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10 UNITED STATES DISTRICT COURT

11 DISTRICT OF NEVADA

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

Case No: 2:24-cv-00334

14 Plaintiffs, )

15 vs. )

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

17 )  
 18 Defendant(s). )  
 19 \_\_\_\_\_

**DEFENDANT CLARK COUNTY'S**  
**REPLY TO PLAINTIFF'S**  
**RESPONSE [132]/[149]<sup>1</sup> TO ITS**  
**MOTION FOR SUMMARY**  
**JUDGMENT [103]**

20 Defendant CLARK COUNTY, by and through its counsel of record, hereby files this  
 21 Reply to Plaintiff's Response [132]/[149] to its Motion for Summary Judgment [103] on  
 22 Plaintiffs' First Amended Complaint ("FAC") [61] pursuant to Fed. R. Civ. P. 56.

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

26 ///

27 \_\_\_\_\_  
 28 <sup>1 1</sup> Plaintiffs filed errata to their motion for summary judgment [105] and their response [132] to Defendant's motion for summary judgment [103]. The new ECF Nos. for these filings are [142] and [149], respectively. The County will cite to both filings for ease of reference and to avoid any confusion.

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**MEMORANDUM OF POINTS AND AUTHORITIES**

**I.**

**LEGAL ARGUMENTS**

**A. CLARK COUNTY’S MOTION FOR SUMMARY JUDGMENT CLEARLY IDENTIFIES THE INFORMATION NECESSARY TO RESOLVE THE CONSTITUTIONAL QUESTIONS OF LAW BEFORE THE COURT IN FAVOR OF THE CONSTITUTIONALITY OF CCC 16.13.030**

Because Plaintiffs’ position with respect to the constitutionality of CCC 16.13.030 lacks any substantive arguments at law, Plaintiffs continue to attempt to find procedural avenues to limit the scope of the Court’s review or to disregard wholesale arguments put forth by the County or to conflate the constitutional analysis before the Court with one of their own creation—insisting that the County did not sufficiently identify what constitutes “undisputed facts” for the purposes of its motion [103]. *See, e.g.*, [132]/[149] at 2:15-9:15.

In doing so Plaintiffs try to distort what they view as the County’s “undisputed facts” to create confusion. Plaintiffs contend, based on Google Earth measurements obtained by one of their attorneys, that they dispute that the pedestrian bridges and/or the area affected by the ordinance only make up 6% of the total length of the sidewalk system on Las Vegas Blvd. [132]/[149] at 3:21-6:4. They also dispute, by attempting to impeach evidence and data produced by LVMPD and analyzed by Dr. Sousa, that the pedestrian bridges suffer more calls for disorder than the grade-level sidewalks. [132]/[149] at 6:5-9:15.

Neither of those facts, however, is material to the questions of constitutionality before the Court and, again, it highlights how the Plaintiffs are using this case as an opportunity to invite the Court to serve as a super legislature by weighing the evidence and second guessing the conclusions drawn by the elected County Commissioners who enacted CCC 16.13.030, contrary to the doctrines of judicial restraint and the Separation of Powers doctrine.

To be certain, questions of constitutionality are not questions of fact; nor are they even mixed questions of fact and law. Questions of constitutionality are resoundingly questions of law only, which means no “facts”—undisputed or otherwise—are necessary to resolve them. *See, e.g., Crawford v. Comm’r*, 266 F.3d 1120, 1122 (9th Cir. 2001) (“Whether a federal statute

1 is constitutional is a question of law that we review de novo.”); *United States v. Ninety-Five*  
2 *Firearms*, 28 F.3d 940, 941 (9th Cir.1994) (“Whether a statute or regulation is  
3 unconstitutionally vague is a question of law reviewed de novo.”); *see also United States v.*  
4 *Bynum*, 327 F.3d 986, 991 (9th Cir. 2003). “In considering a motion for summary judgment,  
5 of course, the court decides a pure question of law and is not permitted to weigh the evidence  
6 or to judge the credibility of witnesses.” *Neely v. St. Paul Fire & Marine Ins. Co.*, 584 F.2d  
7 341, 344 (9th Cir. 1978).

8         These questions of law can be resolved based on the language of the ordinance and  
9 things of which the Court may take judicial notice like the legislative history and matters of  
10 actual fact; and the burden is on the Plaintiffs—not the Defendant—to make the showing of  
11 unconstitutionality. *See* [51] at 18:7-9, 25:15-17 (“The burden is on the plaintiff to demonstrate  
12 “from the text of [the law] and from actual fact” that substantial overbreadth exists”) (citing  
13 *N.Y. State Club Ass’n, Inc. v. City of N.Y.*, 487 U.S. 1, 14 (1988)).

14         In order to rule on the constitutionality of CCC 16.13.030 under intermediate scrutiny,  
15 the Court need only consider three material questions of law: 1. Is the ordinance a content-  
16 neutral time, place or manner restriction; 2. Is the ordinance narrowly tailored to serve a  
17 significant government interest; and 3. Does the ordinance leave open ample channels for  
18 expressive conduct of the type which may be affected by the ordinance.

19         Clark County’s Motion for Summary Judgment [103] clearly identifies and addresses  
20 these points of law necessary to resolve the motion—which are undisputed given that they can  
21 be found in the language of the ordinance and the record of the legislative history. *See, e.g.*,  
22 [103] at 24:12-28:21. Accordingly, summary judgment is both appropriate and ripe for a ruling  
23 as a matter of law in favor of Defendant Clark County despite Plaintiffs’ erroneous procedural  
24 arguments of “disputed facts.”

### 25         **1. CCC 16.13.030 is a Content-Neutral Time, Place or Manner Restriction**

26         The “crucial first step” in determining whether an ordinance is unconstitutional is to  
27 determine whether it is “content neutral on its face.” *Reed v. Town of Gilbert, Ariz.*, 576 U.S.  
28 155, 165–66 (2015). “Government regulation of speech is content based if a law applies to

1 particular speech because of the topic discussed or the idea or message expressed.” *Id.* at 163.

