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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' REPLY IN SUPPORT OF PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT [ORIGINAL ECF NO. 105,

CORRECTED ECF NO. 142][1]

[ORAL ARGUMENT REQUESTED]

Plaintiffs LISA MCALLISTER, BRANDON SUMMERS, and JORDAN POLOVINA (collectively "Plaintiffs"), through counsel, Christopher M. Peterson of the ACLU of Nevada, submit the following reply in support of Plaintiffs' Motion for Summary Judgment (original at ECF No. 105, corrected at ECF No. 142) and in opposition to the Defendant Clark County's Response to Plaintiffs' Motion for Summary Judgment (ECF No. 123). This reply is based 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 __3rd__ day of _April_, 2025.

ACLU OF NEVADA

/s/*Christopher M. Peterson*
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[1] The Plaintiffs filed erratas for their Motion for Summary Judgment and their response to Clark County's Motion for Summary Judgment on March 27, 2026, to fix clerical errors in both filings. *See* (ECF No. 141 (Errata for Motion for Summary Judgment); ECF No. 148 (Errata for Plaintiffs' Response). The corrected versions for the Motion for Summary Judgment and complete set of corrected appendices are provided in ECF No. 143 through ECF No. 147. The corrected version of the Response and complete set of corrected are provided in ECF No. 149 through ECF No. 153. Plaintiffs are aware that ECF No. 143–147 and ECF No. 149–150 have been mislabeled due to Plaintiff counsel's user error in PACER as "Motion", "Response", and "Appendix" rather than "Notice of Corrected Image/Document" due to user error. Plaintiffs' counsel have been in communication with the Court's Clerk's Office and opposing counsel since March 27, 2026, in an effort to correct the filing errors.

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

When this Court issued its order denying Plaintiffs' Motion for Preliminary Injunction and in part Defendant's Motion to Dismiss, it agreed with Plaintiffs that CCC 16.13.030 impacted First Amendment activity. However, the Court expressed concern that the Plaintiffs failed to offer sufficient evidence to show that the ordinance impacted a substantial amount of protected activity compared to its legitimate sweep. (Order, ECF No. 51 at 18:6–7 (citing *Moody v. Netchoice, LLC*, 144 S. Ct. 2383, 2394 (2024)). Responding to this concern, Plaintiffs have provided evidence through the County's pedestrian studies to support of their Motion for Summary Judgment to establish this element. The data in those studies establish that most, if not all, the people stopping on the bridges prior to the passage of CCC 16.13.030 were engaging in protected activity. Not only does the County fail to dispute the accuracy of those studies, it fails to explain why those studies should not be dispositive in regards to the Plaintiffs' burden.

As the Plaintiffs having satisfied their burden, the County must show that the restriction imposed is a "reasonable restriction on the time, place, or manner of protected speech." *Ward v. Rock Against Racism*, 491 U.S. 781, 791 (1989). But the County failed to establish any genuine issue of material fact as to whether it can satisfy this burden; instead, the County beats the same drum that it has throughout this case, that its own legislative record, and the inadmissible evidence contained therein, is sufficient to satisfy its burden to show multiple things: "[1] the restrictions are justified without reference to the content of the regulated speech, [2] that they are narrowly tailored to serve a significant governmental interest, and [3] that they leave open ample alternative channels for communication of the information." *McCullen v. Coakley*, 573 U.S. 464, 477 (2014). The Court has previously rejected this approach—which would render the County immune from constitutional challenges— and it should so again to find that the County's effort to claim the law is constitutional

without coming forward with sufficient evidence fails to show that CCC 16.13.030 is narrowly tailored.

Finally, as to Plaintiffs' Fourteenth Amendment vagueness claim, Plaintiffs have offered undisputed evidence that the County contradicts itself as to what conduct is criminalized by CCC 16.13.030 and that LVMPD enforces the provision in a manner that is unlawfully discriminatory as defined by the Constitution, targeting activity protected by the First Amendment for enforcement while ignoring unprotected activity that violates the law.

As the Plaintiffs have satisfied their burden with undisputed facts and the County fails to support its burden with admissible facts, Plaintiffs are entitled to summary judgment.

II. EVIDENTIARY OBJECTIONS

In response to a motion for summary judgment, "[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." Fed. R. Civ. P. 56(c)(2); *Orr v. Bank of Am.*, 285 F.3d 764, 773 (9th Cir. 2002) ("A trial court can [ ] consider [only] admissible evidence in ruling on a motion for summary judgment."). While it is true that "[a]t the summary judgment stage, [the court does] not focus on the admissibility of the evidence's form" but rather "the admissibility of its contents", *Fraser v. Goodale*, 342 F.3d 1032, 1036–37 (9th Cir. 2003) (citations omitted), the County offers inadmissible content to try to both dispute the facts on which the Plaintiffs premise their Motion for Summary Judgment and to satisfy its own evidentiary burden.

A. The County Cannot Rely on Opinions and Specialized Knowledge.

In its Response to Plaintiffs' Motion for Summary Judgment (ECF No. 123, the "County's Response"), the County continues to rely on the same inadmissible material that it used to support its own Motion for Summary Judgment, including inadmissible opinion evidence from LVMPD's

and the NRA's presentations before the Board,[2] Dr. Sousa's testimony and report, and the recommendations and hypotheticals offered in the County's pedestrian studies. (*See* ECF No. 123, 9:10–13:2**,** 14:10–17:26, 19:7–19:13.) But, as previously addressed in Plaintiffs' Response to Clark County's Motion for Summary Judgment (ECF No. 149, "Plaintiffs' Response", (originally filed as ECF No. 132)), this material is all either (1) impermissible opinion evidence or (2) requires specialized knowledge, and so cannot be admitted except through a qualified expert. Fed. R. Evid. 701; Fed. R. Evid. 702; (*see* ECF No. 149, 18:4–19:17). The County has noticed only one expert, and this expert is unqualified to provide the testimony that the County wants to admit. (*Id.; see also generally* Motion to Exclude, ECF. No. 125). Plaintiffs also preemptively raised similar objections in their Motion for Summary Judgment to the County's use of information premised on opinion and specialized knowledge found in the pedestrian studies. (ECF No. 142 (originally filed as ECF No. 105), 17:19–18:3). These issues cannot be cured at trial.

