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7
8 **JUSTICE COURT**
9 **LAS VEGAS, NEVADA**

10 STATE OF NEVADA,
11 Plaintiff,
12 v.
13 JORDAN POLOVINA,
14 Defendant

Case Number: 25-CR-054145

Department: 03

**Reply in Support of Motion to
Dismiss for Selective Prosecution**

15 Defendant Jordan Polovina files this Reply in Support of his Motion to Dismiss for
16 Selective Prosecution. This Reply is supported by the following Memorandum of Points and
17 Authorities and any attached exhibits. Pursuant to NRS 239B.030 the undersigned affirms that the
18 proceeding document does not contain the social security number of any person.

19 Dated: December 18, 2025.

20 **American Civil Liberties**
21 **Union of Nevada**

22 

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1 **Memorandum of Points and Authorities**

2 Mr. Polovina offers these relevant facts and arguments to support his Motion to Dismiss
3 and respond to the State’s opposition.

4 **I. Additional Relevant Facts**

5 As seen on body worn camera, when Officers Bettencourt and Nye initially approached
6 Mr. Polovina, they had to walk around a group of three women who were stopped and taking
7 photographs on the pedestrian bridge to avoid running into them. *See* Defendant’s Motion to
8 Dismiss for Selective Prosecution, Exhibit A (“BWC of Officer A”) at 0:00:40 – 0:00:55. These
9 women blocked over half of the pedestrian bridge, and those passing by were required to walk
10 through a narrow opening to get by. *Id.* The three women had even placed their bag on the ground
11 in the middle of the bridge. *Id.* The officers did not warn these women that they were violating
12 CCC 16.13.030 or address them at all, instead they continued directly to Mr. Polovina to issue him
13 a citation. *Id.* at 0:00:32 – 0:06:25.

14 As seen on the video, Mr. Polovina was positioned on the pedestrian bridge along the North
15 wall. Although he was in the middle of the length of the bridge, he was closely tucked against the
16 North wall and he took up less space than other individuals who had stopped to take photographs,
17 take in the view, or have discussions. *Id.* at 0:00:50 – 0:01:20. At no point after the officers
18 approached Mr. Polovina did they ask him to move to a “less obstructive” area. At no point could
19 Mr. Polovina be seen obstructing anyone on the pedestrian bridge. At no point did the officers
20 mention obstruction to Mr. Polovina. Instead, one officer just stated that “bridges are like
21 crosswalks” and that “you can’t be on the bridges” and the officer directed Mr. Polovina to perform
22 on the surface level sidewalks instead. *Id.* at 0:01:25; 0:03:05. In the background of that
23 conversation were more pedestrians who had to walk around the three women taking pictures who
24 took up over half of the width of the walkway. *Id.* at 0:03:25.

1 Of the 46 other people stopped and standing on the pedestrian bridges the officers failed to
2 warn or cite anyone other than Mr. Polovina for violating CCC 16.13.030 despite one of the
3 officers verbally acknowledging that the three women taking photographs, who the officers had to
4 walk past to reach Polovina, had also violated the ordinance. *Id.* at 0:04:55. In fact, when someone
5 tried to give Mr. Polovina a monetary tip while walking by, the officer threatened to charge the
6 person for “obstruction” then advised that the person wait to tip Mr. Polovina until after the
7 officers’ finished citing him. *Id.* at 0:10:45. To reiterate, the officer instructed someone looking to
8 tip Mr. Polovina to stop on the pedestrian bridge and wait so that the officers could finish citing
9 Mr. Polovina for stopping on the pedestrian bridge before the person could tip Mr. Polovina.

10 **II. Argument**

11 The charge against Mr. Polovina is a textbook example of selective prosecution. The
12 State’s opposition confirms rather than refutes this and the State’s attempts to justify the actions
13 of the officers who charged Mr. Polovina by inventing an exception to CCC 16.13.030 only further
14 establishes that Mr. Polovina’s citation was the result of selective prosecution.

