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16 **UNITED STATES DISTRICT COURT**

17 **DISTRICT OF NEVADA**

19 LISA MCALLISTER, an individual; and
20 BRANDON SUMMERS, an individual,

21 Plaintiffs,

22 vs.

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

25 Defendant

Case No.: 2:24-cv-00334

COMPLAINT

26 Plaintiffs, LISA MCALLISTER and BRANDON SUMMERS (collectively referred to as
27 “Plaintiffs”), hereby bring this verified Complaint. Plaintiffs are seeking an order declaring Section
28

1 16.13.030 of the Clark County Code (“CCC”) void in violation of the First and Fourteenth
2 Amendments of the United States Constitution, Article 1, Sections 8 and 9 of the Nevada
3 Constitution, and Title II of the Americans with Disabilities Act (“ADA”), 42 U.S.C. § 12131 *et*
4 *seq.*; injunctive relief to enjoin CCC 16.13.030; and costs and attorney’s fees.

6 **I. JURISDICTION AND VENUE**

7 1. This Court has jurisdiction pursuant to 28 U.S.C. § 1331 (federal question), 28
8 U.S.C. § 1343 (civil-rights violation), 28 U.S.C. § 2201 (declaratory relief), and 28 U.S.C. § 2202
9 (injunctive relief).

10 2. This Court also has jurisdiction pursuant to the First and Fourteenth Amendments
11 of the United States Constitution and 42 U.S.C. § 1983 (deprivation of rights).

12 3. Venue is proper pursuant to 28 U.S.C. § 1391(b) as the events giving rise to these
13 claims occurred in the District of Nevada, specifically in Clark County.

15 **II. PARTIES**

16 4. Plaintiff, BRANDON SUMMERS, is, and at all relevant times herein was, a
17 musician and street performer who resides in Clark County, Nevada.

18 5. Plaintiff, LISA MCALLISTER, is, and at all relevant times herein was, a person
19 that is disabled who resides in Clark County, Nevada.

20 6. Defendant, CLARK COUNTY, is a political subdivision of the state of Nevada,
21 organized under the Clark County Code, created by and operating under the laws of the State of
22 Nevada and, pursuant to Nev. Rev. Stat. 12.105, may be served with process herein by service
23 upon the Clark County Clerk, located at 500 S. Grand Central Parkway, 1st Floor, Las Vegas, NV
24 89155.

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1 **III. STANDING**

2 **A. Brandon Summers**

3 7. “To satisfy Article III standing, a plaintiff must show: (1) an injury in fact that is
4 concrete and particularized and actual or imminent, not conjectural or hypothetical; (2) a causal
5 connection between the injury and the challenged action of the defendant; and (3) that it is likely,
6 as opposed to merely speculative, that the injury will be redressed by a favorable decision.”
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8 *Jackson v. City & County of San Francisco*, 746 F.3d 953, 967 (9th Cir. 2014) (cleaned up).

9 8. Mr. Summers is a violinist that has engaged in street performance on the Las Vegas
10 Strip since 2009. *See* Declaration of Brandon Summers, attached hereto as EXHIBIT 2, ¶¶ 4–5.

11 9. Mr. Summers has engaged in street performance on the pedestrian bridges on the
12 Las Vegas Strip since 2011. Ex. 2, ¶ 7.

13 10. Mr. Summers typically performs on three pedestrian bridges located within the
14 resort corridor between Bally’s and The Cromwell, between MGM Grand and The Tropicana, and
15 between Fashion Show Mall and the Wynn.
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17 11. Performances by street performers are protected activities under the First
18 Amendment. *Santopietro v. Howell*, 73 F.4th 1016, 1023 (9th Cir. 2023).