To address one potential source of confusion, the County's pedestrian studies (ECF No. 144-1 (Exhibit 7); ECF No. 145-1 (Exhibit 8); ECF No. 146-1 (Exhibit 9), (originally filed as ECF No. ECF No. 107–1, 108–1, and 109–1 respectively)) contain both admissible and inadmissible information. The studies' data about who was stopping on the pedestrian bridges and why is admissible under FRE 701 because this data is based on the research team's personal perceptions, is relevant to an issue of fact (*i.e.*, how many people engaging in protected activities were impacted by CCC 16.13.030's ban on stopping), and does not require specialized knowledge (*i.e.*, it does not require an expert to figure out why someone has stopped and whether they are street performing, soliciting, handbilling, or vending). By comparison, the 2012 study's recommendation that the County ban all stopping on the bridges ***does*** require expert testimony because it is both an opinion

[2] These materials also contain hearsay as discussed in II(B) below.

and premised on specialized knowledge (*i.e.*, calculating and evaluating Level of Service ("LOS")). (*See* ECF No. 145-1 (Exhibit 8) at CC 1118).

Admittedly, Plaintiffs have cited to the 2022 Pedestrian Study's LOS calculations for the pedestrian bridges—which is technical information—to address the County's claims that all bridges suffered from congestion, (ECF No. 142 (originally filed as ECF No. 105), 5, 25:4–25:18), but the Plaintiffs rely on this information only to the extent that the Court finds that County's evidence related to LOS is admissible. To be clear, LOS and other evidence related to congestion is only relevant to ***the County's burden*** to show that CCC 16.13.030 is narrowly tailored; to satisfy their own burden, Plaintiffs only need the nontechnical observations regarding who was stopping and why. If all evidence related to LOS is excluded, the County has no evidence establishing that the bridges were congested to an unacceptable level as the County uses LOS as the metric to determine congestion.

B. The NRA and LVMPD Presentations Include Inadmissible Hearsay.

Hearsay is "a statement that**:** (1) the declarant does not make while testifying at the current trial or hearing; and (2) a party offers in evidence to prove the truth of the matter asserted in the statement." Fed. R. Evid. 801(c). Hearsay is generally not admissible. Fed. R. Evid. 802. The NRA's presentation (ECF No. 103-11, CC 4005–06, cited in the County's Response (ECF No. 123, 15:4–15:8)) was premised on inadmissible hearsay. The "representatives of local businesses" cited by the County did not offer their firsthand observations about the bridges when testifying before the Board; instead they discussed the experiences of "visitors" and "employees" while citing tourism blogs and negative reviews by unnamed authors. (*Id.*) And as County says itself, LVMPD's presentation "echoed" the NRA's presentation about visitor and employee concerns. (ECF No. 123, 15:4–15:8).

With no applicable exception, the hearsay information contained in these presentations cannot be admitted at trial and thus cannot be relied on to overcome Plaintiffs' Motion for Summary Judgment.[4]

C. The Undisclosed Videos of Unnamed Performers and Fusion Watch Videos Are Inadmissible Pursuant to FRCP 37(c).

Under Fed. R. Civ. P. 26(a)(1)(ii) "a party must, without awaiting a discovery request, provide to the other parties [. . .] a copy—or a description by category and location—of all documents, electronically stored information, and tangible things that the disclosing party has in its possession, custody, or control and may use to support its claims or defenses, unless the use would be solely for impeachment." Parties have an ongoing obligation to supplement their disclosures in a timely manner. Fed. R. Civ. P. 26(e)(1)(a). "If a party fails to provide information or identify a witness as required by Rule 26(a) or (e), the party is not allowed to use that information or witness to supply evidence on a motion, at a hearing, or at a trial, unless the failure was substantially justified or is harmless." Fed. R. Civ. P. 37(c).

To support its Response, the County offers video footage of people performing on grade-level sidewalks that are not Mr. Polovina or Mr. Summers. (ECF No. 123, 8:9–8:21 (citing ECF No. 123 – 10, Ex. I)). It also uses video clips from "Fusion Watch". (ECF No. 123–14, Ex. M). Aside from whether these clips are relevant, the County failed to disclose these materials during discovery. (Defendant Clark County's Twenty-Fourth Supplemental Disclosure and Production of Documents and Witnesses Per FRCP 26(A)(1), attached as Exhibit 2); Declaration of Attorney Jacob T. S. Valentine in Support of Plaintiffs' Reply in Support of Plaintiff's Motion for Summary Judgment ("Valentine Decl."), attached as Exhibit 2, ¶ 8).[5] Furthermore, the County appears to offer this as

[4] *Compare Fraser*, 342 F.3d at 1037 (diary admissible even if hearsay because "[t]he contents of the diary are mere recitations of events within Fraser's personal knowledge and, depending on the circumstances, could be admitted into evidence at trial" both based on Fraser's personal knowledge and to refresh Fraser's recollection).

[5] Moreover, the County does not even explain the source of or authenticate the footage. *See* FRE

evidence to satisfy its burden to show that CCC 16.13.030 is narrowly tailored and not for the purpose of impeachment. The County's failure to disclose is not substantially justified, and the Court should not allow the County to use the videos to support its Response.

D. The Commissioners' Statements, the Incident in Seoul, and Videos from Activity Occurring Outside of the Flow Zones Are Irrelevant.

"Irrelevant evidence is not admissible." Fed. R. Evid. 402. "Evidence is relevant if it has any tendency to make a fact more or less probable than it would be without the evidence; and the fact is of consequence in determining the action." Fed. R. Evid. 401. The County offers evidence in its Response that does not meet the standard provided by FRE 401 and is thus inadmissible.