15 **A. The State misinterprets CCC 16.13.030 and misapplies the relevant precedent related** 16 **to selective prosecution to the LVMPD officers’ actions in this matter.**

17 Little to no relevant facts are in dispute. The State does not deny that there were at least 46
18 individuals other than Mr. Polovina who had stopped on the pedestrian bridge while the officers
19 wrote Mr. Polovina a citation. The State also does not deny that the officer chose not to cite those
20 individuals and none of those individuals received a citation for stopping on the pedestrian bridge
21 at that time.

22 Instead, in its Opposition the State attempts to justify the officers’ actions by claiming that
23 the other individuals who stopped on the pedestrian bridge to take photographs and take in the
24 view were not actually violating CCC 16.13.030. The State claims that because LVMPD trains its

1 officers not to enforce these violations and because these actions do not impede the flow of
2 pedestrians or cause disorder they do not violate CCC 16.13.030. The State’s claim is inaccurate
3 as it ignores the plain text of CCC 16.13.030 as well as the County’s admissions on the record,
4 misinterprets the guidance LVMPD gives to its officers, misconstrues guidance and training from
5 LVMPD as the law, and ignores the facts of what occurred as Mr. Polovina was being cited.

6 **1. The plain text of CCC 16.13.030 as well as the County’s admissions on the record**
7 **confirm that the County’s official interpretation considers stopping and standing**
8 **to take a photograph or take in the view violates CCC 16.13.030.**

9 The plain text of CCC 16.13.030 states that it is unlawful to “stop or stand” on the
10 pedestrian bridges. The only exception is for persons who “stop or stand while waiting for access
11 to an elevator or escalator for purposes of entering or exiting a pedestrian flow zone.” There is no
12 exception within the statute for individuals taking photographs. Similarly, there is no exception
13 for individuals stopping to take in the view. This is confirmed in a deposition where the deponent
14 was an attorney for Clark County who was answering questions officially on behalf of Clark
15 County.¹ See Defendant’s Motion to Dismiss for Selective Prosecution, Exhibit C (“Clark County
16 Deposition”). The deponent, who for all purposes was Clark County itself, admitted that there was
17 no exception to CCC 16.13.030 for stopping to take photographs or take in the view. Clark County
18 Deposition at 109:8-15.

19 To the extent that the State relies on LVMPD’s policies or trainings to determine what
20 conduct is criminalized by CCC 16.13.030, the State errs. LVMPD is a separate entity from the
21 County, who passed the law, and the police department’s interpretation of CCC 16.13.030 is
22 irrelevant to determine the actual scope of CCC 16.13.030. Simply put, LVMPD does not make

23 ¹ Pursuant to Federal Rules of Civil Procedure 30(b)(6), governmental entities may be required
24 to provide deposition testimony by designating a representative to speak on behalf of the agency
in the deposition. In Mr. Polovina’s civil case, both Clark County and LVMPD provided
testimony pursuant to FRCP 30(b)(6).

1 the law and therefore LVMPD’s interpretation of the law does not modify the plain text of the law.
2 But even if it could, the State’s interpretation of the guidance issued by LVMPD is inaccurate.

3
4 **2. LVMPD’s guidance to its officers regarding enforcement of CCC 16.13.030 does not align with the State’s Opposition.**

5 The States opposition claims that LVMPD does not enforce CCC 16.13.030 “against
6 individuals stopping to take photos on the bridge because it is not directly related to what is causing
7 the disorder on the pedestrian bridge.” Opposition at 3:22-24. This statement not only misconstrues
8 the deposition of LVMPD, but it also treats an admission by LVMPD that they enforce CCC
9 16.13.030 selectively as a modification of the ordinance itself.