19 12. Mr. Summers has established an injury in fact because Mr. Summers has an interest
20 in engaging in protected First Amendment activity on the pedestrian bridges and but for CCC
21 16.13.030 he would do so. *Teter v. Lopez*, 76 F.4th 938, 943–44 (9th Cir. 2023).
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23 13. Mr. Summers has established a causal connection between his injury and
24 Defendant’s actions as he is at risk of prosecution under CCC 16.13.030 by engaging in his regular
25 practice of performing on pedestrian bridges.
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1 14. A favorable decision will redress Mr. Summer’s injury by eliminating his risk of
2 prosecution under CCC 16.13.030.

3 **B. Lisa McAllister**

4 15. “In the ADA context, a plaintiff may establish injury in fact to pursue injunctive
5 relief through evidence that the plaintiff encountered an access barrier and either intends to return
6 or is deterred from returning to the facility.” *Kirola v. City & Cnty. of San Francisco*, 860 F.3d
7 1164, 1174 (9th Cir. 2017).

8 16. Ms. McAllister is disabled due to a spinal injury and uses a manual wheelchair to
9 travel. *See* Declaration of Lisa McAllister, attached hereto as EXHIBIT 1, ¶ 4–5.

10 17. Ms. McAllister has used the pedestrian bridges on the Las Vegas Strip to travel
11 through the resort corridor in her wheelchair. Ex. 1, ¶ 6.

12 18. Ms. McAllister has needed to stop in public areas because her wheelchair
13 malfunctioned. Ex. 1, ¶ 7.

14 19. Ms. McAllister has needed to stop in public areas to rest when her arms are tired.
15 Ex. 1, ¶ 8.

16 20. Ms. McAllister has needed to stop in crowded public areas due to limited visibility
17 in order to determine where there is space for her to travel in her wheelchair. Ex. 1, ¶ 9.

18 21. Ms. McAllister has established injury in fact because the risk of criminal penalties
19 under CCC 16.13.030 is a barrier to Ms. McAllister accessing the pedestrian bridges and she is
20 deterred from returning to the area.

21 22. Ms. McAllister has established a causal connection between her injury and
22 Defendant’s actions as she is at risk of prosecution under CCC 16.13.030 for stopping on a
23 pedestrian bridge due to her disability.
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1 23. A favorable decision will redress Ms. McAllister’s injury by eliminating her risk of
2 prosecution under CCC 16.13.030.

3 **C. Overbreadth Doctrine**

4 24. Plaintiffs have standing to challenge CCC 16.13.030 under the overbreadth doctrine
5 of the First Amendment.

6 25. “[A] law may be invalidated under the First Amendment overbreadth doctrine if ‘a
7 substantial number of its applications are unconstitutional, judged in relation to the statute’s plainly
8 legitimate sweep.’” *Arce v. Douglas*, 793 F.3d 968, 984 (9th Cir. 2015) (quoting *United States v.*
9 *Stevens*, 559 U.S. 460, 473, 130 S. Ct. 1577, 176 L. Ed. 2d 435 (2010)).

10 26. “The doctrine exists out of concern that the threat of enforcement of an overbroad
11 law may chill constitutionally protected speech.” *Id.*

12 27. “Under the First Amendment overbreadth doctrine, ‘[l]itigants . . . are permitted to
13 challenge a statute not because their own rights of free expression are violated, but because of a
14 judicial prediction or assumption that the statute’s very existence may cause others not before the
15 court to refrain from constitutionally protected speech or expression.’” *Kashem v. Barr*, 941 F.3d
16 358, 375 n.9 (9th Cir. 2019) (quoting *Broadrick v. Oklahoma*, 413 U.S. 601, 612, 93 S. Ct. 2908,
17 37 L. Ed. 2d 830 (1973)).

18 **IV. STATEMENT OF FACTS**

19 **The Ordinance at Issue**

20 28. CCC 16.13.030 provides that “it is unlawful for any person to (1) stop or stand
21 within any Pedestrian Flow Zone, or (2) engage in any activity while within a Pedestrian Flow
22 Zone with the intent of causing another person who is within a Pedestrian Flow Zone to stop or
23 stand.” CCC 16.13.030.