First, the County quotes or cites to statements made by County Commissioners Naft, Gibson, and McCurdy. (ECF No. 123, 15:9–15:17). Since the County does not claim that these Commissioners have any firsthand knowledge about public safety, congestion, or people standing on the pedestrian bridges, it appears that the County offers these statements to explain why the Commissioners voted to pass CCC 16.13.030. But as the County has emphasized throughout this litigation, why a particular legislator voted for CCC 16.13.030 is irrelevant in resolving Plaintiffs' claims; in fact, the County made significant efforts to prevent Plaintiffs from deposing the Commissioners or inquiring into their states of mind during the course of discovery in this matter. (*See*, *e.g.*, Discovery Plan and Scheduling Order, ECF No. 54, 4 n. 3 ("It is the County's position that this legislative immunity precludes, among other things, the depositions of both legislators and their staff, aides, and counsel which serve as their alter egos in the legislative process."); *see also* County's Motion for Protective Order, ECF No. 72, 31:7–31:9 (seeking protective order to prevent "the depositions of lobbyists, researchers, legislators, County employees or other public officials to replay

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901(a) ("To satisfy the requirement of authenticating or identifying an item of evidence, the proponent must produce evidence sufficient to support a finding that the item is what the proponent claims it is.").

the policy debates they failed to carry before the Board of County Commissioners")). Accepting the County's previous representations as true, why Naft, Gibson, or McCurdy voted for CCC 16.13.030 is irrelevant in determining whether the CCC 16.13.030 implicates the First Amendment, impacts a substantial amount of protected activity as compared to its scope, is narrowly tailored, allows for sufficient alternative channels for communication, or is unconstitutionally vague. Moreover, the County should not be allowed to rely on evidence that it blocked Plaintiffs from investigating during discovery.

Second, the County describes a crowd crush incident that occurred in a narrow alleyway in Seoul, Korea in its Response. (ECF No. 123, 18:5–18:14). Besides showing that crowd crush is a thing that happens, the County fails to explain why this incident that occurred in another country in a space that was not a pedestrian bridge makes it more probable that crowd crush will occur on the pedestrian bridges in Las Vegas, much less that CCC 16.13.030 would do anything to prevent the phenomenon of crowd crush from occurring.

Finally, the County uses videos of people, including Summers and Polovina, performing on grade-level sidewalks to support its Response. (ECF No. 123, 6:26–8:21.) But these videos were taken outside of the pedestrian flow zones, and they do not make it any more or less probable that congestion was an issue on the bridges prior to passing CCC 16.13.030.

E. The Legislative Record Is Not *Per Se* Admissible.

The County argues that, to satisfy its burden, it may introduce any documents or testimony relating to the legislative record of CCC 16.13.030—even if that material would be otherwise inadmissible—because the Court can take "judicial notice" of anything in the legislative record. (ECF No. 123, 12:24–12:28). This does not conform with "judicial notice" as defined by federal law.

"The court may judicially notice a fact that is not subject to reasonable dispute because it [. . .] can be accurately and readily determined from sources whose accuracy cannot reasonably be

questioned." Fed. R. Evid. 702. However, "[j]ust because the document itself is susceptible to judicial notice does not mean that every assertion of fact within that document is judicially noticeable for its truth." *Khoja v. Orexigen Therapeutics*, Inc., 899 F.3d 988, 999 (9th Cir. 2018). "[A] court may not take judicial notice of proceedings or records in another case so as to supply, without formal introduction of evidence, facts essential to support a contention in a cause then before it." *Barrozo v. Cnty. of Los Angeles*, 2022 U.S. App. LEXIS 13172, *2, 2022 WL 1537364, *1 (9th Cir. May 16, 2022). Thus, the Court may take judicial notice of what documents are in the legislative record but not of the purported facts and evidence contained in those documents.

Moreover, the County cannot use judicial notice to backdoor expert witness testimony or other inadmissible evidence. *See, e.g., United States EEOC v. Republic Servs.*, 2008 U.S. Dist. LEXIS 135874 *11, 2008 WL 11388658, *3 (D. Nev. November 26, 2008) (striking the federal government's request to judicial notice scientific test results because the substance was "something which is appropriate for discussion by an expert, and not for judicial notice."). It would not be appropriate for the Court to take judicial notice as to the truth of what was said in CCC 16.13.030's legislative record, especially when what was said would require an expert to admit into evidence, is hearsay, or is otherwise unreliable.

Repeating the same refrain it tried to rely on to preclude meaningful discovery (*see* ECF No. 37, 10:18-11:25 (County's Motion to Stay Discovery); *see also* ECF No. 70 at 17:1-18:23 (County's Opposition to Plaintiffs' Motion to Compel and For Sanctions, and Countermotion to Compel and for Sanctions)), the County also argues that this Court would "impermissibly act as a super legislature" if it "reevaluate[d] the weight of the evidence already considered by the County Commissioners." (ECF No. 123, 12:2 –12:4). In other words, the County believes that by selectively curating its legislative record, the County has immunized CCC 16.13.030 from constitutional scrutiny under all circumstances, even if the information the Board relied upon was false, purely speculative,

or manipulated to avoid information detrimental to the ordinance's passage. This is nonsensical and would render CCC 16.13.030 above any challenge. This never-before-seen theory is entirely unsupported by existing legal authority, and it is in fact contrary to law, as this Court recognized when it rejected the County's efforts to unduly limit discovery. (*See* ECF No. 51, 32:8-9 ("The County must do more than rest on its assertion that, so long as it shouts out a traditionally recognized public interest, the court can't second-guess the legislative process."); *see also id.*, 38:5-39:2 (rejecting County's claim that Plaintiffs' discovery would result in the Court supplanting its wisdom for that of the legislature by denying County's motion to stay an detailing permissible discovery on issues implicit in the legislative process); *see also* ECF No. 81, 3:6-10 (rejecting same argument, noting "As a notable example with respect to relevance of the discovery regarding definitions of the terms in the ordinance [clearly part of the legislative process], the Court has identified no meaningful argument from the defense as to how that information is not relevant to, for example, whether Defendant has met its burden to show that the ordinance responds to a real rather than speculative, significant government interest.")).

The County is obligated in these proceedings, not its legislative record, to "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," and "that the law actually furthers [its] asserted interests." *Porter v. Martinez*, 68 F.4th 429, 443 (9th Cir. 2023). As it is this Court, not the County's own Board, that determines whether CCC 16.13.030 is constitutional in these proceedings, it is incumbent on the County to satisfy its burden with relevant, admissible evidence and not just its own conclusions that the ordinance is fine.