2 CCC 16.13.030 provides in its entirety:

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

8 CCC 16.13.030 (emphasis added).

9 CCC 16.13.030 applies to all people equally. *Id.* It does not restrict the viewpoint or  
10 content of a person’s speech—in fact it isn’t even directed at speech. *Id.* It only limits stopping  
11 and standing or intending to cause others to stop and stand within the limited bounds of the  
12 pedestrian flow zones. *Id.* Those two restrictions are clearly related to “place,” i.e., pedestrian  
13 flow zones, and “manner,” i.e., conduct requiring stopping or standing or causing others to  
14 stop or stand. *Id.* People can still hold and express any opinions or engage in any speech they  
15 want within the bounds of the pedestrian flow zones—irrespective of the content or point of  
16 view—so long as it doesn’t require stopping.

17 Accordingly, CCC 16.13.030 satisfies the first test of intermediate scrutiny as a matter  
18 of law because, while not a “fact,” the language of the ordinance is undisputed, and the Court  
19 can confirm from the ordinance that it is a content-neutral place and manner restriction.

20 **2. CCC 16.13.030 is Narrowly Tailored to Serve a Significant Government**  
21 **Interest Even if the Court Adopts Plaintiffs’ Dubious Attorney-Generated**  
22 **Figures and Interpretations of LVMPD Data**

23 Plaintiffs’ arguments regarding “disputed facts,” i.e., that they disagree that 94% of the  
24 sidewalk on the Las Vegas Blvd is unaffected by CCC 16.13.030 and that calls for disorder  
25 are more frequent on the pedestrian bridges, are more aptly categorized as Plaintiffs’ attacks  
26 on the significance of the government interest underlying the enactment of CCC 16.13.030  
27 and/or the County’s contention that the ordinance is narrowly tailored. [132]/[149] at 2:15-  
28 9:15.

Even if the Court were allowed to weigh evidence or the credibility of witnesses in

1 ruling in a question of law or to adopt the erroneous positions Plaintiffs have taken in regards  
2 to these “disputed facts” based on the calculations and analysis performed by their counsel  
3 (who are neither data scientists nor licensed civil or traffic engineers), the legislative history  
4 and the language of the ordinance still indisputably demonstrate that: i. There are significant  
5 government interests, including pedestrian safety and ADA access to pedestrian bridges,  
6 underlying the enactment of CCC 16.13.030; and ii. The ordinance is narrowly tailored to only  
7 cover the pedestrian bridges and the immediate vicinity of the touchdown structures where  
8 those ADA facilities are accessed.

9 No other facts or law are material to an analysis of the constitutionality of CCC  
10 16.13.030 as a matter of law.

11 **i. Public safety, the free flow of pedestrian traffic, and ADA access for**  
12 **disabled pedestrians are all significant government interests warranting the**  
13 **enactment of CCC 16.13.030 and these were Adequately Demonstrated due**  
14 **to the Unique Characteristics of the Pedestrian Bridges**

15 In their attempt to undermine the significant nature of the government interest  
16 underlying the enactment of CCC 16.13.030, Plaintiffs attacked the credibility of Dr. Sousa  
17 and the methodology of his study, the data he analyzed, and his report based on their non-  
18 expert understanding of the methodology. Plaintiffs contend that there were discrepancies  
19 between what LVMPD considered a pedestrian bridge and what Dr. Sousa considered a  
20 pedestrian bridge which makes the findings in Dr. Sousa’s report “unreliable, and [leads]  
21 Plaintiffs [to] dispute that there are higher levels of disorder on the pedestrian bridges than  
22 grade-level sidewalks.” [132]/[149] at 6:5-9:15.

23 While the County vehemently disagrees with Plaintiffs’ non-expert testimonial attacks  
24 of Dr. Sousa’s methodology and report by affidavit of counsel, ultimately what Plaintiffs fail  
25 to comprehend is that even if the levels of disorder on the sidewalks were the same as the  
26 levels of disorder on the pedestrian bridges as they contend, there is still a significant interest  
27 in the enactment of CCC 16.13.030 because of the unique structural characteristics of the  
28 pedestrian bridges and their ADA accommodations which makes these disorder related events  
more problematic in and around the pedestrian bridges. This is supported by substantial

1 evidence and testimony in the legislative history and the language of the purpose section for  
2 the subject ordinance—CCC 16.13.010—which evidence is independent from a comparison  
3 of disorder calls for service on the pedestrian bridges and at-grade sidewalks by Dr. Sousa.

4 First, it should be abundantly clear that the Supreme Court of the United States already  
5 recognizes that “ensuring public safety and order, promoting the free flow of traffic on streets  
6 and sidewalks” are significant government interests. *McCullen v. Coakley*, 573 U.S. 464, 486,  
7 134 S. Ct. 2518, 2535, 189 L. Ed. 2d 502 (2014) (internal citations and quotation marks  
8 omitted). Access for the disabled—as evidenced by the existence of the Americans with  
9 Disabilities Act (“ADA”)—is similar a significant government interest. *Dare v. California*,  
10 191 F.3d 1167, 1174 (9th Cir. 1999) (“Congress concluded that the ADA was a necessary  
11 legislative response to a long history of arbitrary and irrational discrimination against people  
12 with disabilities.”). While the County has the duty to establish that issues of public safety,  
13 pedestrian traffic, and ADA access underlying the enactment of CCC 16.13.030 are not merely  
14 speculative, the Court has indicated that this burden on the County is not a heavy one—but  
15 even if it were a heavy burden the evidence in the legislative history could satisfy it. [51] at  
16 32:6-13.

17 In the legislative history on the proposed amendment to Chapter 16.11 in 2022,  
18 LVMPD gave a presentation about the state of the pedestrian bridges and the need for an  
19 ordinance prohibiting obstructions thereon—this was months before anyone even considered  
20 retaining Dr. Sousa to look at the crime data for pedestrian bridges. *See, e.g.*, [103-11] at 3979-  
21 CC 3984; [103-12] at timestamp 03:00-21:37; [103-15].