1 29. The pedestrian flow zones encompass pedestrian bridges and up to 20 feet
2 surrounding a touchdown structure, which includes the escalators, elevators, and stairs leading to
3 the pedestrian bridges. CCC 16.13.020.

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5 30. The pedestrian bridges are described as “part of the sidewalk system of the Las
6 Vegas Strip and were created for the purpose of separating pedestrian traffic from vehicular traffic
7 to facilitate pedestrians crossing in those locations.” CCC 16.13.010.

8 31. “Pedestrians are prohibited from crossing at grade level where pedestrian bridges
9 are located.” CCC 16.13.010.

10 32. CCC 16.13.030 includes one exception for people that “stop or stand while waiting
11 for access to an elevator or escalator for purposes of entering or exiting a Pedestrian Flow Zone.”
12 CCC 16.13.030.

13 33. Any person in violation of CCC 16.13.030 is guilty of a misdemeanor. CCC
14 16.13.050.

15 34. The Clark County Commission enacted CCC 16.13.030 at the January 2, 2024,
16 Clark County Commission meeting.¹

17 35. On January 2, 2024, Lisa Logsdon served as County Counsel for Clark County.²

18 36. During the Clark County Commission meeting where CCC 16.13.030 was enacted,
19 Ms. Logsdon in her capacity as Counsel for Clark County said “when [people] are engaging in
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26 ¹ Clark County, *Clark County Board of Commissioners on 2024-01-02 9:00 AM*, Granicus, at 1:37:01 (Jan. 2, 2024),
https://clark.granicus.com/player/clip/7626?view_id=28&meta_id=1560080&redirect=true&h=5b266a8fbbb1c483d61adbf851c5457f.

27 ² *Lisa Logsdon*, Clark Cnty., Nev.,
28 https://www.clarkcountynv.gov/government/departments/district_attorney/divisions/civil/lisa_logsdon.php (last
visited Feb. 9, 2024).

1 activity within the pedestrian flow zone, they have to be intending to cause another person to stop
2 within the pedestrian flow zone. So, if there is picketing or different activity going on at the street
3 level and somebody stops on the bridge, that is not covered by the ordinance.”³

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5 37. During the Clark County Commission meeting where CCC 16.13.030 was enacted,
6 Ms. Logsdon in her capacity as Counsel for Clark County said that the pedestrian bridges were
7 made “for incidental and brief views of the Las Vegas Strip.”⁴

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9 38. During the Clark County Commission meeting where CCC 16.13.030 was enacted,
10 Ms. Logsdon in her capacity as Counsel for Clark County said “as the ordinance is content neutral,
11 it doesn’t have any impact [on street performing] so [street performers] can still do all of their
12 street performing things down on the street level or if they’re continuing to walk while they do any
13 First Amendment activity.”⁵

14 39. On January 2, 2024, William McCurdy was a Clark County commissioner.⁶

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16 40. During the Clark County Commission meeting where CCC 16.13.030 was enacted,
17 Commissioner McCurdy in his capacity as commissioner said “if there is, for example, a street
18 performer performing and there's a show girl, I expect for both to have the same type of interaction
19 with law enforcement.”⁷

20 41. During the Clark County Commission meeting where CCC 16.13.030 was enacted,
21 Commissioner McCurdy in his capacity as commissioner said that Clark County and law
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25 ³ Clark County, *supra* note 1, at 1:14:40.

26 ⁴ *Id.* at 1:04:12.

27 ⁵ *Id.* at ss.

28 ⁶ *About William McCurdy II*, Clark Cnty., Nev.,
https://www.clarkcountynv.gov/government/board_of_county_commissioners/district_d/biography.php (last visited
Feb. 9, 2024).

⁷ Clark County, *supra* note 1, at 1:30:02.

