widths of 13' or more, and at least two bridges had effective widths of 17'. (*See id*. at CC 383954-969).

By comparison, the study found that grade-level locations have much more variation in their effective widths and many of the grade-level locations are narrower than those found on the pedestrian bridges. In the Inner Study Corridor, effective widths varied from 18.4' to 5.5', with three locations with effective widths under 10', and 10 locations with effective widths under 13'. (*See id*. at CC 383930). In the Outer Study Corridor, effective widths varied from 13' to 1.5', with half the locations having effective widths under 10'. (*See id*. at CC 383919).

Multiple locations along the grade-level sidewalks have barriers on either side of the sidewalk. (*See*, *id.* at CC 383923 (depicting barriers on both sides of sidewalk outside of the Wynn); CC 383924 (depicting barriers on both sides of sidewalk north of Fashion show mall); CC 383940 (sidewalk between Bellagio fountain and fence-lined roadway)). Other locations have barriers preventing

pedestrians from exiting the sidewalk away from the street, meaning that pedestrians would have to step into oncoming traffic if they wanted to step off the sidewalk. (*See*, *id.* CC 383920 (fence blocking exit from sidewalk away from street)). While there are no documented instances of people injured exiting the pedestrian bridges, multiple people have been hurt or killed stepping off of the grade-level sidewalks. (*See* ECF No. 108-1, 2012 Pedestrian Study at CC 995, 997; *see also* ECF No. 107-1, 2022 Pedestrian Study at CC 383902, 383904).

F. Research on time-based and other restrictions.

In its motion, the County observes that the firm that the County contracted to perform the pedestrian studies recommended that the County designate the bridges as "no obstruction zones." (*See* MSJ at 23:8-12). However, the studies consistently offered an alternative, less restrictive recommendation at the same time: to designate specific bridges as no obstruction zones at specific times of day. (*See* ECF No. 107-1, 2022 Pedestrian Study at CC 383985 (comparing time-of-day recommendations provided in 2012, 2015, and 2022 studies)). In fact, the 2022 study identified only one bridge for a time-of-day restriction and only advised that restrictions last from 8:00 PM to 12:00 PM on Saturdays and Mondays for that bridge. (*Id*.) The study did not advise time-based restrictions to be placed on any other bridges because the LOS rating for them did not justify time-based restrictions. (*Id*.).

Not only was the County aware from its pedestrian studies that time-based and bridge-specific restrictions were available as alternative to a 24-hour ban applied to all bridges, the County has applied time-based restrictions on some of the bridges in the past and continues to apply time-based restrictions on grade-level sidewalks. (*See* ECF No. 128-1, Yazdani Depo. (Complete) at 102:5–102:8; 188:11–189:7). Yet having imposed such restrictions in the past, the County does not have any evidence that time-based restrictions, bridge-specific restrictions, carve outs for First Amendment activity, or even adequate enforcement of the pre-existing obstruction ordinance would fail to address

the concerns underpinning CCC 16.13.030. (*See* ECF No. 128-1, Yazdani Depo. (Complete) at 102:5–102:15 (time- and place-based restrictions); ECF No. 131-1, Sousa Depo. (Complete) at 98:10–99:23 (discussing lack of evidence that existing obstruction ordinance was insufficient); *see also* Ex. 5, Deposition of Abigail Frierson, Clark County 30(b)(6) Designee (Complete Transcript) ("Frierson Depo. (Complete)") at 152:14 – 154:3 (discussing lack of evidence related to exempting First Amendment activities)). The County has also admitted, despite the protests to the contrary in CCC 16.13.010, that it can predict at what times pedestrian traffic will increase in the Corridor and when LOS will degrade to unacceptable levels on the pedestrian bridges. (*See* ECF No. 128-1, Yazdani Depo. (Complete) at 96:8–96:12; 218:19–219:19).

G. The County's lack of data related to public safety and crowd crush.

The County has no substantive data related to crime on the pedestrian bridges. (ECF No. 128-1, Yazdani Depo. (Complete) at 111:23-112:25, 212:3-16; Ex. 5, Frierson Depo. (Complete) at 20:6-16, 33:6-35:2, 52:9-18). Instead, to claim that "disorder" is a problem on the pedestrian bridges and that CCC 16.13.030 is an appropriate solution, the County relies on testimony from Dr. William Sousa, whom it has noticed as an expert in this matter and whose definition of "disorder" the County has adopted. (Ex. 5, Frierson Depo. (Complete) at 31:23-32:7; ECF No. 110-4, Clark County Board of Commissioners Meeting Agenda from November 21, 2023, at CC013; ECF No. 110-5, Clark County Board of Commissioners Meeting Agenda from December 5, 2023, at CC 041; ECF No. 110-6, Clark County Board of Commissioners Meeting Agenda from January 2, 2024, at CC080; *Compare* ECF No. 106-3 at 55:19-62:13 *with* ECF No. 110-7, Questions Related to Public Safety on Pedestrian Bridges, William H. Sousa, Ph. D. ("Final Sousa Report") at CC 133.). Dr. Sousa describes disorder as "relat[ing] to problems that – don't necessarily rise to the level of serious crime, but they're nonetheless concerns for citizens." (ECF No. 131-1, Sousa Depo. (Complete) at 29:24–30:4). Under Sousa's definition of disorder, not all criminal behavior constitutes disorder and not all disorder is

criminal. (*Id*. at 30:22–31:7). Also according to Dr. Sousa, there are no specific noncriminal acts that would be considered disorder and that the determination is "mostly contextual." (*Id*. at 32:16–32:19). Under this definition, any type of activity that encourages people to stop or generally irritates a viewer—including activities protected by the First Amendment such as panhandling, soliciting, and street performing—constitutes disorder. (*Id*. at 36:16–37:2 (causing someone to stop), 40:14–41:4 (irritating)). Dr. Sousa believes encouraging people to stop is inherently what street performing, soliciting, and panhandling does. (*Id*. at 36:13–37:2).

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

No crowd crush incident has ever occurred on the pedestrian bridges, and the County has no evidence that crowd density on the bridges ever reached levels where crowd crush could have occurred. (ECF No. 128-1, Yazdani Depo. (Complete) at 103:10–3, 113:6–9, 215:15–18, 252:4–11). Likewise, the County is unaware of any time where emergency personnel could not access the pedestrian bridges. (*Id*. at 51:17–20).