22 The presentation showed significant numbers of individuals stopping or standing on the  
23 bridge which forced pedestrians into narrow lanes of traffic, often in conflict with other  
24 pedestrians; including homeless individuals who had off-leash dogs wandering the bridges,  
25 those who had large items like ice boxes or tables, were intoxicated, were engaging pedestrians  
26 causing them to stop, were engaging in unlicensed vending and other commercial activities,  
27 were urinating or defecating in public, were using narcotics, were pickpocketing, were  
28 engaging in lewd acts, were conducting illegal table games, were soliciting donations based

1 on fraudulent representations, were engaging in physical altercations, were camping on or  
2 vandalizing County property, and who were blocking access to elevators and escalators  
3 thereby precluding ADA access. *See generally* [103-15].

4 Nobody in the legislative history ever testified that these types of incidents didn't also  
5 occur with some frequency on the at-grade sidewalks (though certainly no such ADA  
6 obstruction could occur given the lack of escalators and elevators on the at-grade sidewalks)—  
7 instead they testified that, because of the pedestrian bridges' unique structure, which included  
8 elevated walkways, high constricted walls, limited points of ingress and egress, and access to  
9 ADA infrastructure, these types of behaviors were more problematic on the pedestrian bridges.

10 Specifically, LVMPD testified that the elevated nature of the bridges made crime and  
11 disorder difficult to visualize for their at-grade patrols, that the elevated nature of the bridges,  
12 high walls, and limited access points of pedestrian bridges made reaching offenders in time  
13 difficult to enforce existing laws and also created unique congestion that created increased  
14 opportunities for crime and conflict. *See, e.g.*, [103-11] at CC 3979-CC 3981; *see also* CCC  
15 16.13.010 (“because of the physical nature of the pedestrian bridges, by the time such  
16 conditions exist, it would often be too late for law enforcement or other first responders to  
17 intervene, mitigate, render aid, rescue, or take other actions necessary as a result of crime and  
18 other serious safety issues.”). The diagrams disclosed by the County demonstrate the unique  
19 structural characteristics of these pedestrian bridges which are elevated between 17' and 25'  
20 from the ground, have fixed widths between 16' and 24', have high confining walls that leave  
21 no avenue for escape, feature only two or three points of ingress/egress, and which feature up  
22 and down escalators and elevators in each touchdown structure. [103-5] at 2501-CC 2515.

23 In addition to these significant public safety and pedestrian traffic flow concerns—local  
24 business representatives also testified that the conditions on the bridges had reached such a  
25 points that many customers at local businesses and travel bloggers had left negative reviews  
26 of how their experiences on the pedestrian bridges affected their visits to Las Vegas  
27 demonstrating that there were also valid economic concerns for ensuring these bridges were  
28 safe and fulfilling their roles as above-grade crosswalks for the general public. *See, e.g.*, [103-

1 11] at CC 4004-CC 4005.

2 After seeing the presentation depicting individuals engaging in lewd acts and  
3 vandalizing/committing arson in and on the escalators and elevators for the pedestrian bridges  
4 in LVMPD’s presentation, Commissioners Naft and Gibson expressed great dismay about the  
5 impact that these loiterers on the bridges were having on access to the pedestrian bridges  
6 through ADA infrastructure. [103-11] at CC 3996. In response to his colleagues who wished  
7 to see more data on the pedestrian bridges before enacting any legislation—Commissioner  
8 Gibson rightly indicated that the evidence already presented clearly demonstrated a tangible  
9 threat to life and property and that even in 2022—long before any Dr. Sousa study was  
10 conducted or any LVMPD statistics were obtained—there was sufficient evidence of a  
11 significant government interest warranting the enactment of an ordinance regulating the  
12 pedestrian bridges. *Id.* at CC 3997.

13 Admittedly, Dr. Sousa’s report and findings were discussed prominently in the January  
14 2, 2024, BCC meeting in which CCC 16.13.030 was enacted—including data that showed that  
15 calls for service on the Las Vegas Strip had increased generally nearly 25% between 2018 and  
16 2022 (a stat Plaintiffs do not appear to dispute) despite decreased tourist numbers and  
17 decreased pedestrian traffic. [103-19] at CC 093 (Calls specifically for disorderly offenses  
18 jumped from 6,981 in 2018 to 8,570 in 2022 – an increase of 23%”).

19 Despite the data, however, the primary basis cited in support of the ordinance was the  
20 distinct challenges created by the unique structural characteristics of the bridges. [103-19] at  
21 CC 104 (“occurs due to the bridges that are congested and the concealed nature of the bridges”)  
22 (“there’s a challenge of not being able to see what is happening on the bridges when they’re  
23 on foot patrol and when they’re on the street below”), (“We’ve seen large crowds on bridges  
24 during major events, and what we see is when the pedestrian bridges get packed, it’s very  
25 difficult for officers to get onto those bridges and to maintain order”), (“[In an active shooter  
26 like event] If there were folks that were congregating on those bridges, standing on those  
27 bridges, standing there with property on those bridges, it would be very difficult for people to  
28 use those bridges as an exit [...]”), (“If the bridges are crowded and people are not moving

1 and their property is still there, it creates an exceptional public safety event for us”); CC 106  
 2 (“Due to the unique public safety issues that are created on the bridges that this ordinance is  
 3 necessary [...]”), (“Please consider this ordinance an ounce of prevention, one that may prevent  
 4 significant injury should there be a need for rapid evacuation across the bridge or access by  
 5 first responders”); CC 109 (“It’s the unique nature of the bridges. It is the fact that by the time  
 6 something happens that creates an urgency in a crowd flow, it is too late to take action to clear  
 7 the bridges and make them unobstructed. It’s because it is a funnel on both ends that people  
 8 going down the escalators are going to prevent first responders from going up”).