III. FAILURE TO DISPUTE PLAINTIFFS' MATERIAL FACTS

"To defeat summary judgment, the nonmoving party must produce evidence of a genuine dispute of material fact that could satisfy its burden at trial." *Sanderina, LLC v. Great Am. Ins. Co.*,

2019 U.S. Dist. LEXIS 154760, *6, 2019 WL 4307854, *2 (D. Nev. September 11, 2019). A response "must [also] include a concise statement setting forth each fact material to the disposition of the motion that the party claims is [. . .] genuinely in issue, citing the particular portions of any pleading, affidavit, deposition, interrogatory, answer, admission, or other evidence on which the party relies." LR 56–1. Despite its claims to the contrary, the County does not offer evidence that disputes the material facts supporting Plaintiffs' motion for summary judgment.[6]

A. The County Does Not Overcome the Evidence Establishing that the Pedestrian Bridges Are Public Fora.

The County claims that whether the pedestrian bridges should be classified as sidewalks is a factual dispute. (ECF No. 123, 3:15–4:5). However, the County does not dispute any of the facts that the Plaintiffs rely upon in determining that the bridges are sidewalks; rather, the County admits it considers the pedestrian bridges are part of the Corridor's sidewalk system. (*See id*., 3:15–3:19). In reality, the County's "factual dispute" is a legal argument as to whether the bridges should be classified as public fora, which the Plaintiffs address below. *See* Section IV(A)(1) ("The pedestrian bridges are public fora."), *infra.*

B. The County Cannot Run from its Own FRCP 30(b)(6) Testimony.

The County claims that Plaintiffs misrepresent the County's representations as to what conduct CCC 16.13.030 criminalizes, but it does not dispute with citation to the record that its representative stated that people will be cited for intentionally stopping for any purpose other than to wait for an elevator. (ECF No. 123 at 4:9–6:24; 5:19–5:26). Despite claiming the law will be applied equally, the County also does not dispute that it issued guidance via social media exempting some activities from enforcement (taking photographs on the bridges) or claim that the Plaintiffs misquoted

[6] To the extent that the County does not directly dispute Plaintiffs' factual claims but rather presents additional facts in an effort to suggest Plaintiffs fail to satisfy their evidentiary burden or the County satisfies its own, Plaintiffs address those factual claims under "Evidentiary Objections" above and "Legal Argument" below.

the media post. (*Id.*, 4:9–4:14 & n.1). And as discussed below, the County continues to provide conflicting descriptions of CCC 16.13.030's scope within its Response, sometimes saying that all intentional stopping is criminalized and at other times only "substantial" intentional stops are. *See* Section (IV)(C), *infra*.

C. Plaintiffs Do Not Foment Disorder.

Not only are the videos of Plaintiffs inadmissible (*see* II(C), *supra*), the County's measurements supporting its contention that the Plaintiffs cause congestion are purely speculative. (ECF No. 123, 6:26-9:9 (including speculative claims that Mr. Polovina and his equipment extend 5 feet from a wall based on a single photograph, and the that speculative assertion that Mr. Polovina's "bridge performances also have the potential to block functionally all of the bridge width on the 16-foot bridges and the majority of the bridge width on the bridges with a 20-foot width," supported by no evidence whatsoever)). Moreover, the County fails to come up with any evidence of actual harms that were caused by any performances, let alone support its circular conclusion that "[i]t is undeniable that stationary people, including those like vendors and performers that encourage people to stop or force people into close quarters, have the potential to contribute to crowds and disorder..." (ECF No. 123, 9:6-9). The logic of the County's argument suggests that the County could ban any activity anywhere if it tends to attract an audience, such as the Bellagio Fountains, and ignores that more narrow solutions exist, such as banning ***actual*** obstruction and limiting movement on ***some*** sidewalks and ***some*** pedestrian bridges. In its focus on street performing, the County also essentially concedes its aim was to bar such activity. But its claim that "the majority of protected speech activities, including marching, carrying signs, protesting, singing" are unaffected is false in any case. (*Id.*, 9:1-3). For example, as noted above, tourists stopping to take photos or gawk at the sites is allowed, but locals stopping to protest is banned.

D. The County Does Not Dispute the Evidence in the Pedestrian Studies That Plaintiffs Rely Upon in Seeking Summary Judgment.

Setting aside that it uses the pedestrian studies for inadmissible purposes, (Section II(A)), the County does not dispute the pedestrian studies show congestion was only an issue for some grade-level sidewalks and some, but not all, bridges, and the worst congestion problems were on grade-level sidewalks. (ECF No.142 at 5:7-22.) The County's focus on the studies' recommendation to declare the bridges no obstruction zones fails and ignores, *inter alia,* the recommendations to make some sidewalks and bridges no obstruction zones for some times of certain days. (*See* ECF No. 144-1, 2022 Pedestrian Study at CC 383985 (comparing time-of-day recommendations provided in 2012, 2015, and 2022 studies)).

E. The County Does Not Dispute the Pedestrian Study Data Related to Stopping And Standing on the Pedestrian Bridges

To the extent the County contends the CCC 16.13.030 arrest data disclosed by LVMPD conflicts with the material facts establishing Plaintiffs' facial challenge, the County errs in multiple respects. (ECF No. 123, 12:3 – 14:6). First, the County ignores that Plaintiffs' Motion primarily relies on the County's pedestrian study data, not LVMPD's pedestrian arrest data, to show that most (if not all) of the people stopping on the bridges prior to CCC 16.13.030's implementation engaged in First Amendment activity. (ECF No. 142, 15:8–15). The County does not dispute the accuracy of its pedestrian studies, and it does not claim that it has other data about people stopping on the bridges prior to CCC 16.13.030's stopping ban going into effect.

Plaintiffs reference LVMPD's pedestrian bridge arrest data to supplement the pedestrian study data. (*Id.*, 15:16–18). Contrary to any claim by the County, the data sets do not conflict as they cover different time periods. The pedestrian studies all documented people stopping on the bridges *prior* to CCC 16.13.030's implementation in 2024. (*See* ECF No. 144-1 (Exhibit 7, 2022 Pedestrian Study); ECF No. 145-1 (Exhibit 8, 2012 Pedestrian Study); ECF No. 146-1 (Exhibit 9, 2015 Pedestrian Study

Update); ECF No. 146-2 (Exhibit 10, 2016 Pedestrian Study Update) (originally filed as ECF No. 109-2). On the other hand, the arrest data is limited to arrests made *pursuant to* CCC 16.13.030. (*See* ECF No. 147-2 (Exhibit 12, Pedestrian Bridge Arrests, LVMPD 00296–306 (correcting ECF No. 110-2) (documenting arrests pursuant to CCC 16.13.030 from February 14, 2024, until October 3, 2024)). And as discussed below, the arrest data itself does not support the County's position. *See* Section (IV)(C), *infra*.