H. Enforcing CCC 16.13.030 and related guidance from the County.

The Las Vegas Metropolitan Police Department (LVMPD) is the law enforcement agency that enforces CCC 16.13.030 on the pedestrian bridges in the Resort Corridor. (Ex. 6, Deposition of Andrew Walsh, 30(b)(6) Designee for Non-Party Las Vegas Metropolitan Police Department (Complete Transcript) ("Walsh Deposition (Complete)") at 29:4-31:1). LVMPD has established a

policy that it does not enforce CCC 16.13.030 against people for "incidental stops". (*Id*. at 35:6–35:11; 49:24–50:2). In training its officers on this policy, LVMPD does not define "incidental stop" by a length of time; instead, it exempts specific activities from enforcement including taking photographs or stopping to take in views of the Strip. (*Id*. at 37:16–37:19, 37:20–38:13, 50:3–51:5). It expressly does not exempt street performing or other activities protected by the First Amendment from enforcement. (*Id*.).

In 2024, LVMPD documented at least sixteen times where it arrested people who were engaging in First Amendment activities, including playing music, soliciting money, filming music videos, and vending for violating CCC 16.13.030. (*See* Ex. 7, Pedestrian Bridge Arrests, LVMPD 00296–306 (documenting arrests pursuant to CCC 16.13.030)). Over the same period, the vast majority of other enforcement measures were taken against people who were sleeping, lying down, or sitting on the sidewalk. (*Id*.). While LVMPD has not provided systemic data of enforcement post-2024, people have also been charged for stopping on the bridges while protesting. (*See* ECF No. 110-3, *State v. Mirabelli*, 25-CR-071740, Criminal Complaint, CC 385906 (accusing defendant of "stopping on the pedestrian bridge to engage in a protest")).

LVMPD is a government entity separate from Clark County, but it has expressly based its policy on Clark County's language in CCC 16.13.010 describing the ordinance's purpose and Clark County's representations at the time CCC 16.13.030 was passed. (Ex. 6, Walsh Depo. (Complete) at at 38:15–40:14; 162:8–163:8). The County has testified that all intentional stopping or standing, even if incidental, violates CCC 16.13.030, unless the person is waiting for an elevator or escalator. (Ex. 5, Frierson Depo. (Complete) at 107:16–23 (clarifying the only exception on the stopping ban is for people waiting for the escalators), 120:25 – 121:56 (no exception for taking photographs)). At the same time, the County has also published a social media post stating that "[I]t is unlawful for any person to stop, stand, or engage in an activity that causes another person to stop or stand within any

Pedestrian Flow Zone. This is not interpreted to mean that tourists and locals cannot take photos along the Boulevard while on a pedestrian bridge[.]" (ECF No. 106-2, Statement on X posted by @ClarkCountyNV regarding CCC 16.13.030 on Jan. 2, 2024, 6:30 PM, M-S 00031).

V. PLAINTIFFS' EVIDENTIARY OBJECTIONS

"A party may object that the material cited to support or dispute a fact cannot be presented in a form that would be admissible in evidence." FRCP 56(c)(2). Pursuant to FRCP 56(c)(2), the Plaintiffs object to any opinions inadmissible under FRE 701 that the County relies upon in support of its motion for summary judgment. Pursuant to FRE 701, "[i]f a witness is not testifying as an expert, testimony in the form of an opinion is limited to one that is: (a) rationally based on the witness's perception; (b) helpful to clearly understanding the witness's testimony or to determining a fact in issue; and (c) not based on scientific, technical, or other specialized knowledge within the scope of Rule 702." Testimony based on speculation is inadmissible under FRE 701. *See, e.g., Viale v. Foster Wheeler*, LLC, 2021 U.S. App. LEXIS 22940, *3 (9th Cir. 2021).

A witness "may testify in the form of an opinion" based on "facts or data in the case that [they have] been made aware of or personally observed" if the witness qualifies as an expert under FRE 702. *See* FRE 702 (provided the prerequisites for expert opinion testimony); FRE 703 (explaining what an expert witness may base their testimony on). However, a party that intends to offer testimony limited to experts must comply with the expert witness disclosure requirements provided by FRCP 26(2) and establish that its proposed expert satisfies the prerequisites imposed by FRE 702.

A. LVMPD's representations[6]

[6] The County's brief also references the NRA's presentation (*see e.g.* 12:9–13:8), but it does not appear to reference the content of the NRA's presentation to support its argument for summary judgment. To the extent the County implicitly relies on the NRA's presentation, Plaintiffs object on the same basis as the admissibility of LVMPD's representations. Furthermore, the Plaintiffs intend to register their objections to the NRA's representations in their response to the NRA's amicus brief as the Court previously directed. (*See* ECF No. 112, 2:7–8 ("I give plaintiffs the opportunity to respond to [the NRA's amicus brief's] substance and assert any objections about the brief and its

According to Clark County's motion, LVMPD representatives offered the following while testifying in support of amendments to CCC 16.11 and then later the passage of CCC 16.13.030:[7]

- The opinion that obstructions on the bridges "create[] an environment that was ripe for criminal activity" without offering any data or other evidence in support of that theory; (MSJ at 8:14 – 8:15);
- The opinion that LVMPD patrols have trouble seeing what is happening on the bridges and catching criminals without offering any specific examples where this occurred; (*id*. at 8:16–8:18);
- The opinions about how people standing on the bridges "degrade the level of service", create "more opportunity for crime and conflict", "raise the risk of personal injury and tragedy", and make "it more difficult for first responders to gain access" without providing any explanation as to how LVMPD reached these conclusions; (*id*. at 8:19 – 9:2);
- The opinion that the bridges were at risk of "crowd crush" without providing specific evidence that this risk was more than speculative (*id*. at 13:23–14:5).

LVMPD's opinions are inadmissible pursuant to FRE 701. While LVMPD offered opinions on everything from criminal evasion to crowd crush, the agency offered no admissible evidence or "personal observations" to support these opinions. Finally, all of these opinions require some form of specialized knowledge related to crime prevention, crowd dynamics, or bridge design. As the County has not noticed anyone from LVMPD as an expert in this matter, the substance of LVMPD's testimony is inadmissible at trial and cannot be considered here in support of the County's motion for summary judgment.

B. Dr. Sousa's testimony and report

Unlike LVMPD, the County has noticed Dr. Sousa as a potential expert in this matter as required by FRCP 26. However, Dr. Sousa does not meet the prerequisites under FRE 702 for his

exhibits.")).

[7] LVMPD also offered a presentation depicting people stopped on the bridges engaging in a wide range of criminal activities. (8:4–8:13). While the images from the presentation, separate from LVMPD's opinions about the images, might be admissible if properly authenticated, LVMPD admitted that "many of the crimes in the presentation resulted in arrest under other ordinances and statutes." (*Id*. at 9:5–9:6).

testimony and report to be admissible in this matter as discussed in Plaintiffs' motion to exclude. (ECF No. 125, Plaintiffs' Motion to Exclude Defendant's Expert William Sousa).