9 Accordingly, and while Clark County disputes Plaintiffs’ contention that the LVMPD  
 10 data and Dr. Sousa’s report are unreliable or that calls for service on the pedestrian bridges are  
 11 not greater than calls for service on at-grade sidewalks, even if calls for service were uniform  
 12 across the Las Vegas Strip, the unique characteristics of the pedestrian bridge are what create  
 13 the significant government interest underlying the ordinance here and that is established in the  
 14 legislative history and the language of Clark County Code Chapter 16.13. Accordingly,  
 15 disputes about whether linear footage is the right measure or square footage is the right  
 16 measure or about how the exact bounds for what constitutes a pedestrian bridge were  
 17 calculated by each individual in the report generation process for Dr. Sousa are immaterial to  
 18 a determination of constitutionality by the Court and, in fact, are an impermissible invitation  
 19 to this Court to weigh and analyze evidence and engage in political policy analysis.

20 **ii. CCC 16.13.030 is Narrowly Tailored to Address this Significant Interest as**  
 21 **it is Expressly Limited to just the Unique Structures of the Pedestrian**  
 22 **Bridges and the area Adjacent to the Pedestrian Bridge ADA**  
 23 **Infrastructure**

24 Plaintiffs—without providing any sort of measurement from a licensed civil  
 25 engineer<sup>2</sup>—dispute the County’s measurements obtained from two civil engineers, the Deputy  
 26 Director of the Department of Public Works and a consultant at Kimley-Horn, of the pedestrian

27 <sup>2</sup> Notably, Plaintiffs’ attempt to provide GIS measurements for the subject sidewalks from Google through its counsel  
 28 should be stricken as unqualified expert testimony because Plaintiffs’ counsel was not disclosed as an expert witness and  
 lacks the “knowledge, skill, experience, training, or education” to provide rebuttal measurements to those prepared by civil  
 engineers in the course and scope of their work. *See* Fed. R. Evid. 702.

1 bridge lengths and the percentage of the total sidewalk network along the Las Vegas Strip that  
2 is comprised of the pedestrian bridges. [132]/[149] at 3:21-6:4. Alternatively, they argue that  
3 the County should not have used linear feet of the sidewalks as a measure because square  
4 footage of the total sidewalk and bridges is a more meaningful measure when dealing with  
5 issues of congestion and that the square footage measurement shows that the pedestrian  
6 bridges occupy 18% of the square footage of the Las Vegas Strip sidewalk network instead of  
7 6%. [132]/[149] at 4:4-5:6. Plaintiffs' basis for these arguments is that one of their counsel,  
8 Jacob Valentine, Esq., could not recreate the linear footage numbers when he attempted to do  
9 so using tools on Google maps. *Id.* at 5:21-6:4. Plaintiffs attempt to dispute the amount of area  
10 affected by the subject ordinance to argue that CCC 16.13.030 is not narrowly tailored to create  
11 some disputed material fact which defeats summary judgment.

12 The area affected by the subject ordinance is clearly defined in ordinance in CCC  
13 16.13.020 which provides that "Pedestrian flow zones" "include the pedestrian bridges and up  
14 to twenty feet surrounding the touchdown structure located within the resort corridor." CCC  
15 16.13.020. Accordingly, and regardless of whether pedestrian bridges and the touchdown  
16 structures make up 6% of the sidewalk network or 18% of the sidewalk square footage on the  
17 Las Vegas Strip, you can see from the language of the ordinance that it is narrowly tailored as  
18 it is strictly limited to only those areas of concern identified in the legislative history—  
19 including the bridge itself and the area immediately adjacent to the entrances and exits to the  
20 ADA infrastructure like escalators and elevators.

21 Narrowly tailored does not mean the ordinance is the least restrictive means of  
22 achieving the goal or only impacts a small area. *See, e.g., Turner Broad. Sys., Inc. v. F.C.C.*,  
23 512 U.S. 622, 662 (1994) An ordinance is narrowly tailored if it does not "burden substantially  
24 more speech than is necessary to further the government's legitimate interests." *Ward v. Rock*  
25 *Against Racism*, 491 U.S. 781, 799, 109 S. Ct. 2746, 2758, 105 L. Ed. 2d 661 (1989). Here—  
26 as is demonstrated by the language of the ordinance defining the "Pedestrian flow zone"—the  
27 ordinance is narrowly tailored to include only the pedestrian bridges and the area immediately  
28 adjacent to the pedestrian bridge ADA infrastructure and no more. Therefore, even if that area

1 constituted 60% of the sidewalk network it would still be narrowly tailored because it is  
2 narrowly tailored to address the specific interest and nothing more.

3 Accordingly, and as a matter of law, CCC 16.13.030 is narrowly tailored to achieve its  
4 aims of promoting the significant government interests of ensuring public safety, the free flow  
5 of pedestrian traffic, and ADA access to pedestrian bridges.

6 **3. CCC 16.13.030 Leaves Open Ample Channels for Expressive Conduct of the**  
7 **Type which may be Affected by the Ordinance**

8 Plaintiffs' "dispute" about the percentage of the sidewalk network on the Las Vegas  
9 Strip may also be construed as an argument CCC 16.13.030 does not leave open ample  
10 channels for the types of expressive conduct which may be affected by the ordinance.

11 As discussed at other places in the briefing on this issue, CCC 16.13.030 does not  
12 prohibit any speech by its terms. Accordingly, the limited types of speech which may be  
13 impacted by CCC 16.13.030 are those which absolutely require the individual engaging in  
14 expressive conduct to be stationary. This may involve some limited types of musical  
15 performances with large instruments like cellos, drums, or tubas which may not be easily  
16 played while moving. It may also impact speech that requires the speaker to stop others for  
17 engagement, like obtaining signatures or proselytizing (though arguably walking alongside  
18 someone with a clipboard or to talk about religion along the pedestrian bridge provides the  
19 same intimate access and one could then merely stop once they've exited the pedestrian flow  
20 zone to obtain signatures or contact information while remaining in compliance with the  
21 ordinance so the activities aren't per se prohibited).