10 The deposition of the official LVMPD representative reveals that LVMPD has made a
11 policy decision to exempt “incidental viewing purposes” from enforcement. Opposition at 4; *see*
12 Defendant’s Motion to Dismiss for Selective Prosecution, Exhibit D (“LVMPD Deposition”) at
13 35-39, 47. Notably the determination that a stop is incidental is not related to whether the stop
14 actually “impedes the flow of traffic or leads to people congregating” or creates “disorder” as the
15 State implies. Instead, LVMPD has trained and instructed its officers to exempt entire classes of
16 activities from enforcement, regardless of how long the individual activity takes or how disruptive
17 the individual activity is. LVMPD Deposition at 35:21-25, 37:16-19, 50:11-13, 50:23-51:5, 55:2-
18 7. This categorical exemption is not based on objective criteria such as duration of the stop, actual
19 impediment to flow or if it can somehow be calculated objectively “disorder”, but rather on the
20 category of the activity itself. Photography and “viewing” are categorically exempt. Street
21 performing is categorically enforced. This is an admission from LVMPD that they have created
22 exemptions to CCC 16.13.030 based solely on the activity itself, not on the effect the activity has
23 on the flow and disorder of the bridge.

1 In fact, when asked whether stopping to take a picture is exempt from enforcement the
2 LVMPD deponent answered “Yes” and explained that LVMPD interprets the ordinance to exempt
3 taking photographs in all cases. LVMPD Deposition at 39-40. But when asked about First
4 Amendment activity such as street performing, the LVMPD deponent testified that officers are
5 trained to direct such individuals “to go to other sidewalks where 16.13.030 is not in effect.”
6 LVMPD Deposition at 74-75. The State cannot use the fact that LVMPD created an enforcement
7 policy that exempts non-expressive stopping while selectively targeting expressive stopping,
8 despite the ordinance containing no such distinction to justify the selective enforcement of CCC
9 16.13.030 against Mr. Polovina. In fact, this enforcement policy only confirms that LVMPD trains
10 all officers to selectively enforce CCC 16.13.030.

11 **3. The evidence of Mr. Polovina’s stop shows that he was not cited for impeding the**
12 **flow of pedestrian traffic or causing disorder and was instead cited for engaging**
13 **in protected activity.**

14 The Body Worn Camera footage confirms that the officers did not cite Polovina for
15 interfering with pedestrian movement or causing disorder. The footage shows that Polovina was
16 not standing in front of anyone as the officers approached and was instead tucked along the North
17 wall of a pedestrian bridge. BWC of Officer A at 0:00:50 – 0:01:20. The footage also shows groups
18 of others who interfered with pedestrian movement who were not cited such as six people who
19 stopped to have a conversation directly behind the officers, a family of four who stopped to
20 reorganize bags and take pictures for over two minutes, and multiple individuals who stopped for
21 extended periods to take photographs while positioned in the center of the walkway. BWC of
22 Officer A at 00:01:31 – 00:02:13, 0:06:59 – 0:09:25, and 0:00:32 - 0:00:56; *see also* Defendant’s
23 Motion to Dismiss at 2-3. These groups objectively created more of an obstruction to pedestrian
24 flow and disorder than a single individual who was standing against the wall playing an instrument
did. Yet the officers ignored these groups and cited Mr. Polovina. This demonstrates that the

1 enforcement decision was not actually based on “impeding flow,” but rather on the claim that Mr.
2 Polovina’s played an instrument on the pedestrian bridge.

3 The BWC footage also shows that Mr. Polovina pointed out to one of the officers that three
4 individuals nearby had stopped to take photographs. BWC of Officer A at 0:04:59. Mr. Polovina
5 even asked the officer whether the three photographers had also violated the law and the officer
6 responds that “technically” they violated the law but took no action against them. *Id.* This exchange
7 captures the discriminatory enforcement in its purest form: the officer admitted that the
8 photographers were violating the ordinance but exercised his discretion not to cite them, while
9 simultaneously he cited Mr. Polovina for the same conduct other than the fact that Mr. Polovina
10 had played an instrument.