C. Recommendations and hypotheticals from the pedestrian studies

The County repeatedly observes that the pedestrian studies the County commissioned recommended that the County designate the bridges as "no obstruction zones". (*See, e.g.,* MSJ, 4:17–4:24). It also cites to the 2012 pedestrian study for the contention that "as the average number of NPOs increased, generally, the Level of Service ("LOS") decreased when pedestrian volume was significant," stating that "[t]he study acknowledged that this result is obvious because when NPOs are present 'the effective walkway width (W_E) decreases and the pedestrian traffic is not provided the complete walkway width (W) for movement.'" (MSJ, 4:3–8, citing ECF No. 103–6, Exhibit E at CC 1072). But neither statement is admissible because they (1) express an opinion and (2) require specialized knowledge. FRE 701.

To be clear, there is material in the pedestrian studies admissible through lay witness testimony. For example, the researchers' personal observations about what people were doing on a particular sidewalk at a given time or measurements regarding the actual width of a particular walkway would be admissible under FRE 701. Additionally, the studies' recommendations are admissible to show that the County was aware of alternatives to handle congestion on the bridges.

However, the opinions offered for the truth they assert, especially opinions based on specialized expertise, require expert testimony. FRE 701. The County offers the study's "no obstruction" recommendation not to show the County was aware this was an option but rather to show it was correct option for the pedestrian bridges due to the researchers' expertise. Likewise, the statement connecting NPOs to "worsen levels of service" (compared to LOS getting worse due to other factors) likewise is a conclusion about two separate variables that requires specialized knowledge to establish cause and effect.

The County's sole expert witness, Dr. Sousa, is not qualified to offer these opinions. The reason is simple: both opinions are based on an understanding of LOS, *see* MSJ 4:17–4:24 (recommending "no obstruction zone" designations in part because of "walkway 'LOS'), and Dr. Sousa admits he does not know what LOS is. (ECF No. 131-1, Sousa Depo. (Complete) at 103:12–24)). As the County has not noticed a qualified expert, these opinions are inadmissible.

VI. LEGAL ARGUMENT

A. The County is not entitled to summary judgment on Plaintiffs' First Amendment claims.

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

The burden then shifts to the government to show that the restriction imposed is a "reasonable restriction on the time, place, or manner of protected speech," assuming that the restriction is content neutral. *Ward v. Rock Against Racism*, 491 U.S. 781, 791 (1989). The government must then establish that "the restrictions are justified without reference to the content of the regulated speech, that they are narrowly tailored to serve a significant governmental interest, and that they leave open ample alternative channels for communication of the information." *McCullen v. Coakley*, 573 U.S. 464, 477 (2014). If the government defendant fails to establish that its restriction is narrowly tailored to serve

a significant government interest, the restriction is unconstitutional even if the restriction leaves open alternative channels for communication. *See id.*, 573 U.S. at 496 n. 9. Here, Plaintiffs can and the County cannot satisfy their respective burdens.

1. The Plaintiffs satisfy their burden.

The Plaintiffs clearly satisfy their burden to show First Amendment scrutiny applies to CCC 16.13.030. The United States Court of Appeals for the Ninth Circuit has previously determined the sidewalk system in the Resort Corridor and pedestrian bridges are traditional public fora, and Clark County has always considered the pathways over the pedestrian bridges part of the Corridor's sidewalk system. As this Court previously observed in these proceedings, CCC 16.13.030 impacts First Amendment activities such as street performing, soliciting, panhandling, and any activity that involves either one-on-one communication or drawing an audience. In turn, the County's own pedestrian studies, which provide the only systemic data available about who was stopping and standing on the pedestrian bridges before CCC 16.13.030's ban went into effect, establish unequivocally that CCC 16.13.030 burdens a substantial amount of First Amendment activity compared to its scope because, according to the data, everyone stopping on the bridges was also engaging in some sort of protected activity. Additionally, the "disorder" that the ordinance is aimed at getting rid of expressly includes protected activity such as panhandling and street performing.

a. Pedestrian bridges are traditional public fora, therefore CCC 16.13.030 restricts access to traditional public fora.

The County wants to exempt pedestrian bridges from the First Amendment protections universally afforded to public streets and sidewalks, arguing that it is "difficult to classify pedestrian bridges as public fora given their traditional role as above-grade crosswalks." (MSJ, at 22:14-22:18). The County identifies no authorities that agree that pedestrian bridges' "traditional role" is the same

as "above-grade crosswalks," nor can it. The obvious differences[8] between street-level crosswalks and pedestrian bridges undermine this argument. In turn, the County's analysis of the factors used to determine what constitutes a public forum ignores those factors' plain meaning and misapplies them to the facts of this case. (*Id*. at 22:19-23:18).

i. Broad First Amendment protections apply to the public streets of the Resort Corridor.

Speech on public streets and sidewalks occupies a "special position in terms of First Amendment protection." *United States v. Grace*, 461 U.S. 171, 180, 103 S. Ct. 1702, 75 L. Ed. 2d 736 (1983). "Wherever the title of streets . . . may rest, they have immemorially been held in trust for use of the public . . . and have been used for purposes of assembly, communicating thoughts between citizens, and discussing public questions." *Hague v. CIO*, 307 U.S. 496, 515, 59 S. Ct. 954, 83 L. Ed. 1423 (1939); *see also Berger v. City of Seattle*, 569 F.3d 1029, 1035–36 (9th Cir. 2009) (citations omitted) ("[t]he protections afforded by the First Amendment are nowhere stronger than in streets and parks, both categorized for First Amendment purposes as traditional public fora."); *Venetian Casino Resort, LLC v. Loc. Joint Exec. Bd. of Las Vegas*, 257 F.3d 937, 943 (9th Cir. 2001) (quoting *Frisby v. Schultz*, 487 U.S. 474, 480, 108 S.Ct. 2495, 101 L.Ed.2d 420 (1988)) ("For '[t]ime out of mind public streets and sidewalks have been used for public assembly and debate, the hallmarks of a traditional public forum'" and they are thus "the archetype of a public forum").

[8] The County's argument that NRS 484B.297 and NRS 484B.307 "highly regulate" normal surface-level crosswalks and sidewalks is a non-sequitur. Unlike with pedestrian bridges, pedestrians using surface-level crosswalks and sidewalks face significant risks of being hit by automobiles—an outcome these statutes are specifically intended to prevent. *See, e.g.*, NRS 484B.297(1) (prohibiting pedestrians from walking along adjacent highway where sidewalks are provided); NRS 484B.297(2) (mandating that "pedestrians walking along highways where sidewalks are not provided shall walk on the left side of those highways facing the approaching traffic"); NRS 484B.297(6) (setting forth specific safety-enhancing rules for when pedestrian is forced to walk on the road due to closed sidewalk); NRS 484B.307(2)-(9) (setting forth right-of-way rules for vehicular traffic and pedestrians based on traffic signals).