1 enforcement must “make sure we’re doing [enforcement of CCC 16.13.030] in a manner that’s
2 consistent with our board’s vision.”⁸

3 42. On January 2, 2024, James Gibson was a Clark County commissioner.⁹

4 43. During the Clark County Commission meeting where CCC 16.13.030 was enacted,
5 Commissioner Gibson in his capacity as commissioner said that Clark County “must trust that our
6 police department will be fair and equitable in the way they exercise their discretion” to enforce
7 CCC 16.13.030.¹⁰

8 44. The Clark County Commission unanimously voted in favor of CCC 16.13.030.¹¹

9 45. On January 2, 2024, Andrew Walsh was the Undersheriff at the Las Vegas
10 Metropolitan Police Department (“LVMPD”).¹²

11 46. During the Clark County Commission meeting where CCC 16.13.030 was enacted,
12 Undersheriff Walsh in his capacity as a LVMPD representative testified before the Clark County
13 Commission about CCC 16.13.030.

14 47. During the Clark County Commission meeting where CCC 16.13.030 was enacted,
15 Undersheriff Walsh in his capacity as a LVMPD representative said that “officers will issue a
16 warning and ask folks to move along, and if they refuse officers will have the ability based on this
17 law to issue a citation or make an arrest.”¹³

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24 ⁸ *Id.* at 1:31:59.

25 ⁹ *About Commissioner Gibson*, Clark Cnty., Nev.,
26 https://www.clarkcountynv.gov/government/board_of_county_commissioners/district_g/biography.php (last visited
27 Feb. 9, 2024).

28 ¹⁰ Clark County, *supra* note 1, at 1:35:58.

¹¹ *Id.* at 1:37:01.

¹² *Undersheriff Andrew Walsh*, Las Vegas Metro. Police Dep’t, <https://www.lvmpd.com/about/office-of-the-sheriff/undersheriff-andrew-walsh> (last visited Feb. 9, 2024).

¹³ Clark County, *supra* note 1, at 1:11:12.

1 48. On January 2, 2024, Clark County had an official government account on the
2 platform “X” (formerly known as Twitter) named “Clark County Nevada.”¹⁴

3 49. On January 2, 2024, after enacting CCC 16.13.030, Clark County posted a
4 statement on its official X account, reading in part: “[I]t is unlawful for any person to stop, stand,
5 or engage in an activity that causes another person to stop or stand within any Pedestrian Flow
6 Zone. This is not interpreted to mean that tourists and locals cannot take photos along the
7 Boulevard while on a pedestrian bridge[.]”¹⁵

8 50. On January 17, 2024, Kevin McMahill was the Clark County Sheriff.¹⁶

9 51. On January 17, 2024, the Las Vegas Review-Journal published an article about the
10 enforcement of CCC 16.13.030 titled “Police won’t stop photos on Strip bridges under new law,
11 sheriff says.”¹⁷

12 52. In the January 17, 2024, Las Vegas Review-Journal article about the enforcement
13 of CCC 16.13.030, Sheriff McMahill was quoted saying: “Are we going to stop people for stopping
14 and taking a picture at all? Absolutely not. But those chronic individuals up there that are preying
15 on our tourists and our locals that are visiting the Strip (are) just not going to have a place to do it
16 anymore.”¹⁸

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25 ¹⁴ @ClarkCountyNV, X, <https://twitter.com/ClarkCountyNV> (last visited Feb. 9, 2024).

26 ¹⁵ @ClarkCountyNV, X (Jan. 2, 2024, 6:30 PM), <https://twitter.com/ClarkCountyNV/status/1742372938618425611>.

27 ¹⁶ *Sheriff Kevin McMahill*, Las Vegas Metro. Police Dep’t, <https://www.lvmpd.com/about/office-of-the-sheriff/sheriff-kevin-mcmahill> (last visited Feb. 9, 2024).