11 The citation Polovina received confirms that Polovina was cited because he was
12 performing an instrument on the pedestrian bridge, not for interfering with pedestrian movement.
13 Despite the States assertions in its Opposition that Mr. Polovina was stopped because he
14 “interfered with pedestrian movement,” or caused “disorder”, Opposition at 3 and 6, the officers
15 who cited Defendant never claimed that Mr. Polovina interfered with pedestrian movement or
16 created any disorder. Instead, the officers only claimed that “Subject did stop and play instrument
17 in the middle (along North wall) of a pedestrian bridge (with signs posted) in the resort corridor of
18 Clark County, Nevada.” *See* Defendant’s Motion to Dismiss for Selective Prosecution, Exhibit B
19 (“Polovina Criminal Complaint”). The citation does not allege that Mr. Polovina impeded traffic,
20 blocked pedestrians, caused congestion, or mention the word “disorder.” Instead, the citation
21 specifically notes that Mr. Polovina had played an “instrument.” Polovina Criminal Complaint.
22 This detail is telling since the officers found it important enough to include in the citation that Mr.
23 Polovina was engaged in expressive activity, demonstrating that the expressive nature of his
24 conduct was central to their decision to enforce.

1 **B. Mr. Polovina was selectively prosecuted for street performing, an activity protected**
2 **by the First Amendment**

3 To prove a selective prosecution claim, a defendant must prove discriminatory effect and
4 discriminatory purpose. *Wayte v. United States*, 470 U.S. 598, 608, 105 S. Ct. 1524, 1531 (1985);
5 *United States v. Armstrong*, 517 U.S. 456, 465, 116 S. Ct. 1480, 1486 (1996).

6 The State does not deny that 46 people stopped on the pedestrian bridge, violating CCC
7 16.13.030, but only Mr. Polovina was cited. The State does not dispute that LVMPD exempts
8 conduct, such as taking photographs, which violates the plain text of CCC 16.13.030 but enforces
9 the statute against expressive activity such as performing an instrument. The State does not dispute
10 that Mr. Polovina was charged with violating CCC 16.13.030 because he was playing an
11 instrument. The State does not dispute that Mr. Polovina would not have received a citation if he
12 had been taking photographs or stopping for no other reason than to look out over the Strip. *See*
13 *Opposition* at 5:4-10. These undisputed facts, along with the deposition testimony revealing
14 LVMPD’s discriminatory enforcement policy, establish both prongs of the selective prosecution
15 test under *Wayte v. United States*, 470 U.S. 598 (1985) and *United States v. Armstrong*, 517 U.S.
16 456 (1996).

17 **1. The State’s opposition confirms discriminatory effect.**

18 To establish discriminatory effect, a defendant must show that “others *similarly situated*
19 generally have not been prosecuted for conduct similar to that for which the defendant was
20 prosecuted.” *United States v. Sutcliffe*, 505 F.3d 944, 954 (9th Cir. 2007) (emphasis added). The
21 “similarly situated” inquiry examines whether individuals committed the same legal violation, not
22 whether they had different motivations or engaged in different ancillary activities while
23 committing that violation. *See United States v. Armstrong*, 517 U.S. 456, 465 (1996) (requiring
24 showing that “similarly situated individuals of a different race were not prosecuted”); *United States*

1 v. *Banuelos-Rodriguez*, 215 F.3d 969, 973 (9th Cir. 2000) (individuals are similarly situated when
2 they have committed “the same or similar illegal conduct”).

3 The point of the “similarly situated” analysis is to “isolate the factor allegedly subject to
4 impermissible discrimination.” *United States v. Aguilar*, 883 F.2d 662, 706 (9th Cir. 1989),
5 superseded on other grounds by statute, Immigration Reform and Control Act of 1986, Pub. L. No.
6 99-603, 100 Stat. 3359, as recognized in *United States v. Gonzalez-Torres*, 309 F.3d 594 (9th Cir.
7 2002). To isolate the factor subject to impermissible discrimination, a court must compare the
8 actions of all individuals alleged to be similarly situated and determine the factors which make the
9 defendant different from the other similarly situated individuals. *Id.* If the factor isolated is a
10 protected right or activity, then the prosecution has a discriminatory effect. *See United States v.*
11 *Steele*, 461 F.2d 1148, 1151 (9th Cir. 1972) (finding discriminatory effect where enforcement
12 focused on those exercising First Amendment rights).