22 Plaintiffs contend that Clark County's figures regarding the amount of area impacted  
23 by CCC 16.13.030 are inaccurate claiming, based on their counsel's Google research and/or  
24 square footage measurements from the County, that the number is closer to the 18% of the  
25 sidewalk network on the Las Vegas Strip. [132]/[149] at 3:21-6:4.

26 Regardless of whether the Pedestrian flow zone ordinance impacts 6% of the total  
27 sidewalk network on the Las Vegas Strip or 18% of the sidewalk network on the Las Vegas  
28 Strip, that still means that the majority of the Las Vegas Strip (either 94% or 82%) is open and

1 available for the types of speech Plaintiffs claim are impacted by CCC 16.13.030 that  
2 absolutely require the speaker be stationery or intend to stop other individuals.

3 Both 94% and 82% of the sidewalk network constitute ample channels for  
4 communication to the exact same group of pedestrians, which is nothing to say about the  
5 remaining sidewalk in the resort corridor and across unincorporated Clark County that is open  
6 for speech that allegedly requires a speaker to be stationary or to cause others to stop. A great  
7 visualization of this is provided in the maps prepared by Clark County Department of Public  
8 Works GIS team which shows roughly the space impacted by the subject ordinance in blue  
9 versus the amount of the sidewalk network left open for Plaintiffs' speech activities in red.  
10 [103-5] at CC 2497 – CC 2500.

11 The at-grade sidewalk network offers Plaintiffs the same group of pedestrian listeners  
12 along the same route of travel—just at different geographic locations. In fact, both Plaintiffs  
13 Summers and Polovina have a demonstrated and admitted history of voluntarily performing  
14 on these at-grade sidewalks for years. [105]/[142] at 3:5-7 (“They have regularly performed  
15 on the sidewalks in the Resort Corridor for years [...]”); *see also* [123-3]; [123-4]; [123-5];  
16 [123-6]; [123-7]; [123-8]; [123-9].

17 Accordingly, there are ample channels available for Plaintiffs to continue to engage in  
18 expressive conduct which absolutely requires stopping or standing or intending to cause others  
19 to stop or stand on the vast majority of the Las Vegas Strip sidewalk network—regardless of  
20 whether the Court adopts Clark County’s measurement based on linear footage (6%) or  
21 Plaintiff’s position that square footage area (18%) is the more accurate measure.

22 **B. PEDESTRIAN BRIDGES ARE NOT PUBLIC FORA NOR DO THEY BURDEN**  
23 **AN UNDUE AMOUNT OF SPEECH AND, EVEN IF THEY DID, THEY STILL**  
24 **WITHSTAND INTERMEDIATE SCRUTINY**

25 **1. Pedestrian Bridges are Modern Public Spaces in Transition, they are not**  
26 **Public Fora which have Existed Time Immemorial, and, even if they were, the**  
27 **Ordinance is still a Valid Time, Place Manner Restrictions Reviewable under**  
28 **Intermediate Scrutiny**

29 Plaintiffs contend that Pedestrian Bridges are “undisputed” Public Fora because they  
30 are part of the “sidewalk network” and they conflate pedestrian bridges with sidewalks arguing

1 that they should be entitled to the same protections. [132]/[149] at 22:18-29:7. The County has  
2 addressed these arguments at length—both in its motion [103] and in its opposition [123] to  
3 Plaintiffs’ motion [105]/[142]. [103] at 22:3-23:8

4 Briefly restated, however, pedestrian bridges have replaced at-grade crosswalks over  
5 the past 30 years, meaning that in the grand scheme of things pedestrian bridges are new  
6 infrastructure that the County is still seeking to understand and properly classify and regulate.  
7 One thing is certain, however, the at-grade crosswalks these pedestrian bridges replaced did  
8 not allow pedestrians to stop or stand or to cause others to stop and stand; they did not allow  
9 cello players or violin players or panhandlers to stand in the middle of traffic despite being  
10 part of the same “sidewalk network.”

11 Whilst it is the County’s position that these public spaces in transition do not qualify as  
12 public fora under the test established by the Ninth Circuit (and the cases cited by Plaintiffs are  
13 all distinguishable as they involve severe overcorrections by the respective jurisdictions), even  
14 if the Court finds that pedestrian bridges are public fora that would just mean that the Court  
15 needs to apply the intermediate scrutiny standard which, as discussed *supra*, clearly supports  
16 a finding that CCC 16.13.030 is a constitutional place and manner restriction.

## 17 **2. CCC 16.13.030 does not Implicate or Burden a Substantial Amount of** 18 **Protected Speech**

19 While Defendant argued in its Motion for Summary Judgment [103] that CCC  
20 16.13.030 does not implicate speech based on *Roulette* and *Broaderick* in order to preserve  
21 these issues for appeal—because stopping and standing are functionally no different from the  
22 sitting or lying down conduct prohibited in *Roulette* because the same types of protected  
23 speech activity Plaintiffs’ contend are prohibited by CCC 16.13.030 would also be prohibited  
24 by the Seattle sidewalk ordinance—namely panhandling and playing large instruments like  
25 cellos, drums or tubas.

26 Plaintiffs, however, go a step further in their arguments asserting that CCC 16.13.030  
27 not only implicates a substantial amount of speech, but in fact “only banned First Amendment  
28 activity” because of some arbitrary qualification the Kimley-Horn pedestrian studies (again

1 the ones the County is not permitted to cite) did not track sleeping, homeless, or stationary  
2 people on pedestrian bridges—measuring only three types of NPOs, all of which were engaged  
3 in First Amendment activity. [32] at 29:8-32:9. This strange qualification—when the Kimley-  
4 Horn studies were cited nowhere in the purpose of the ordinance, Dr. Sousa’s report, or by  
5 LVMPD in support of the ordinance—has no basis in the analysis of the constitutionality of  
6 CCC 16.13.030. Just because Kimley-Horn did not measure other types of NPOs does not  
7 mean that other types of stationary people didn’t exist nor does it somehow create a scenario  
8 where CCC 16.13.030 only targets protected speech activities (because they happened to be  
9 the only thing measured).