28 ¹⁷ Taylor R. Avery, *Police Won’t Stop Photos on Strip Bridges Under New Law, Sheriff Says*, Las Vegas Review-Journal (Jan. 17, 2024), <https://www.reviewjournal.com/local/the-strip/ban-on-stopping-on-strip-pedestrian-bridges-wont-be-enforced-for-weeks-2983573>.

¹⁸ *Id.*

1 **V. CAUSES OF ACTION**

2 **A. FIRST CAUSE OF ACTION: VIOLATION OF THE FOURTEENTH**
3 **AMENDMENT OF THE UNITED STATES CONSTITUTION**

4 53. Plaintiffs incorporate paragraphs 1 – 52 as though fully set forth herein.

5 54. The Fourteenth Amendment to the United States Constitution provides: “No State
6 shall . . . deprive any person of life, liberty, or property, without due process of law.” U.S. Const.
7 Amend. XIV.

8 55. Rather than trusting law enforcement to fairly enforce vague laws, the due process
9 clause protects against the arbitrary enforcement of laws.

10 56. “The fundamental rationale underlying the vagueness doctrine is that due process
11 requires a statute to give adequate notice of its scope.” *Botosan v. Paul McNally Realty*, 216 F.3d
12 827, 836 (9th Cir. 2000) (citing *Grayned v. City of Rockford*, 408 U.S. 104, 108 (1972)).
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14 57. “A statute is vague not when it prohibits conduct according ‘to an imprecise but
15 comprehensible normative standard, but rather in the sense that no standard of conduct is specified
16 at all.’” *Id.* (quoting *Coates v. City of Cincinnati*, 402 U.S. 611, 614, 29 L. Ed. 2d 214, 91 S. Ct.
17 1686 (1971)).
18

19 58. “[V]agueness concerns are more acute when a law implicates First Amendment
20 rights, and, therefore, vagueness scrutiny is more stringent.” *Butcher v. Knudson*, 38 F.4th 1163,
21 1169 (9th Cir. 2022) (citing *Cal. Teachers Ass’n v. State Bd. of Educ.*, 271 F.3d 1141, 1150 (9th
22 Cir. 2001)).
23

24 59. A criminal regulation is unconstitutionally vague if the regulation (1) “fails to
25 provide a person of ordinary intelligence fair notice of what is prohibited” or (2) is “so standardless
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1 that it authorizes or encourages seriously discriminatory enforcement.” *Id.* (quoting *FCC v. Fox*
2 *Television Stations, Inc.*, 567 U.S. 239, 254, 132 S. Ct. 2307, 183 L. Ed. 2d 234 (2012)).

3 60. If the regulation fails to satisfy either test, it is unconstitutional. *Id.*

4 61. “[C]onstitutional vagueness analysis does *not* treat statutory text as a closed
5 universe” meaning a court must consider legislative history, historical circumstances, related
6 statutory provisions, and terminology. *State v. Castaneda*, 126 Nev. 478, 483, 245 P.3d 550, 553
7 (Nev. 2010) (emphasis in original) (finding that courts may look to a word’s ordinary meaning or
8 a common law definition when conducting a vagueness analysis); *Heppner v. Alyeska Pipeline*
9 *Service Co.*, 665 F.2d 868, 870–71 (9th Cir. 1981) (finding that courts may look to a word’s plain
10 meaning, legislative history, and circumstances surrounding the passage of the law when
11 conducting a vagueness analysis); *People v. Superior Court (J.C. Penney Corp., Inc.)*, 246 Cal.
12 Rptr. 3d 128, 387–88 (Cal. Dist. Ct. App. 2019) (finding that courts may look to a word’s plain
13 meaning, related statutory provisions, legislative history, and wider historical circumstances
14 around the enactment of the law when conducting a vagueness analysis).

15 62. CCC 16.13.030 bans everyone from “stop[ping] or stand[ing] within any Pedestrian
16 Flow Zone.” CCC 16.13.030.