13 Here, all 46 other individuals who stopped and stood on the pedestrian bridge violated CCC
14 16.13.030.² Each of these individuals committed the same basic offense that Mr. Polovina is
15 alleged to have committed and are therefore “similarly situated.”

16 Comparing Mr. Polovina’s actions to the 46 individuals who stopped on the pedestrian
17 bridge the only difference which distinguishes Mr. Polovina is the fact that Mr. Polovina was
18 stopped in order to play the cello as a street performer. The State acknowledges this difference in
19 its Opposition, stating that the difference between Mr. Polovina and the other individuals is that
20 the others “were not playing instruments.” Opposition at 6:25-28. Therefore, engaging as a street
21 performer is not a requirement to establish other similarly situated individuals as the State suggests,
22 instead it is the factor isolating Mr. Polovina from the 46 others who stopped. Since street
23 performing is a protected First Amendment activity, there is discriminatory effect here. *See Berger*

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² The State argues that stopping and standing is not prohibited when taking a photograph or taking in the view,
however this claim is disputed in Section A above.

1 v. *City of Seattle*, 569 F.3d 1029, 1035-36 (9th Cir. 2009) (holding that street performing is
2 protected expressive conduct); See *United States v. Steele*, 461 F.2d 1148, 1151 (9th Cir. 1972)
3 (finding discriminatory effect where enforcement focused on those exercising First Amendment
4 rights).

5 **2. The State’s opposition confirms discriminatory purpose.**

6 Discriminatory purpose can be satisfied by proof that a defendant was charged or
7 prosecuted because of his protected activities. See *Wayte v. United States*, 470 U.S. 598, 610, 105
8 S. Ct. 1524, 1532 (1985) (dismissing a claim of selective prosecution because the Defendant did
9 not show that they were prosecuted because of their protest activities).³ It can also be satisfied by
10 a showing that a “public administrator chose a particular course of action, at least in part, because
11 of its adverse effects upon a particular group.” *Salaiscooper v. Eighth Judicial Dist. Court*, 117
12 Nev. 892, 903, 34 P.3d 509, 517 (2001). In this case, the State confirms both that Polovina was
13 charged because he engaged in protected activity and that a public administrator chose to enforce
14 CCC 16.13.030 in a manner which targets protected First Amendment activities and exempts other
15 activities.

16 The State, in its opposition, admits that Mr. Polovina “was stopped because he was in the
17 middle of bridge playing his cello.” Opposition at 5:6-7. This statement alone confirms
18 discriminatory purpose.

19 The actions of the officers who cited Mr. Polovina further confirm that Mr. Polovina was
20 cited for a discriminatory purpose. The officers ignored 46 other individuals who had stopped and
21 the officers specifically targeted Mr. Polovina. In fact, the officers walked around a group stopped
22 to take photographs in order to reach Mr. Polovina. BWC of Officer A at 0:00:40 – 0:00:55. The
23 citation written by the officers only further confirms this, as the officers claimed that “subject did

24 _____
³ Despite the State’s claim otherwise, discriminatory purpose does not require showing that officers “disagreed”
with or sought to “suppress” a particular message. See Opposition at 5.

1 stop and play instrument in the middle (along North wall) of a pedestrian bridge (with signs posted)
2 in the resort corridor of Clark County, Nevada.” Polovina Criminal Complaint. The citation
3 specifically notes that Mr. Polovina was playing an “instrument.” Polovina Criminal Complaint.
4 This detail is telling since the officers found it important enough to include in the citation that Mr.
5 Polovina was engaged in expressive activity, demonstrating that the expressive nature of his
6 conduct was central to their decision to enforce.

7 LVMPD’s training and enforcement policy also establishes that street performers like Mr.
8 Polovina are intentionally targeted. As outlined above in Section A, LVMPD has created an
9 enforcement policy that targets protected First Amendment activities but categorically exempts
10 activities like taking photographs and viewing the strip regardless of much disorder and disruption
11 taking the photograph takes or how little disorder and disruption the street performance creates.
12 This leads to enforcement like we see in Mr. Polovina’s case, where large groups of people getting
13 in the way of pedestrians and taking up a large portion of the bridges width in order to take
14 photographs will not be cited but a street performer engaging in protected First Amendment
15 activity tucked along a wall collecting tips will be cited.