This calculus has been repeatedly applied to the Resort Corridor. Starting in 1998, the Ninth Circuit held that a Clark County ordinance concerning leaflet distribution in the Las Vegas Resort Corridor was unconstitutional, noting that it was undisputed that it regulated "activities occurring in a public forum." *S.O.C., Inc. v. County of Clark*, 152 F.3d 1136, 1144 (9th Cir. 1998). The Ninth Circuit has reaffirmed this fundamental principle within the last few years, again expressly holding that "[t]he sidewalks along the Las Vegas Strip dedicated to public use are public fora." *Santopietro v. Howell*, 73 F.4th 1016, 1024 (9th Cir. 2023); *Venetian Casino Resort, LLC*, 257 F.3d at 943–44.

ii. Pedestrian Bridges Have Been Repeatedly Held to be Public Streets/Sidewalks and Public Fora.

According to clearly established case law, "a thoroughfare sidewalk, seamlessly connected to public sidewalks at either end and intended for general public use" is "a public sidewalk, and consequently, a traditional public forum from which [the sidewalk's private owners] have no right to exclude members of the public." *Perez-Morciglio v. Las Vegas Metropolitan Police Dept.*, 820 F. Supp. 2d 1100, 1111 (D. Nev. 2011) (citing *Venetian Casino Resort, L.L.C. v. Local Joint Executive Board of Las Vegas*, 45 F. Supp. 2d 1027, 1036 (D. Nev. 1999)). Here, as the County admits, the pedestrian bridges at issue are seamlessly connected to the public sidewalks at both ends, are intended for general public use, and thus are public fora. This is further supported by the fact that, in 2010, Clark County agreed to a Stipulated Memorandum of Understanding which, inter alia, specified that the sidewalks and pedestrian bridges along the Strip constitute a traditional public forum. *See Santopietro*, 73 F.4th at1021 (9th Cir. 2023).

Indeed, other courts in the Ninth Circuit have held that pedestrian bridges are public fora. *See, e.g.*, *Askins v. United States Dep't of Homeland Sec.*, No. 12-CV-2600 W (BLM), 2013 U.S. Dist. LEXIS 141725, at *12 (S.D. Cal. Sep. 30, 2013) (describing a pedestrian bridge as "essentially an elevated sidewalk, which is generally considered to be a public forum with respect to First Amendment jurisprudence"). In July 2025, another federal district in the Ninth Circuit granted a

preliminary injunction against the City of Los Angeles and the Los Angeles Police Department ("LAPD") from removing journalists from closed areas, detaining or arresting journalists, and using less-lethal munitions and chemical agents against journalists. *Los Angeles Press Club v. City of Los Angeles*, 790 F. Supp. 3d 838 (C.D. Cal. 2025). The opening paragraph of the ruling describes the plight of photojournalist Michael Nigro who had his First Amendment rights violated while on a pedestrian bridge. *Id*., 790 F. Supp. at 842; *see also id*. at 843-844 (describing Mr. Nigro's experience on the pedestrian bridge in more detail). In rendering the ruling, the court included Mr. Nigro's experience on the pedestrian bridge as one occurring in a public forum. *Id*. at 847 (citing *Snyder v. Phelps*, 562 U.S. 443, 456, 131 S.Ct. 1207, 179 L.Ed.2d 172 (2011)) ("Here, Plaintiffs allege incidents that took place on the City's public streets and sidewalks, "the archetyp[cal] ... traditional public forum.").

Moreover, courts in other circuits have expressly found pedestrian bridges to be public fora. In *Ovadal v. City of Madison, Wis.*, the district court "found that the pedestrian overpass was a traditional public forum because it was a portion of a public sidewalk." *Id*., 416 F.3d 531, 536 (7th Cir. 2005). The Seventh Circuit adopted the district court's common-sense reasoning that "'[a] public sidewalk does not lose its status as a traditional public forum when it passes over a highway overpass,'" and noted that because pedestrian bridges are public sidewalks, they "'are held in the public trust and are properly considered traditional public fora.'" *Id.* (quoting *Frisby*, 487 U.S. at 481) (emphasis added). Other courts have held similarly. *See also Faustin v. City, Cnty. of Denver, Colorado*, 268 F.3d 942, 949 (10th Cir. 2001) (overpass which "enables pedestrian traffic to cross over a highway" by linking "parallel sides of the street to one another, acting as a thoroughfare between them" is traditional public forum); *Lytle v. Brewer*, 77 F. Supp. 2d 730, 736 (E.D. Va. 1999) (pedestrian walkway crossing over interstate is "most akin to a public sidewalk or street, and therefore, must be considered as a traditional public forum").

Thus, it is beyond any reasonable dispute that the pedestrian bridges in the Las Vegas Resort Corridor are functionally equivalent to public sidewalks and are public fora.

iii. The County's arguments claiming pedestrian bridges are not public fora defeat themselves.

In addressing the criteria used by the Ninth Circuit to determine what constitutes public fora, the County demonstrates precisely why pedestrian bridges clearly fall in this category, and why the courts that have already determined that pedestrian bridges are public fora could not have found otherwise.[9] Indeed, the County failed to cite *any* case law for the proposition that pedestrian bridges are not public fora.

The first factor concerns "the actual use and purposes of the property, particularly [its] status as a public thoroughfare and availability of free public access to the area," and clearly supports a finding that pedestrian bridges are public fora. *ACLU of Nev. v. City of Las Vegas*, 333 F.3d 1092, 1100–01 (9th Cir. 2003). The County concedes that pedestrian bridges are public fora based on their *actual use*, noting that "the pedestrian bridges are certainly freely accessible by the public." (MSJ, 22:27). However, the County then engages in a bit if disingenuous sleight-of-hand in trying to recast what the Ninth Circuit meant in requiring an analysis of "purposes of the property," *i.e.*, the pedestrian bridges. In fact, the County makes essentially the same argument on this factor that the Ninth Circuit rejected in *ACLU of Nev*. The County asserts that the "primary purpose" of pedestrian bridges "was not to expand the public thoroughfare, but rather to replace at-grade crosswalks and better facilitate street-crossings at busy intersections to reduce vehicle-pedestrian accidents." (MSJ, 12:1-2). This

[9] (*See* MSJ at 22:19-26, quoting the factors set forth in *ACLU of Nev. v. City of Las Vegas*, 333 F.3d 1092, 1100–01 (9th Cir. 2003) ("1) the actual use and purposes of the property, particularly [its] status as a public thoroughfare and availability of free public access to the area; 2) the area's physical characteristics, including its location and the existence of clear boundaries delimiting the area; and 3) traditional or historic use of both the property in question and other similar properties.")).

argument eats its own tail: replacing "at-grade crosswalks" and "facilitate[ing] street crossings" are clearly, in and of themselves, uses of the pedestrian bridges as a public thoroughfare.