F. The Evidence Offered by the County Does Not Show That Its Alleged Harms are Real or a Ban On All Stopping Would Remedy Those Harms.

The County accuses without evidence Plaintiffs of misrepresenting statements made by the County's representatives that the County has no data related to crime or crowd crush on the pedestrian bridges. (ECF No. 123, 17:11–17:16); unfortunately for the County, the representatives clearly state they have no such data. While the County claims that LVMPD has "tracked and compiled" crime data for the County Commissioners, the County did not cite to any documents, affidavits, depositions, or any other part of the record in making this claim. (ECF No. 123, 17:17–17:26). And instead of offering data about crowd crush, the County cites to irrelevancies. As noted above, the facts that crowd crush occurred in an alleyway in Seoul, South Korea, and that popular events occur in the Resort Corridor do nothing to show that it is ***more probable that crowd crush will occur on the pedestrian bridges in Las Vegas.*** (*Id.*, 18:5 –19:6).

Finally, the County claims Plaintiffs distort Dr. Sousa's definition of disorder,[8] accusing them of "cherry-picking portions of Dr. Sousa's deposition." (*Id.*, 16:19). However, the County's own definition fails to meaningfully deviates from Plaintiffs' definition because the County does not (and cannot) deny that Dr. Sousa clearly includes legal, constitutionally protected conduct in his definition of "disorder", and even the County's own description of Dr. Sousa's "disorder" in its Response

[8] Plaintiffs have previously provided the full transcript of Dr. Sousa's deposition. (ECF No. 131–1).

includes "minor incivilities and quality of life concerns [. . .]" (*Id.*, 16:15).

IV. LEGAL ARGUMENT

A. The County Does Not Overcome that Plaintiffs Have Demonstrated Entitlement to Summary Judgment on their First Amendment Overbreadth Claim.

Even assuming the CCC 16.13.030 is content neutral, there is no genuine issue of material fact as to whether the County cannot meet is burdens to show it is sufficiently narrowly tailored to a significant governmental interest and leaves open ample alternative channels for communication. (ECF No. 142, 9:22–10:8).

1. The Pedestrian Bridges Are Public Fora.

In arguing that the pedestrian bridges are not public fora, the County admits that it considers the bridges to be part of the pedestrian sidewalk system. (ECF No. 123, 3:15–3:19). The County offers no new relevant facts or arguments to support its position, citing instead to its own Summary Judgment Motion. (*Id.*, 3:23–3:26, 25:4–26:32). As discussed previously in Plaintiff's Response, the pedestrian bridges *are* public fora under the application of every available metric. (ECF No. 149, 22:18-29:7). Until passing CCC 16.13.030, the County treated pedestrian bridges as public fora by regulating the bridges as sidewalks under law and by allowing First Amendment activities. (ECF No. 132, 27:3–27:13). Regardless of what the County thought, many people used the pedestrian bridges for First Amendment activity, which is reflected in the County's pedestrian studies. (ECF No. 144-1 (Exhibit 7), 2022 Pedestrian Study at CC 383974–75; ECF No. 145-1 (Exhibit 8), 2012 Pedestrian Study at CC 1072; ECF No. 146-2 (Exhibit 10) 2016 Pedestrian Study Update at CC 4282).

Turning to precedent, every effort by corporations and government entities in Southern Nevada to strip public areas of their public forum status—including pedestrian malls and pathways passing through private property—has failed. *See generally ACLU of Nev. v. City of Las Vegas*, 333 F.3d 1092 (9th Cir. 2003) (rejecting City of Las Vegas's position that the pedestrian mall running on Fremont Street was no longer a public forum); *Venetian Casino Resort, L.L.C. v. Local Joint Exec.*

Bd., 257 F.3d 937, 944 (9th Cir. 2001) (rejecting a corporation's bid to terminate public forum status for a sidewalk along Las Vegas Boulevard). And multiple courts have determined that pedestrian bridges like the ones at issue here are public fora. (*See* ECF No. 132, 24:21–25:24.) In contrast, the County offers no legal authorities that support its position that pedestrian bridges are not public fora. (ECF No. 123, 25:1-26:13, incorporating argument from ECF 103, 22:1-23:18, neither of which cites no legal authorities to support the proposition).

Finally, the County claims that it can terminate the bridges' public fora status because of the County's supposed purpose for them, but the Ninth Circuit has rejected this legal theory. Indeed, the Ninth Circuit rejected this precise argument years ago when the City of Las Vegas attempted to terminate the Fremont Street Experience's status as a public forum. (ECF No. 149, 27:23–28:14 (discussing the Ninth Circuit's rejection of the "primary purpose" argument in *ACLU of Nev.*, 333 F.3d at 1101–02). And, as the Ninth Circuit previously observed when determining whether a particular path was a public forum within the Resort Corridor, a walkway that is a "thoroughfare" intended "to facilitate pedestrian traffic in daily commercial life along the Las Vegas Strip generally" is part of the public forum in the Resort Corridor. *Venetian Casino Resort, L.L.C.*, 257 F.3d at 944. The pedestrian bridges are exactly these sorts of walkways.

But even if the Court accepts the County's underlying premise that the bridges are "crosswalks", the County fails to provide any legal authority establishing that crosswalks are not themselves part of a public forum. Streets, just like sidewalks, are traditional public forums. *Askins v. United States Dep't of Homeland Sec.*, 899 F.3d 1035, 1046 (9th Cir. 2018) ("Public streets and sidewalks are the archetype of a traditional public forum."); *Venetian Casino Resort, L.L.C.*, 257 F.3d at 944 ("[T]he ***public streets*** and sidewalks located within the Las Vegas Resort District are public fora.") (internal quotation omitted) (emphasis added)). In fact, the Ninth Circuit has previously determined that vehicular traffic laws restricting expressive activity are subject to First Amendment

scrutiny because streets are public fora. *See Porter*, 68 F.4th at 439 ("The parties do not dispute that Section 27001 effectively forbids drivers from honking in public forums unless there is a traffic-safety reason to do so [. . .] because Section 27001 applies on public streets, which are the archetype of a traditional public forum.") (quotation omitted)). The reason why First Amendment activity happens infrequently in crosswalks is not because the crosswalks are excluded from public fora but because vehicular traffic passes through them, and crosswalk laws are intended to keep people from getting hit by cars. As the pedestrian bridges are designed to avoid vehicular traffic, they do not have this problem.