10 In fact, when records of CCC 16.13.030 enforcement in the pedestrian flow zones are  
11 reviewed, the vast majority of arrests and citations under the ordinance have no relation  
12 whatsoever to protected speech activity—a fact Plaintiffs conceded in their motion for  
13 summary judgment [105]/[142]. [105]/[142] at 6:9-12 (“the vast majority of other enforcement  
14 measures were taken against people who were actually obstructing the sidewalk, i.e., sleeping,  
15 lying down, or sitting on the sidewalk”); *see also* Criminal Case files for Cases Identified in  
16 Criminal Legal Inquire Result Report (redacted only as to the personally identifiable  
17 information of non-parties pursuant to NRS 239.014), attached hereto as **Exhibit A**.

18 Accordingly, Plaintiffs’ arguments in this regard are unavailing.

19 **C. PLAINTIFFS’ CLAIMS OF “UNDISPUTED” FACTS ARE NEITHER**  
20 **UNDISPUTED NOR MATERIAL TO THE ISSUES BEFORE THE COURT**  
21 **AND CONSTITUTE AN INVITATION TO THE COURT TO VIOLATE THE**  
22 **DOCTRINE OF JUDICIAL RESTRAINT**

23 When intermediate scrutiny applies to constitutional challenges, courts do not impose  
24 an unnecessarily rigid burden of proof on the government. The government may rely on any  
25 material reasonably believed to be relevant to substantiate its interests. *Mai v. United States*,  
26 952 F.3d 1106, 1118 (2020). When empirical evidence is incomplete, courts applying  
27 intermediate scrutiny must accord substantial deference to the predictive judgments of the  
28 legislature. *Id.* The ordinance simply needs to promote a substantial government interest that  
would be achieved less effectively absent the regulation. *Id.* Courts have emphasized that

1 reliance on experts is particularly understandable when a government considers an innovative  
2 solution, since data demonstrating efficacy may not exist because the solution would not have  
3 been implemented previously. *Pena v. Lindley*, 898 F.3d 969, 979 (2018).

4 But the government need not conduct new studies or produce evidence independent of  
5 that already generated by other jurisdictions or offered by testimony in the legislative hearing,  
6 so long as whatever evidence the government relies upon is reasonably believed to be relevant  
7 to the problem that the regulation addresses. *See, e.g., Palmer v. Sisolak*, 594 F.Supp.3d 1215  
8 (2022); *City of Erie v. Pap's A.M.*, 529 U.S. 277 (2000); *Mahoney v. Sessions*, 871 F.3d 873,  
9 881 (9th Cir. 2017)).

10 Courts must not substitute their own policy judgment for that of the legislature, and  
11 when policy disagreements exist in the form of conflicting legislative evidence, courts owe  
12 the legislature's findings deference because the institution is far better equipped than the  
13 judiciary to amass and evaluate vast amounts of data bearing upon legislative questions. *Pena*,  
14 898 F.3d at 979.

15 Despite this long-standing doctrine of judicial restraint, the Plaintiffs in this case  
16 repeatedly ask the Court to step in as a super legislature and reevaluate the evidence and weigh  
17 the policy decisions already contemplated by the Board of County Commissioners.

18 Plaintiffs invite the Court to look at the pedestrian traffic data from the Kimley-Horn  
19 pedestrian studies of pedestrians stopping on the pedestrian bridges (while simultaneously  
20 arguing the Court should ignore the recommendations arising from that data). [132]/[149] at  
21 9:23-11:2, 20:4-21:5. They also argue the Court must look at congestion levels on grade-level  
22 sidewalks and the functional widths of the grade-level sidewalks—in support of their position  
23 that conditions on the grade-level sidewalks are equally as bad (while ignoring the grade-level  
24 sidewalks don't have the same structural or ADA considerations as pedestrian bridges). *Id.* at  
25 11:3-23, 12:23-14:7. They argue that the County needed to conduct more research regarding  
26 other potential time-based restrictions to find the least-restrictive ordinance possible—despite  
27 strict scrutiny not applying—and argue that the County cannot rely on concerns of crowd crush  
28 or assert that it left open ample channels of communications without additional studies or

1 evidence to support such claims. [132]/[149] at 14:7-16:19.

2 But these are analyses the Court should refrain from engaging and burdens the County  
3 does not have to meet in establishing the constitutionality of its ordinance because the Board  
4 of County Commissioners is the entity best-situated to weigh the data and to be politically  
5 accountable to the constituents of the County for the impact of any legislation—or for the  
6 impact of any failure to enact necessary legislation. At best, Plaintiffs’ arguments present  
7 policy or political issues about which reasonable minds may disagree—they do not in any way  
8 undermine the existence of significant government interests underlying the enactment of CCC  
9 16.13.030 or the constitutionality thereof.

10 **D. PLAINTIFFS’ EVIDENTIARY OBJECTIONS ARE AN ABSURD ATTEMPT**  
11 **TO ELIMINATE PORTIONS OF THE LEGISLATIVE RECORD FROM**  
12 **CONSIDERATION BY THE COURT AND UNFAVORABLE PORTIONS OF**  
13 **THE SAME PUBLIC PEDESTRIAN STUDIES THEY RELY ON IN SUPPORT**  
14 **OF THEIR OWN POSITION**

15 Plaintiffs insert evidentiary objections into their Opposition [132]/[149], seeking to  
16 prevent the Court from considering portions of the legislative history, including testimony,  
17 reports, and addenda, from proponents of the bill like representatives of LVMPD, local  
18 business leaders, and Dr. Sousa<sup>3</sup>. [132]/[149] at 18:4-20:2. Plaintiffs also seek to preclude the  
19 Court from considering portions of the pedestrian studies commissioned by Clark County on  
20 the Las Vegas Strip by Kimley-Horn because engineers from Kimley-Horn weren’t disclosed  
21 as experts, while simultaneously and unironically citing to those same studies in support of  
22 their position. [132]/[149] at 20:3-21:5.