This point is further driven home by the fact that despite the County's claims that pedestrian bridges are not public thoroughfares, the LVMPD treats pedestrian bridges as traditional sidewalks. In *Fleming*, the LVMPD issued a citation to and arrested the plaintiff for storing materials on a public sidewalk in violation of CCC 16.11.070, and it did so though the plaintiff was on a pedestrian bridge at the time. *Fleming v. Las Vegas Metro. Police Dept*., No. 23-CV-00177-RFBEJY, 2023 U.S. Dist. LEXIS 177728 , at *2-*5 (D. Nev. Sept. 30, 2023). Moreover, the Clark County Code's definition of "public sidewalk" includes portions of a highway "intended for use of pedestrians, and shall also include crosswalks, medians and traffic islands." CCC 16.11.020(d). As there can be no dispute that pedestrian bridges are intended for use of pedestrians, it cannot be disputed that pedestrian bridges are "public sidewalks" (and therefore, public fora) under the Clark County Code, just as the sidewalks abutting highways are.

Moreover, in 2022, the Clark County Commission considered changing the definition of "crosswalk" to include pedestrian bridges and prohibiting obstructive uses in and around "touchdown structures." (Ex. 8, Summary of Final Action, Meeting of Clark County Board of Commissioners, April 19, 2022, at 18). As seen in this proposed amendment, the County believed that pedestrian overpasses were equivalent of public sidewalks (and therefore public fora) on which street performers may exercise their First Amendment rights. Similarly, on May 3, 2022, the Clark County Commission voted to update the "No Obstructive Use Zone" map for the Las Vegas Resort District to include pedestrian overpasses, (Ex. 9, Clark County Board of Commissioners Agenda Item File 22-0581, Exhibit 8), again emphasizing that the County itself considers the bridges to be public sidewalks.

Additionally, the County's "primary purpose" argument was previously rejected by the Ninth Circuit. In *ACLU of Nev*., the City of Las Vegas urged the Court "to adopt the Second Circuit's view

that it is a forum's "primary function and purpose" that is significant in determining whether traditional public forum status applies." *Id*. at 1101. The Ninth Circuit flatly rejected this notion, finding that this focus would "elevate form over substance," and that "if this proposal were imposed uniformly, there would be *no* traditional public forums":

> It has frequently been observed that the notion that traditional public forums are properties that have public discourse as their principal purpose is a most doubtful fiction. The standard proposed by the City would have us erect a barrier to speech unsupported by the requirements of either compatibility or notice, the foundational reasons justifying forum analysis.

ACLU of Nev., 333 F.3d at 1102 (footnote omitted, internal citations omitted, emphasis added).

To drive this point home, the Ninth Circuit emphasized Justice Brennan's dissent in *Kokinda*, noting that public sidewalks, parks and streets "have been reserved for public use as forums for speech even though government has not constructed them for expressive purposes" and that "why the sidewalk was built is not salient." *Id*., *at* 1102, n.8 (citing *United States v. Kokinda*, 497 U.S. 720, 737, 110 S.Ct. 3115, 111 L.Ed.2d 571 (1990)) (emphasis added). Here, the County's references to the alleged reasons why the pedestrian bridges were built are equally irrelevant.

The County likewise loses as to the second factor involving physical characteristics. The County references inapposite factors such as pedestrian bridges being elevated off the ground, having fixed widths, walls, "no avenue for escape," and limited points of ingress or egress. (MSJ, 23:4-7). But the Ninth Circuit rejected such factors noting that "cosmetic differences … are insufficient to distinguish an area from surrounding public forums … Although there is no doubt that the decorative pavement, barriers to cars, and canopy indicate to the public that the Fremont Street Experience is not simply another street, its openness to the public and smooth integration into downtown preserve its public forum status." *ACLU of Nev.*, 333 F.3d at 1103 (citing *Venetian Casino Resort LLC*, 257 F.3d at 945 and *Gerritsen v. City of Los Angeles*, 994 F.2d 570, 576 (9th Cir.1993)). Likewise, there is no dispute that pedestrian bridges are still delineated public thoroughfares or sidewalks that people

use to walk from one place to another, and that their "openness to the public" and "smooth integration" into the Las Vegas Corridor "preserve [their] public forum status." *Id*.

Finally, as to the third factor—traditional or historic use—the County concedes that it "may support finding that pedestrian bridges are public fora" because "the County has historically acquiesced to the presence of people standing and stopping on pedestrian bridges." (MSJ, 23:8-18.)

Thus, all three factors favor a finding of the obvious and common-sense fact that pedestrian bridges are public fora.

b. CCC 16.13.030's restrictions implicate activities protected by the First Amendment.

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

As it did in its Motion to Dismiss, the County argues that CCC 16.13.030's restrictions on

stopping, standing, or encouraging other to stop or stand does not implicate the First Amendment. (*See* MSJ, 8:8-20:11). The County offers no legal authority unavailable to this Court when it denied the County's motion to dismiss. Rather the County relies on *Roulette v. City of Seattle*, 97 F.3d 300 (9th Cir. 1996) and *Broadrick v. Oklahoma*, 413 U.S. 601 (1973), which this Court expressly considered when it determined that CCC 16.13.030 *did* implicate protected acts and so was subject to First Amendment scrutiny. (*See* ECF No. 51 at 5 n.20 & 25 n.114 (citing *Broadrick*); *see also id.* at 21:1-25:2 (citing and discussing *Roulette*)).

Furthermore, encouraging people to stop is not only integral to First Amendment activity but also is itself protected by the First Amendment. Speech and other conduct are entitled to protection under the First Amendment when "intended to convey a particularized message and the likelihood is great that the message would be so understood. *Porter v. Martinez*, 64 F.4th 1112, 1121 (9th Cir. 2023); *Hilton v. Hallmark Cards*, 599 F.3d 894, 904 (9th Cir. 2010). While encouraging someone else to stop may take many forms, but these communications are all criminalized by CCC 16.13.030. As such, CCC 16.13.030 not only targets conduct integral to First Amendment activity; it also targets conduct directly protected by the Constitution as well.

c. CCC 16.13.030 burdens a substantial amount of First Amendment activity on the pedestrian bridges.