2. The County Does Not Establish a Genuine Issue of Material Fact as to Whether CCC 16.13.030 Implicates First Amendment Activity.

As it did in its Motion to Dismiss (ECF No. 9, 10:9-14) and again in its Motion for Summary Judgment (ECF No. 103, 18:13-20:11), the County argues that CCC 16.13.030 does not implicate the First Amendment at all. (ECF No. 123, 22:17–23:27). The County offers no new facts or legal authorities to support its position in its Response. (*Compare id. with* ECF No. 103, 18:15–20:11). Plaintiffs addressed the County's arguments in their Response to the County's Summary Judgment Motion. (ECF No. 149, 29:8–30:15 (noting that the Court previously rejected the notion that CCC 16.13.030 does not implicate First Amendment activity, and that encouraging people to stop implicates it as well); *see also* ECF No. 51 at 5 n.20 & 25 n.114; id. at 21:1-25:2.) Thus, the Court should rule consistently with its decision finding CCC 16.13.030 implicates the First Amendment when it denied the County's first Motion to Dismiss.

The County's pedestrian studies show that CCC 16.13.030's ban has a substantial impact on protected activity compared to its legitimate sweep. Neither party disputes that Plaintiffs prevail on their facial challenge if a substantial number of CCC 16.13.030's applications are unconstitutional judged in relation to the ordinance's plainly legitimate sweep. *Moody v. NetChoice, LLC*, 603 U.S. 707, 723 (2024). There may be many cases where it is difficult to determine how much protected

activity is impacted by a facially neutral law, but this is not a problem here because the County studied for many years who was stopping on the bridges and documented when those people stopped to engage in activity protected by the First Amendment. (ECF No. 144-1 (Exhibit 7), 2022 Pedestrian Study at CC 383974–75; ECF No. 145-1 (Exhibit 8), 2012 Pedestrian Study at CC 1072; ECF No. 146-2 (Exhibit 10) 2016 Pedestrian Study Update at CC 4282.) The County does not dispute that every pedestrian study in the Resort Corridor documented people stopping on the bridges, that every person documented engaged in a protected activity, and that at the time the County banned all stopping on the bridges, the County had no data about people stopping for any other purpose than to engage in protected activity. The reality is that, by virtue of the pedestrian data it collected, the County knew it would be impacting a substantial amount of constitutional activity when it banned all stopping on the bridges; indeed, the data shows ***only*** constitutional activity would be impacted by the ban.

Despite the fact that Plaintiffs primarily rely on the pedestrian studies to show CCC 16.13.030's impact, the County does not address the pedestrian studies at all when arguing that the Plaintiffs cannot establish a facial challenge, relying exclusive on CCC 16.13.030's arrest data (ECF No. 123, 13:3–14:3). However, the arrest data does not contradict the pedestrian studies or undermine the evidence Plaintiffs presented to establish their entitlement to summary judgment.

First, the arrest data was collected after the County passed CCC 16.13.030, so it does not overlap with the pedestrian study data, which was collected before CCC 16.13.030 was passed. Second, the arrest data is necessarily underinclusive compared to the data from the pedestrian studies—a proposition which the County's expert Dr. Sousa agrees with. (*See* ECF 131-1, Sousa Deposition Transcript, 110:21-111:3). After all, the arrest data only documents people who stopped *and* were arrested pursuant CCC 16.13.030. It does not include people like Plaintiff Summers who would have stopped for First Amendment activity but were chilled from doing so by CCC 16.13.030's

ban on stopping and standing. It does not include people who stopped for protected activity but heeded an informal warning from LVMPD to move along, which is typically issued pursuant to LVMPD's official policy before arrest. And the data does not appear to include people like Mr. Polovina who received citations for allegedly violating CCC 16.13.030.

3. The County Fails to Create a Genuine Issue of Material Fact as to Whether CCC 16.13.030 Is Narrowly Tailored.

As set forth in Plaintiffs' Motion, there is no genuine factual dispute that CCC 16.13.030 is not narrowly tailored. In its Response, the County protests that the Plaintiffs "willfully refuse[] to acknowledge the existence of evidence" showing CCC 16.13.030 is narrowly tailored. (ECF No. 123, 27:27–27:28). Yet to satisfy its burden, the County generally directs the Court to review:

> The legislative history of the proposed amendment to Chapter 16.11 and enactment of CCC 16.13.030, the LVMPD presentation on the bridges, the Kimley-Horn pedestrian studies, Plaintiffs' own videos, Dr. Sousa's report, the testimony of the Kimley-Horn 30(b)(6) witnesses, lawsuits against the County for bridge-related incidents, daily inspection reports showing the impact on infrastructure, and testimony of the proponents of the ordinance.

(*Id.*, 28:3–28:7.) As courts have previously observed, "judges are not like pigs, hunting for truffles buried in briefs," *James v. Alessi*, 2020 WL 5751561, 2020 U.S. Dist. LEXIS 176276, *16 (D. Nev. September 24, 2020) (quoting *Indep. Towers of Wash. v. Wash.*, 350 F.3d 925, 930 (9th Cir. 2003)). Here, the County fails to explain at all what facts within these records it believes are admissible and support its position. Picking through its "Response to Plaintiffs' So-Called Undisputed Facts", the County could be referring any of the following:

- The videos of Plaintiffs Summers and Polovina performing outside of the pedestrian flow zones, (ECF No. 123, 7:1–8:8);
- Videos previously undisclosed of unknown people playing instruments outside of the pedestrian flow zones, (*id.*, 8:9–8:21);
- The recommendations made in the County's 2012 pedestrian study, (*id.*, 9:24 – 10:5;

- LVMPD's presentation to the Board depicting individuals committing crimes on the pedestrian bridges, (*id.*, 14:15–15:3);
- Statements by "representatives from local business" that the "state of the pedestrian bridges had degraded", (*id.*, 15:4–15:8);
- Comments by Commissioners McCurdy, Gibson, and Naft, (*id.*, 15:9–15:17);
- Data analysis and opinions by Dr. Sousa regarding disorder and calls for service on the bridges, (*id.*, 15:26–16:13);
- Crime data supposedly "tracked and compiled" by LVMPD and presented to the County Commissioners, (*id.*, 17:17–17:27);
- A crowd crush event that occurred in South Korea, (*id.*, 18:5–18:14);
- Popular events and emergencies that have occurred in or near the Resort Corridor, (*id.*, 18:15–19:6);
- LVMPD Undersheriff Andy Walsh's opinion that crowd crush might happen on the pedestrian bridges. (*id.*, 19:7–19:13).