23 Plaintiffs’ arguments for eliminating portions of the legislative history from  
24 consideration are based on their position that the public comments were “speculative,” didn’t  
25 offer “specific examples,” didn’t offer “any data,” or are inadmissible as unqualified expert  
26 opinions. [132]/[149] at 19:1-20:2. Comments Plaintiffs seek to preclude include comments  
27 like LVMPD’s representations that its officers have trouble visualizing the bridges from the

28 <sup>3</sup> Notably, Plaintiffs have also filed a separate motion in limine to preclude Dr. Sousa’s testimony and report from consideration by the Court—which now appears as nothing more than an attempt to get additional pages to their opposition to the County’s motion [103] given the inclusion of their remaining objections herein.

1 street (which should be common sense) or that when large groups of people gather together  
2 there tends to be more conflict and opportunities for crime (again, common sense). [132]/[149]  
3 at 19:1-10.

4 The very notion that one can eliminate portions of the legislative history—a public  
5 record of which the Court may take judicial notice—from consideration in a constitutional  
6 challenge is absurd. The contention that each statement made in the legislative history needs  
7 to be made by someone “qualified as an expert” or “be supported by data” doubles down on  
8 the absurdity. Should the County now be able to turn around and preclude the Court from  
9 considering testimony in the legislative history from opponents of CCC 16.13.030 like  
10 Plaintiff Summers or the ACLU of Nevada’s director because they failed to cite specific  
11 examples or provide data or because they are not constitutional law scholars or because they  
12 did not submit addenda containing data in support of their positions?

13 Legislation has long been passed based on community sentiment, experience, and  
14 feedback, personal observations and anecdotes, and concerns about potential and foreseeable  
15 outcomes or harm without the need for specific data, longitudinal studies, or the qualification  
16 of experts. What Plaintiffs ask is not contemplated in constitutional precedent—which allows  
17 for a complete review of the relevant legislative history to address any ambiguities in an  
18 ordinance or to find support for a legitimate government interest—and runs counter to public  
19 policy as it would make legislation a cost-prohibitive endeavor, requiring even the smallest  
20 pieces of legislation be based on peer-reviewed research and studies rather than issues  
21 identified by members of the community as has been the practice for time immemorial.

22 **E. PLAINTIFFS’ VAGUENESS CLAIMS FAIL AS A MATTER OF LAW BASED**  
23 **ON THE PLAIN LANGUAGE AND ORDINARY MEANING OF THE**  
24 **STATUTE BECAUSE IT PROVIDES ADEQUATE NOTICE AND**  
25 **REASONABLE GUIDELINES TO LAW ENFORCEMENT**

26 **1. Chapter 16.13 Provides Adequate Notice of the Conduct Prohibited by CCC**  
27 **16.13.030**

28 Plaintiffs attempt to play word games with the County’s statements on the subject  
ordinance—giving the Court snippets of statements without context in the hopes that the

1 cherry-picked juxtaposition of these statements will somehow convince the Court that CCC  
2 16.13.030 is confusing or fails to provide adequate notice to a person of reasonable intelligence  
3 of the conduct CCC 16.13.030 prohibits. [132]/[149] at 40:7-18. But the reality is that the  
4 language of the ordinance is unambiguous and the County’s statements are consistent with  
5 that plain meaning.

6 Stop or stand are attributed their plain meaning at law and that plain meaning is “to  
7 cease to move on.” [103-10] at 8:24-9:14. DCM Frierson conceded that any intentional stop  
8 would potentially be subject to citation under CCC 16.13.030—but as the County pointed out  
9 in its opposition [123] to Plaintiffs’ motion for summary judgment [105]/[142] this is because  
10 strict liability laws are disfavored under the law and, accordingly, probable cause to cite  
11 someone under CCC 16.13.030 does not exist unless that person manifests the requisite *mens*  
12 *rea* to cease moving along in some way. [123] at 5:18-6:5. This means that small unintentional  
13 stops, brief variations in movement, stops caused by necessity for things like untied shoes or  
14 other wardrobe malfunctions, wheelchair failures, etc. are not subject to citation by LVMPD  
15 because the requisite *mens rea* cannot be demonstrated.

16 CCC 16.13.010 makes it clear that the pedestrian bridges are primarily intended to  
17 facilitate street crossings, but that incidental and fleeting views of the Strip and incidental stops  
18 were also contemplated and not the target of the ordinance. CCC 16.13.010 (“The parameters  
19 for the pedestrian bridge design did not include uses beyond pedestrian traffic crossing from  
20 one side to the other side. The parameters included that pedestrians would not stop, stand or  
21 congregate **other than for incidental and fleeting viewing of the Las Vegas Strip from the**  
22 **pedestrian bridge.**”) (emphasis added).

23 Accordingly, the ordinance (and the associated enforcement which relies on objective  
24 measures like past warnings or willful expressions of intent to cease moving along to establish  
25 *mens rea*) provides clear guidance that those who intend to cease to move on and those who  
26 intend to cause others to cease moving on are subject to citation.

27 ///

28 ///

1           **2. CCC 16.13.030 Does not Invite Discriminatory Enforcement, nor has Plaintiff**  
2           **Identified any Discriminatory Enforcement by LVMPD since CCC 16.13.030’s**  
3           **Enactment in 2024**

4           Plaintiffs would have the Court believe that, because LVMPD does not intend to cite  
5 or arrest pedestrians when evidence beyond a reasonable doubt of a person’s *mens rea* “to  
6 cease to move on” doesn’t exist, that this somehow makes their enforcement of the ordinance  
7 discriminatory. [132]/[149] at 40:20-41:13.

8           The reality is that, to be subject for citation under CCC 16.13.030, LVMPD will have  
9 to witness a person stopping and that person will have to continue to be stopped long enough  
10 for LVMPD to approach and display some sort of objective behavior indicating that their *mens*  
11 *rea* is to cease moving on before LVMPD could ever even engage or cite them. Accordingly,  
12 even if probable cause of the sufficient *mens rea* weren’t a requirement for citation and  
13 prosecution under CCC 16.13.030, as a matter of practicality LVMPD would lack the  
14 opportunity to approach, warn, cite or arrest individuals who make brief or incidental stops  
15 and who lack the *mens rea* “to cease to move on” in the pedestrian flow zones.