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

"[T]he first step in overbreadth analysis is to construe the challenged statute; it is impossible

to determine whether a statute reaches too far without first knowing what the statute covers." *Stevens*, 559 U.S. at 474. CCC 16.13.030's plain language bans all stopping and standing on the pedestrian bridges except for "waiting for access to an elevator or escalator for purposes of entering or exiting a pedestrian flow zone" and any activity intending to cause other people to stop. Though it made contrary representations in previous filings (*see, e.g.,* Clark County's Motion to Dismiss, ECF No. 9 at 14:25–15:7 (stating that "incidental" stops are not prohibited under CCC 16.13.030)), Clark County's current official position as represented during discovery is that CCC 16.13.030's ban applies to anyone intentionally stopping and standing for any purpose, no matter how "incidental", other than the exception expressly provided. This ban *de facto* prohibits a substantial amount of First Amendment activity. Stopping is integral to both protected activities that draw crowds like street performing or protesting and more intimate communication such as soliciting, panhandling, or gathering petitions. And since the intent behind these activities is to encourage people to stop and engage, they are necessarily banned by CCC 16.13.030's prohibition on activities intending to cause other people to stop on the bridges.

Turning to the factual record, the County's pedestrian studies documented hundreds of instances where people stopped on the bridges to engage in First Amendment activity prior to the passage of CCC 16.13.030, and the studies collected no data about anyone else stopping on the bridges for any other purpose. In other words, according to the data available, CCC 16.13.030 not only banned a substantial amount of First Amendment activity, it *only* banned First Amendment activity. Records from LVMPD also establish that CCC 16.13.030 has since its passage had an impact on First Amendment activities in that people have been openly arrested or cited under CCC 16.13.030 for playing music, soliciting, and protesting on the pedestrian bridges.

The County has little evidence that people other than those engaging in First Amendment activities stopped on the bridges prior to the passage of CCC 16.13.030, and it certainly offers no

systemic evidence supporting that contention. Rather, the County argues that Plaintiffs cannot raise a facial challenge because "[First Amendment] activities may still be conducted anywhere else", (MSJ, 21:22), but whether First Amendment activity could occur on sidewalks not subject to CCC 16.13.030 is irrelevant to the Plaintiffs' burden in raising a facial challenge. CCC 16.13.030 does not apply to any sidewalks outside of the pedestrian flow zones, meaning that those sidewalks are not part of CCC 16.13.030's "legitimate sweep" and not relevant in determining whether Plaintiffs may raise a facial challenge. How much comparable sidewalk is actually available as an alternative place for First Amendment activities is only relevant to the County's burden to show that ample alternative channels for communication exist.

2. The County has not satisfied its burden with undisputed facts.

Unlike the Plaintiffs, the County cannot satisfy its burden. The County has not established that CCC 16.13.030 is narrowly tailored to serve a significant government interest because the County has not shown that it has admissible evidence that (1) its supposed interests in CCC 16.13.030 are more than speculative, (2) banning all stopping and standing on the pedestrian bridges actually address those interests, and (3) obvious, less restrictive measures would not address the County's interests. Second, the County's claims that CCC 16.13.030 offers ample alternative channels for First Amendment activity is disputed by Plaintiffs with admissible evidence.

a. The County has not satisfied its burden with undisputed facts that CCC 16.13.030 is narrowly tailored.

For a restriction to be narrowly tailored to a significant government interest, the restriction must not "burden substantially more speech than is necessary to further the government's legitimate interests." *McCullen*, 573 U.S. at 486. For an interest to be "legitimate", the government must "demonstrate that the recited harms are real, not merely conjectural, and that the regulation will in fact alleviate these harms in a direct and material way." *Porter*, 68 F.4th at 443. While a restriction need not be the least restrictive or least intrusive means of serving the interests, "the government must

[still] demonstrate that alternative measures that burden substantially less speech would fail to achieve the government's interests, not simply that the chosen route is easier." *Id.* at 467.

The County claims that CCC 16.13.030 is narrowly tailored to serve two government interests: public safety and limiting traffic congestion. (MSJ, 25:24–26). While it says these interests are not speculative, the County provides little concrete evidence in support. First it says "[a]mple evidence was presented throughout the legislative history for the unsuccessful proposed amendment to CCC 16.11 and for the enactment of CCC 16.13, discussed *supra*, demonstrating the significant government interest Clark County has in ensuring that the pedestrian bridges are kept safe for visitors and residents, free of obstruction, and able to facilitate the free flow of traffic." (MSJ, 25:27 – 26:3). The County does not specific what evidence presented by whom it relies upon to make this claim or explain how the evidence would be admissible. The County then goes on to say:

> Data, both prior to the legislative process and during it, confirms that pedestrians walk slower on the pedestrian bridges than they do the grade-level sidewalks, NPOs are more likely to be present on or around pedestrian bridges than grade-level sidewalks, disorder related calls are disproportionately higher at pedestrian bridges than at other locations along the Strip, and that, in recent years, calls for disorder and issues relating to unhoused individuals have skyrocketed generally.

(MSJ, 25:13–18). Again, the County does not specify where this data can be found, or how this data supports its position.[10] These generalized statements are insufficient to satisfy the County's burden to show that the County's stated interests are real, there is a connection between stopping and standing and the County's stated interests, or that obvious, less burdensome alternatives would ameliorate the harms the County intended for CCC 16.13.030 to address.

i. Insufficient evidence that stated interests are real.

The County claims it banned all stopping, standing, and encouraging others to stop and stand

[10] The County also argues that the bridges' design, with a fixed width of "16' to 25' feet", also justifies a complete ban on stopping and standing. (MSJ, 26:22–26:28). The County does not identify any evidence or data connecting "fixed width" to congestion or public safety on the bridges. *Id.*

in the pedestrian flow zones due because these activities threatened public safety and traffic flow on the bridges. The County has not presented undisputed evidence that either public safety or congestion a real, rather than speculative, concern for the bridges.

1) Public Safety

To claim CCC 16.13.030 is narrowly tailored, the County refers to data it says shows "disorder related calls are disproportionately higher at pedestrian bridges than at other locations along the Strip, and that, in recent years, calls for disorder and issues relating to unhoused individuals have skyrocketed generally." (MSJ, 25:13–18). This appears to be a reference to Dr. Sousa's testimony and related report that the County commissioned to support the passage of CCC 16.13.030. However, the County fails to establish that the "disorder" or "issues related to the unhoused" tracked by Dr. Sousa are necessarily in conflict with "public safety." It also ignores that Dr. Sousa's analysis is fundamentally flawed in that Dr. Sousa combined two incompatible data sets to conclude that disorder was higher on the pedestrian bridges compared to grade-level sidewalks.