None of this possible evidence creates a genuine issue of material fact.

First, much of this material is inadmissible, *see* Section (II) ("Evidentiary Objections"), *supra*. As discussed above, most of the information that Clark County relies upon is the province of expert witness testimony that the County has not noticed a qualified expert for, based on hearsay, was previously undisclosed, or irrelevant. Mere inclusion in the legislative record does not cure these defects.

Second, addressing information that might be admissible, LVMPD's presentation to the Commission did not include any ***data*** about crime occurring on the pedestrian bridges. Instead, LVMPD showed clips of various people committing crimes on the bridges without context. These clips in themselves do not establish that the bridges are particularly hazardous compared to their grade-level counterparts or that stopping on the bridges somehow contributed to the misconduct depicted. Furthermore, LVMPD said that most of the people depicted were arrested and charged under existing criminal ordinances, indicating that the alleged public safety risk was addressed. (ECF

No. 103, 9:5–9:6).

The County claims that LVMPD "tracked and compiled" crime data for the County Commission, but the County fails to point out where this data is in a citation to the factual record. (ECF No. 123, 17:17–17:26). It also argues that Dr. Sousa's data is evidence of crime, but at best Sousa offers evidence related to "disorder", which is not the same as crime. The County accuses Plaintiffs of making "misrepresentations" in saying that the County does not have any data related to crime or evidence of crowd crush on the bridges. (*Id*., 17:12–16). Yet that is precisely what the County's 30(b)(6) representatives said as cited in Plaintiffs' motion, and the County does not dispute that was their testimony. (*See id.* (not providing any citations to the transcripts or declarations from representatives clarifying statements)).

The County misquotes Sousa's statistics. The County claims that calls for service on Las Vegas Boulevard increased by more than 1700% from 2018 to 2022. (*Id.*, 16:2–16:4). The actual statistic is that calls for service ***related to the unhoused*** increased by more than 1700%. ("Questions Related to Public Safety on Pedestrian Bridges" by William H. Sousa, Ph.D. ("Sousa Report"), ECF 103-18, CC 138). It is unclear how calls specifically related to the "unhoused" are relevant to the County's position unless the County contends that being unhoused is itself a crime. Looking at ***all*** calls for service on Las Vegas Boulevard, they increased from 37,589 in 2018 to 48,358 in 2022 (29% increase) and "Disorder Calls for Service" on Las Vegas Boulevard increased from 6981 in 2018 to 8570 in 2022 (23% increase) over a period of four years, not an absurd 1700% increase. (Sousa Report, ECF 103-18, CC 138). However, even if the County had quoted the correct statistic, "Disorder Calls for Service" on the pedestrian bridges actually decreased from 723 in 2018 to 617 in 2022 (15% decrease). (Email from Gina Fackrell to William Sousa, April 27, 2023, ECF No. 130–1, CC 6070).

The County also misrepresents Sousa's data in claiming that "disorder calls for service to the pedestrian bridges were about twice as likely than calls for other sidewalk locations/addresses." (ECF

No. 123, 16:11–16:12). For this to be true, there would need to be twice as many disorder calls for service on the pedestrian bridges as on the grade-level sidewalks; instead over a four-year period there were a total of 3274 calls for service on the pedestrian bridges and a total of 30,281 calls for service on Las Vegas Boulevard. (Email from Gina Fackrell to William Sousa, April 27, 2023, ECF No. 130–1, CC 6070). This means that over four years of the calls for service related to disorder on Las Vegas Boulevard from Sahara to Russell there was an 11% chance that a call for service originated on the pedestrian bridge, not that it is twice as likely to occur on the pedestrian bridges. (*Id.*; Sousa Report, ECF 103-18, CC 138). However, once again the data Dr. Sousa chose to provide in his expert report fails to tell the whole story as calls for service that mention the pedestrian bridges and are related to disorder in 2022 only represent 7% (617 divided by 8570) of the total calls for service; overall calls for service which mention the pedestrian bridges in 2022 only represent 3% (1289 divided by 48,358) of the total calls for service; and the overall calls for service which mention the pedestrian bridges from 2018-2022 only represent 4% (6662 divided by 174,103) of the total calls for service. (Email from Gina Fackrell to William Sousa, April 27, 2023, ECF No. 130–1, CC 6070).

As for crowd crush, the County admits that no crowd crush incident has occurred in the Resort Corridor. (ECF No. 123, 18:1–18:4). To cover its lack of evidence, the County (1) discusses an incident that occurred in Seoul, South Korea, (2) points out that popular events regularly occur in the Resort Corridor, (3) emergencies have occurred in the Resort Corridor, and (4) observes that a LVMPD Undersheriff thinks crowd crush might happen in the future. (*Id.*, 18:5–19:13). As discussed above, whether there is a relationship between an incident that occurred in a different city in another country and Las Vegas's pedestrian bridges is pure speculation. Second, the fact that large events and mass casualty incidents have occurred in the Corridor before and none resulted in crowd crush actually hurts the County's position. Finally, it appears that the Undersheriff's comments are pure speculation, especially since the County has not provided an evidentiary basis for the comments and

there is no reason to believe the Undersheriff has any expertise with crowd crush beyond the average person.

But even if the Court accepted all the "evidence" cited in the County's Response as admissible, relevant, and accurately interpreted, the County still fails to provide any connection between the conduct banned by CCC 16.13.030 (*i.e.*, stopping and standing on the bridges) and either public safety or traffic congestion concerns for those bridges. The County's "evidence" also fails to show that less burdensome alternatives would be inadequate.