16           LVMPD testified in the legislative hearing (and its training materials on the  
17 enforcement of CCC 16.13.030 confirmed) that its policy with respect to CCC 16.13.030  
18 would be to seek voluntary compliance and to only issue citations or make arrests where that  
19 voluntary compliance fails because the person has been warned before or because the person  
20 willfully refuses to move along. *See, e.g.*, CC 104; *see also* LVMPD training materials videos,  
21 manually filed with the Court, and referred to herein as **Exhibit B** at timestamp 5:00 (“Keep  
22 in mind that the law is not intended to criminalize incidental pausing. Instead, take  
23 enforcement action on people who are **intentionally stopping and standing.**”) (emphasis  
24 added) and **Exhibit C**.

25           Plaintiffs—despite being in possession of the vast majority of the citations issued by  
26 LVMPD under CCC 16.13.030 and the associated criminal case files from the District  
27 Attorney’s Office during the discovery period—have not elected to disclose any of those  
28 citations to the Court because they clearly confirm that LVMPD is only citing individuals who  
have been warned previously, who willfully refuse to move on, or who, upon being stopped

1 by LVMPD, are determined to have outstanding warrants for other offenses, or weapons and  
2 drug paraphernalia—objects of disorder which were the intended targets of the ordinance. *See*,  
3 *e.g.*, **Exhibit A**.

4 For example, **Exhibit A** clearly depicts that the individuals being arrested/cited for  
5 violations of CCC 16.13.030 are people arrested for having knives and/or drug paraphernalia  
6 (CC 6173) (CC 6497), those previously warned/cited under CCC 16.13.030 (CC 6197), those  
7 with outstanding bench warrants (CC 6201) (CC 6257) (CC 6409) (CC 6441), those who had  
8 multiple warnings about CCC 16.13.030 and multiple failures to appear in Court (CC 6205-  
9 CC 6206) (CC6210) (CC 6248) (CC 6253) (CC 6267) (CC 6272) (CC 6277) (CC 6290) (CC  
10 6296) (CC 6301) (CC 6306) (CC 6315) (CC 6319) (CC 6327) (CC 6384) (CC 6395) (CC  
11 6405) (CC 6418) (CC 6426) (CC 6431) (CC 6447) (CC 6453) (CC 6487), those carrying a  
12 deadly weapon and sleeping in ADA infrastructure (CC 6224), violating court orders  
13 prohibiting their presence in the Resort Corridor/in possession of stolen property (CC 6242)  
14 (CC 6282) (CC 6539), engaging in unlawful and unlicensed commercial activity (CC 6260),  
15 sleeping with several large suitcases in the elevator and resisting a person stop (CC 6255) (CC  
16 6540), willfully refusing to move along (CC 6310), sleeping on the pedestrian bridge with  
17 previous warnings (CC 6331), willfully refusing to move along, failing to identify themselves  
18 during a person stop and engaging in racist/aggressive behavior (CC 6336), sleeping on the  
19 stairwell and refusing to move along upon being contacted (CC 6359), physically assaulting  
20 LVMPD officers when they attempted to engage in a person stop (CC 6365), sleeping on the  
21 sidewalk in front of pedestrian bridge elevators blocking ADA access (CC 6380) (CC 6500),  
22 a highly intoxicated man sleeping on the pedestrian bridge walkway who refused to move  
23 along and sleep elsewhere (CC 6384), failure to identify and/or move along (CC 6390),  
24 blocking the elevator with previous warnings (CC 6399), a harpist who returned to play on the  
25 pedestrian bridge after being cited under CCC 16.13.030 and was cited only because LVMPD  
26 could not properly accommodate his property (CC 6458), a California felon who had failed to  
27 register after moving to Nevada (CC 6468), smoking marijuana on the pedestrian bridge and  
28 becoming combative with LVMPD officers (CC 6506), a convicted sex offender who refused

1 to identify himself during a person stop (CC 6510) (CC 6535), etc. Only a handful of these  
2 individuals were engaging in anything remotely related to expressive conduct—a couple of  
3 panhandlers and musicians who had been previously warned—while the vast majority had no  
4 relation whatsoever to First Amendment activity.

5 Accordingly, it’s clear that neither CCC 16.13.030, as a criminal ordinance which  
6 requires objective evidence of the *mens rea* to “cease to move on” along the pedestrian bridges  
7 before a citation may be issued, nor the demonstrated enforcement of the ordinance by  
8 LVMPD are discriminatory or disproportionately impact those engaged in First Amendment  
9 activities.

10 Accordingly, the Court must find that Plaintiffs’ constitutional vagueness claims fail as  
11 a matter of law based both on the statutory interpretation of the language itself which is clear  
12 and unambiguous and the demonstrated record of enforcement which primarily targets those  
13 disorderly behaviors identified in the legislative history prior to the enactment of CCC  
14 16.13.030.

15 **II.**

16 **CONCLUSION**

17 Based on the foregoing, Defendant Clark County humbly requests that the Court grant  
18 its Motion for Summary Judgment on Plaintiffs First Amendment and Due Process challenges  
19 to the constitutionality of CCC 16.13.030 and their state law constitutional equivalents.

20 DATED this 2nd day of April, 2026.

21 STEVEN B. WOLFSON  
22 DISTRICT ATTORNEY

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**CERTIFICATE OF ELECTRONIC SERVICE**

I hereby certify that I am an employee of the Office of the Clark County District Attorney and that on this 2nd day of April, 2026, I served a true and correct copy of the foregoing **DEFENDANT CLARK COUNTY’S REPLY TO PLAINTIFF’S RESPONSE [132]/[149] TO ITS MOTION FOR SUMMARY JUDGMENT [103]** (United States District Court Pacer System or the Eighth Judicial District Wiznet), by e-mailing the same to the following recipients. Service of the foregoing document by e-mail is in place of service via the United States Postal Service.

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