According to the County's witnesses, "disorder" is not synonymous with crime or danger. In fact, there is no evidence actually connecting disorder on the bridge to criminal activity. Rather, it includes a wide range of activities, including "incivilities", "things that solicit fear", and "aggressive anything." (*See* Ex. 5, Frierson Depo. (Complete) at at 181:27–182:1, 189:16–189:17, 194:20–194:22, 196:14–196:18, 197:19–197:25, 209:15–209:17). As used by Dr. Sousa, it encompasses activity such as street performing, soliciting, and panhandling, which are not threats to public safety and constitute protected activity. Preventing "disorder" is not the same as protecting "public safety".

How Sousa calculated disorder on the bridges was also flawed. For LVMPD's statistics and the County's calculations to be compatible, "pedestrian bridge" must remain constant between the two. As is, no one, not Sousa, LVMPD, or the County, confirmed that LVMPD's "pedestrian bridge"

calls for service occurred in the area measured by the County, and as discussed above, *see supra* Section (V)(B), the data available makes clear that apparently that did not happen.

The County has not offered undisputed evidence that "public safety" was a legitimate concern on the pedestrian bridges prior to passing CCC 16.13.030.

2) Congestion

The County's evidence that the pedestrian bridges all suffered from congestion requiring a 24-hour ban on stopping and standing is even more tenuous that its evidence that the bridges had public safety concerns.

Even assuming that they are based on admissible evidence, *see supra* Section (V)(C), the County's general statements "that pedestrians walk slower on the pedestrian bridges than they do the grade-level sidewalks" or "NPOs are more likely to be present on or around pedestrian bridges than grade-level sidewalks" do not establish that the bridges suffer from congestion. In fact, the County's studies show that congestion is frequently lower on the bridges than grade-level sidewalks, and that congestion only reached unacceptable levels on a few, specific bridges at a few, specific times.

According to the County's 2022 pedestrian study, which was available to the County when it passed CCC 16.13.030, the bridges did not suffer from any more congestion than their grade-level counterparts; if fact, most bridges did not suffer at all. Researchers identified many instances where street level sidewalks dropped below the County's accepted LOS of C, with some disruptions lasting as long as 8 hours and LOS dropping as low as level F. The study only identified three pedestrian bridges that dropped below LOS C at any time, and only one bridge saw LOS drop below C for longer than 15 minutes. At no point did the levels drop lower than D on any of the bridges. In other words, the data available to the County when it passed CCC 16.13.030 made clear that congestion was not an issue on the bridges. As for the County's claims regarding "crowd crush", the County's representatives admit it has no evidence that a "crowd crush" incident has ever occurred on the

bridges or even that crowd density on the bridges has ever reached the potential for crowd crush.

The County implies that the bridges' "fixed width" of 16' to 21' make them inherently at risk of congestion. However, at 16' and wider, the bridges are much broader than many stretches of the grade-level sidewalks, and there are multiple places along the grade-level sidewalks that either have barriers on either side or would require a person to step into oncoming traffic on Las Vegas Boulevard to exit the sidewalk. Notably, the County has no evidence that anyone has been injured exiting a pedestrian bridge, but there have been multiple instances where people have been hurt and killed stepping off the grade-level sidewalks along the Resort Corridor.

ii. No connection between CCC 16.13.030's restrictions and the County's alleged interests

Even if the County had evidence that congestion and public safety were actual risks on the pedestrian bridges, the County never explains how banning all stopping and standing within every pedestrian flow zone at all times address its stated concerns. (MSJ, 25:16–27:13). While the County claims that it has evidence that "NPOs" are more likely to stop around pedestrian bridges, pedestrians walk slower on the bridges, and there is more disorder on the bridges, the County does not identify admissible evidence connecting these concepts together.

In its background section, the County discusses a finding in its pedestrian traffic study from 2012 that "as the average number of [NPOs] increased, generally, the [Level of Service ("LOS")] decreased when pedestrian volumes were significant," (MSJ, 4:3–8), but the County never discusses this statement in relation to narrow tailoring or the bridges specifically. (*See* MSJ, 25:16–27:13). Perhaps this is because the study's findings do not actually support an all-the-time, every-bridge ban on stopping since the bridges do not experience significant pedestrian volumes all the time. Or perhaps the County did not rely on this finding because the finding is based on specialized knowledge requiring expert witness testimony to be admissible, and the County's only noticed expert does not know what "LOS" is. Regardless, the County needed to show that CCC 16.13.030 alleviated its stated

concerns in a direct and material way, and it has failed to do so.

iii. No evidence that obvious, less burdensome alternatives would have failed to address County's concerns

Prior to passing CCC 16.13.030, the County was aware of less burdensome alternatives to a complete ban on stopping, standing, or encouraging others to stop on the pedestrian bridges, and it has no evidence that these alternatives would have failed to address its concerns.

First, the County already had an anti-obstruction ordinance on the books when it passed CCC 16.13.030, *see* CCC 16.11.040 (banning obstructions on public sidewalks), and the County offers no evidence that this ordinance was inadequate to address its concerns. Similarly, the County admits that most, if not all, of the conduct complained about in LVMPD's presentation before the County that depicted people stopping on the bridges to engage in a range of bad behavior (1) showed conduct that was already against the law and (2) people who were ultimately arrested under those laws. (MSJ, 9:5–9:9). Presumably the County's existing laws, if properly enforced, would address most of its concerns.

Second, the County could have imposed time-based or bridge-specific restrictions rather than impose a ban in effect at all times on every bridge. The County was aware of this option prior to passing CCC 16.13.030 because the pedestrian studies offer it as a potential solution, the County has imposed time-based restrictions on some of the bridges previously, and the County continues to impose time-based restrictions on portions of the grand-level sidewalks. Despite its rhetoric in CCC 16.13.010, the County knows that pedestrian traffic on the Strip and on the bridges follows predictable patterns. As stated above, according to the County's 2022 Pedestrian Study only three bridges suffered from congestion worse than LOS C, and the congestion mostly lasted for short periods of time. Time- and bridge-specific restrictions would clearly address the County's concerns.

Third, the County could have carved out an exception for First Amendment activities as it has in other ordinances. *See* CCC 16.11.020(e)(1) (only considering certain activities obstructive if they are not otherwise protected by the First Amendment). The County has no evidence that exempting

First Amendment activities from the prohibitions would have interfered with the County's objectives. (ECF No. 106-3, Frierson 30(b)(6) Depo. at 152:4–154:3).

Finally, the County could have imposed a limited restriction on sitting or lying down on the pedestrian bridges similar to the restriction imposed by the City of Seattle analyzed in *Roulette v. City of Seattle*. (*See* MSJ, 19:19–19:28 (discussing the limitations imposed by the City of Seattle on sitting and lying down)). According to the reports disclosed regarding LVMPD's enforcement of CCC 16.13.030, most people stopped on the pedestrian bridges who are not engaged in First Amendment activity are sitting, lying down, or sleeping.