While the government is not required to impose the least restrictive measures, "[t]o meet the requirement of narrow tailoring, the government must demonstrate that alternative measures that burden substantially less speech would fail to achieve the government's interests, not simply that the chosen route is easier." *McCullen*, 573 U.S. at 495. The Plaintiffs identified multiple, less restrictive measures, including adequately enforcing the laws that existed prior to CCC 16.13.030, imposing time- and bridge- specific restrictions, and providing a carve out for First Amendment activity as the County has with other ordinances. The County does not deny that these measures would burden substantially less speech. Instead, the County protests that these proposed measures are inadequate, but cites to nothing in the factual record that supports this. (ECF No. 123, 28:26–29:7). In fact, the record directly contradicts the County. While he opines that the existing laws were inadequate to address congestion and crime, Dr. Sousa admits he has no evidence to support that opinion. (Sousa Depo. (Complete), ECF No. 131–1, 99:5–99:23, 234:17–235:8). While the County claims in its response that it "has no way to predict when crowd surges will occur," (ECF No. 123, 29:2–29:3), the County's 30(b)(6) representative says congestion on the bridges is predictable. (*See* ECF No. 128-1, Deposition of Kaizad Yazdani, Clark County 30(b)(6) Designee (Complete Transcript) at 96:8–96:12; 218:19–219:19).

Finally, in bringing up *Roulette v. City of Seattle*, 97 F.3d 300 (9th Cir. 1996) yet again, the

County inadvertently offers yet another alternative to banning all stopping on the bridges: limit the ban to sitting and lying down. After all, the County has said that in passing CCC 16.13.030, the County Commission was addressing the same problems as Seattle in *Roulette*. (ECF No. 103, 20:1–20:4). The County offers no explanation as to why this more limited ban would be insufficient to address the County's concerns.

B. Plaintiffs Did Not Need to Sue LVMPD or Separately Sue Clark County's Legal Department as a Distinct Entity to Establish Entitlement to Relief as to Their "As Applied" Challenge.

In its Response, the County rehashes the same argument that the Plaintiffs' "as applied" claims must be denied because that the Plaintiffs needed to either include LVMPD or the Clark County District Attorney's Office as defendants separate from the County. (*Compare* ECF No. 102 7:1-9:14, *with* ECF No. 123, 21:11–22:13). As detailed, in Plaintiffs' Response to the Motion to Dismiss, enjoining the County's legal branch, i.e. the District Attorney's Office, is sufficient for an as applied challenge. (*See generally* ECF No. 117). In its Response, the County once again fails provide any statute, precedent, or other legal authority requiring that plaintiffs to file their suits against a district attorney's office separately from the local government those offices belong to.

In the words of Office of the Clark County District Attorney itself: "[t]he Office of the Clark County District Attorney is the legal branch of local government in Clark County."[10] As for any suggestion that the Plaintiffs needed to sue the Clark County District Attorney Steve Wolfson in his official capacity, suing both a local government and one of its officers in his official capacity is redundant. *Ctr. for Bio-Ethical Reform, Inc. v. Los Angeles County Sheriff Dep't*, 533 F.3d 780, 799 (9th Cir. 2008) ("When both a municipal officer and a local government entity are named, and the

[10] Office of the Clark County District Attorney, "About Us", attached as Exhibit 3 in Mozilla Firefox "Reader View" format, available at https://www.clarkcountynv.gov/government/departments/district_attorney/about-us (last viewed April 3, 2026).

officer is named only in an official capacity, the court may dismiss the officer as a redundant defendant."). Just as it does in claiming it can curate legislative histories to immunize its ordinances from constitutional scrutiny, the County offers another "gotcha" legal theory to avoid accountability. The reality is that the County is enforcing its ordinances in the Resort Corridor through its legal department, and so the Plaintiffs can get complete relief from the County without joining any other defendants.

C. CCC 16.13.030 Is Unconstitutionally Vague; the County Still Cannot Consistently Define the Law's Scope and Embraces LVMPD's Unconstitutional Enforcement Practices as Its Own.

As set forth in Section IV(A), *supra*, the County's Response does not create a genuine issue of material fact as to the reality that CCC 16.13.030 impacts constitutionally-protected activity. This reality heightens the vagueness concerns regarding the Ordinance and requires more stringent scrutiny. (*See* ECF No. 142 at 22:20–24:2.) And, as forth in the Motion, there is no genuine issue of material fact that CCC 16.13.030 is ***both*** so vague that it does not provide sufficient notice as to what is prohibited and so standardless that it allows for discriminatory enforcement. (*Id.* at 22-23 (citing *Butcher v. Knudson*, 38 F.4th 1163, 1169 (9th Cir. 2022) (criminal regulation is unconstitutionally vague if it does ***either***)). The Response does not change this reality.

Instead, the Response reinforces that CCC 16.13.030 is unconstitutionally vague. As it has done throughout this case, the County continues to waffle between whether CCC 16.13.030 bans all intentional stopping and standing other than stopping for an elevator or whether the ordinance allows other types of intentional stopping. On one hand, the County claims that "the terms 'stop' and 'stand' [. . .] should be attributed their plain meaning at law" and that to the County "'stop' mean[s] 'to cease to move on.'" (ECF No. 123, 5:14 – 5:17). The County also emphasizes its 30(b)(6) representatives' statement that a person would be cited "if their intent is to stop moving [. . .]" (*Id.*, 5:21.) Yet the County turns around in the same brief and says that the ordinance only applies to "a situation where

a person intends to make a *substantial* stop on the bridge," (*id.*, 30:16–30:17 (emphasis added)), and apparently excludes from prosecution intentional stops to take photographs or engage in other activities. (*Id.*, 6:19–6:24). Over two years after passing CCC 16.13.030, the County has never clarified (1) whether people can *intentionally* stop on a bridge for any other reason than to wait for an elevator, and (2) why any activities would be excluded from prosecution when they are not exempted in the plain language of CCC 16.13.030.

Second, the County does not dispute that it and LVMPD categorically excludes certain activities such as stopping to take in a view or to take a photograph from enforcement no matter how long those activities take but targets other people who stop for First Amendment activities such as performing or soliciting. The Fourteenth Amendment expressly bans this type of selective prosecution. *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). Yet the County openly admits that the County and LVMPD's "understanding of the ordinance and how it is to be enforced is aligned." (ECF No. 123, 30:22–30:26). As it embraces discriminatory enforcement—which is what selective prosecution is— CCC 16.13.030 clearly violates the Fourteenth Amendment.

V. CONCLUSION

Plaintiffs respectfully request that the Court grant their Motion for Summary Judgment.

Dated: April 3, 2026

/s/ *Christopher Peterson*

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CERTIFICATE OF SERVICE

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

☒ CM/ECF

☐ Electronic mail; or

☐ US Mail or Carrier Service

/s/ Christopher Peterson
An employee of ACLU of Nevada