16 In fact, the LVMPD deponent testified that LVMPD trains officers to target First
17 Amendment activity and direct those individuals engaged in First Amendment activity such as
18 street performing to “go to other sidewalks where 16.13.030 is not in effect.” LVMPD Deposition
19 at 74-75. This testimony confirms that LVMPD’s enforcement policy deliberately targets
20 expressive activity for enforcement while exempting non-expressive activity. LVMPD has made
21 the policy decision to use CCC 16.13.030 as a tool to remove street performers from the pedestrian
22 bridges while allowing tourists to stop freely for non-expressive purposes. This is discriminatory
23 purpose in its clearest form.

1 **C. The State errs in its reliance on *O'Brien* as a claim of selective prosecution is distinct**
2 **from a facial challenge under the First Amendment.**

3 In its opposition, the State devotes significant attention to arguing that CCC 16.13.030
4 satisfies the *O'Brien* test for content-neutral regulations of expressive conduct. Opposition at 3.
5 While Mr. Polovina may also have grounds for a facial challenge to CCC 16.13.030, *O'Brien* is
6 irrelevant to a selective prosecution defense.

7 Selective prosecution is prohibited by the Fifth and Fourteenth Amendment and is distinct
8 from a claim challenging the constitutional validity of a statute or charge under the First
9 Amendment. *Awabdy v. City of Adelanto*, 368 F.3d 1062, 1071 (9th Cir. 2004); *see* *Wayte v.*
10 *United States*, 470 U.S. 598, 610, 105 S. Ct. 1524, 1532 (1985) (treating a First Amendment
11 challenge and selective prosecution challenge separately). Although a defendant can challenge a
12 conviction under a theory of selective prosecution by showing that the government selectively
13 prosecuted the defendant for the exercise of First Amendment rights, this is still a selective
14 prosecution challenge and not a challenge under the First Amendment. *Wayte v. United States*, 470
15 U.S. 598, 604, 105 S. Ct. 1524, 1529 (1985). Therefore, the only First Amendment analysis
16 required is determining whether or not the Defendant has claimed that the prosecution was based
17 on an action protected by the First Amendment. *Id.* There is no need to determine whether the
18 statute is content-neutral as that has no bearing on a selective prosecution claim. Selective
19 prosecution claims are evaluated under equal protection standards from *Wayte* and *Armstrong*, not
20 under First Amendment standards from *O'Brien*.

21 The question, in this motion, is not whether CCC 16.13.030 could constitutionally be
22 applied to everyone who stops on a pedestrian bridge. The question is whether the officers that
23 cited Mr. Polovina selectively enforced CCC 16.13.030 against Mr. Polovina because he engaged
24 in an activity protected by the constitution. Based on the officers' conduct and statements and
LVMPD's policy on how to enforce CCC 16.13.030, that is clearly the case here.

1 **III. Conclusion**

2 Mr. Polovina was prosecuted for engaging in First Amendment-protected activity while 46
3 other individuals who violated the same ordinance at the same time and place were ignored because
4 they were engaged in non-expressive activity. This is selective prosecution in its most clear and
5 obvious form. If the Court finds that there exists some factual dispute, Mr. Polovina requests an
6 evidentiary hearing, otherwise Mr. Polovina requests that his Motion to Dismiss for Selective
7 Prosecution be granted.

8
9
10 Dated: December 18, 2025.

**American Civil Liberties
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1 **Certificate of Electronic Service**

2 I hereby certify that service of this Reply in Support of Motion to Dismiss for Selective
3 Prosecution was hereby served November 18, 2025, via electronic e-filing service and email
4 through:

- 5 • This Courts E-Filing Odyssey E-File and Serve
- 6 • Via email to:

7 STATE ATTORNEY’S OFFICE
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10 

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12 Jacob T. S. Valentine
13 An employee of
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15 **Union of Nevada**