In sum, the County has not shown that CCC 16.13.030 is narrowly tailored.

b. Whether CCC 16.13.030 offers ample alternative channels of communication is in dispute.

"[A]n alternative mode of communication may be constitutionally inadequate if the speaker's ability to communicate effectively is threatened." *Bay Area Peace Navy v. United States*, 914 F.2d 1224, 1229 (9th Cir. 1990)(internal quote omitted). "An alternative is not ample if the speaker is not permitted to reach the intended audience." *Id.*

The County claims that CCC 16.13.030 offers ample alternative channels of communication because "94%" of the Las Vegas Strip Corridor's sidewalks are available for First Amendment activity. As previously discussed, *see supra* Section (III)(A), Plaintiffs dispute the County's calculations regarding what percentage of the sidewalk is available for First Amendment activity. And as seen in *Bay Area Peace Navy*, the County must do more than simply claim that other sidewalks are available for activity; rather the County must show that the intended audience is present on those sidewalks.

As made clear by the County's own pedestrian studies, not all sidewalks in the Resort Corridor are the same. The Resort Corridor's sidewalk system stretches for miles, and some sidewalks see much more foot traffic than others, and more pedestrians mean more people for street performers,

solicitors, and other First Amendment actors to engage with. The County's studies actually divide the Corridor's sidewalk system in to the "Inner" and "Outer" Corridors, with significantly higher pedestrian traffic occurring in the Inner Corridor. Notably, every pedestrian flow zone except one is clearly located within the Inner Corridor. In suggesting the Outer Corridor sidewalks as an alternative to pedestrian bridges, the County offers sparsely travelled sidewalks in exchange for active walkways with a clear, built-in audience. Finally, it is the County's burden to show that the alternative channels it offers are sufficient, yet it does not appear that the County has investigated as to whether the sidewalks outside the pedestrian flow zones offer a comparable audience for First Amendment activity.

B. The County is not entitled to summary judgment on Plaintiffs' Fourteenth Amendment vagueness claims.

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

"The fundamental rationale underlying the vagueness doctrine is that due process requires a statute to give adequate notice of its scope." *Botosan v. Paul McNally Realty*, 216 F.3d 827, 836 (9th Cir. 2000) (citing *Grayned v. City of Rockford*, 408 U.S. 104, 108 (1972)). "[V]agueness concerns are more acute when a law implicates First Amendment rights, and, therefore, vagueness scrutiny is more stringent." *Butcher v. Knudson*, 38 F.4th 1163, 1169 (9th Cir. 2022) (citing *Cal. Teachers Ass'n v. State Bd. of Educ.*, 271 F.3d 1141, 1150 (9th Cir. 2001)). A criminal regulation is unconstitutionally vague if the regulation "fails to provide a person of ordinary intelligence fair notice of what is prohibited" or is "so standardless that it authorizes or encourages seriously discriminatory

enforcement." *Id.* (quoting *FCC v. Fox Television Stations, Inc.*, 567 U.S. 239, 254 (2012)). If the regulation fails to satisfy both standards, it is unconstitutional. *Id.*

A court may consider other evidence other than the plain language of the regulation at issue to determine whether it is unconstitutionally vague. *See Desertrain v. City of Los Angeles*, 754 F.3d 1147, 1157 (9th Cir. 2014) (considering enforcement agencies' interpretation of statute).

1. CCC 16.13.030 does not provide adequate notice.

The County says that this Court should ascribe the words stop and stand "their plain meaning" when interpreting CCC 16.13.030 (MSJ, 29:18–19), but it is not clear what the County believes that plain meaning to be. In its motion, the County claims that stop and stand in CCC 16.13.030 exempts "small stops" and "brief photographs of the scenery." But during its 30(b)(6) deposition, the County said that *any* intentional stop violated CCC 16.13.030. (*See* Ex. 5, Frierson Depo. (Complete) at 157:7-159:10) On the other hand, the County's social media account says that photography is exempt from CCC 16.13.030. And LVMPD apparently believes that "incidental stops" are exempt, which *per se* include stopping to view the Strip and take photographs. As for CCC 16.13.030 itself, the only exemption actually written into the statute is for people waiting for an elevator or escalator, which would presumably be redundant if this sort of stop is also considered "small" or "incidental".

If the County and its aligned enforcement agency cannot determine what is criminalized by CCC 16.13.030, a reasonable person will not be able to either.

2. CCC 16.13.030 authorizes or encourages discriminatory enforcement.

LVMPD openly admits that it engages in discriminatory enforcement, ignoring whole categories of people who stop for "incidental viewing purposes" on the bridges as a matter of policy while continuing to enforce the ordinance against people who engage in street performing, soliciting, and other activities protected by the First Amendment. LVMPD does not base its "incidental stop" policy on how long someone stops but rather what people are doing, *per se* exempting people stopping

to take photographs or to take in a view of the Strip from CCC 16.13.030's prohibition. (Ex. 6, Walsh Depo. (Complete) at 37:16–37:19, 37:20–38:13, 50:3–51:5). Expressly targeting people engaging in First Amendment activity for enforcement while disregarding other people also violating that same law who are not engaged in protected activity is selective prosecution in violation of the Fourteenth Amendment. *United States v. Steele*, 461 F.2d 1148, 1150–52 (9th Cir. 1972) (dismissing criminal prosecution due to selective prosecution based on First Amendment activity).

LVMPD is a separate government entity from the County, but its discriminatory enforcement is a function of the County's language in CCC 16.13.010 , the County's representations when CCC 16.13 was passed, and the County's guidance provided on its official social media account that aligns with LVMPD's discriminatory policy. (ECF No. 106-2, Statement on X posted by @ClarkCountyNV regarding CCC 16.13.030 on Jan. 2, 2024, 6:30 PM, M-S 00031). As the County encourages and authorizes LVMPD to discriminate in enforcing the bans imposed on the pedestrian bridges, CCC 16.13.030 is unconstitutionally vague.

VII. CONCLUSION

For the aforementioned reasons, Plaintiffs request that this Court deny the County's motion for summary judgment.

Dated: February 27, 2025

/s/ *Christopher Peterson*

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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing **Plaintiffs' Response to Defendant Clark County's Motion for Summary Judgment** with the Clerk of the Court for the United States District Court of Nevada by using the court's CM/ECF system on February 27, 2026. I further certify that all participants in the case are registered CM/ECF users and that service will be accomplished on all participants by:

☒ CM/ECF

☐ Electronic mail; or

☐ US Mail or Carrier Service

/s/ Christopher Peterson
An employee of ACLU of Nevada