17 63. CCC 16.13.030 is vague for two reasons.

18 64. First, CCC 16.13.030 is vague because the term “stop or stand” does not provide a
19 person of ordinary intelligence fair notice of what conduct is prohibited.

20 65. “A fundamental principle in our legal system is that laws which regulate persons or
21 entities must give fair notice of conduct that is forbidden or required.” *Fox Television Stations,*
22 *Inc.*, 567 U.S. at 253.

1 66. People “should know what is required of them so they may act accordingly.”
2 *Butcher*, 38 F.4th at 1168 (citing *Fox Television Stations*, 567 U.S. at 253).

3 67. “The terms of a law cannot require ‘wholly subjective judgments without statutory
4 definitions, narrowing context, or settled legal meanings.’” *Tingley*, 47 F.4th at 1089 (quoting
5 *Holder v. Humanitarian L. Project*, 561 U.S. 1, 20, 130 S. Ct. 2705, 177 L. Ed. 2d 355 (2010)).
6

7 68. A person need only to “stop or stand” on a pedestrian bridge for the conduct to
8 violate CCC 16.13.030.

9 69. CCC 16.13.030 does not define “stop” or “stand.”

10 70. When a word has not been defined in the law, courts “consider its ‘ordinary,
11 dictionary meaning.’” *Finnigan v. United States*, 2 F.4th 793, 804 (9th Cir. 2021) (quoting *In re*
12 *Roman Cath. Archbishop of Portland in Or.*, 661 F.3d 417, 432 (9th Cir. 2011)).
13

14 71. Merriam-Webster defines “stop” as “to cease activity or operation.” Merriam-
15 Webster, *Stop*, <https://www.merriam-webster.com/dictionary/stop> (last visited Feb. 9, 2024).
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17 72. Merriam-Webster defines “stand” as “to support oneself on the feet in an erect
18 position.” Merriam-Webster, *Stand*, <https://www.merriam-webster.com/dictionary/stand> (last
19 visited Feb. 9, 2024).

20 73. On its face, CCC 16.13.030 only exempts people from the prohibition on “standing”
21 or “stopping” “if [a person] stop[s] or stand[s] while waiting for access to an elevator or escalator
22 for purposes of entering or exiting a Pedestrian Flow Zone.” CCC 16.13.030.
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24 74. However, Clark County and law enforcement officials have stated that CCC
25 16.13.030 does not apply under other circumstances where a person would be stopping or standing
26 on a pedestrian bridge.
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1 75. Clark County has represented that CCC 16.13.030 does not apply to people who
2 stop or stand if they are taking photographs.¹⁹

3 76. Clark County officials have represented that CCC 16.13.030 does not apply to
4 people who stop or stand if they are observing Las Vegas Boulevard.²⁰

5 77. Clark County officials have represented that CCC 16.13.030 does not apply to
6 people who stop or stand if they are waiting for picketers and other protests occurring at street
7 level.²¹

8 78. Clark County officials have represented that CCC 16.13.030 does not apply to
9 people who stop or stand if they are not intending to cause others to stop or stand on the pedestrian
10 bridge.²²

11 79. Because CCC 16.13.030 does not identify these circumstances as exceptions to its
12 prohibition on “standing” or “stopping”, these circumstances must not be included in the terms
13 “standing” and “stopping” under CCC 16.13.030, meaning that “standing” and “stopping” as used
14 in CCC 16.13.030 must not align with the common use of those terms.

15 80. As “standing” and “stopping” as used in CCC 16.13.030 does not align with the
16 common understanding of those terms and the terms are not defined by Clark County Code, people
17 do not have fair notice as to what constitutes criminal activity under CCC 16.13.030 in violation
18 of the United States and Nevada Constitutions.

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27 ¹⁹ @ClarkCountyNV, *supra* note 16.

²⁰ Clark County, *supra* note 1, at 1:04:12.

²¹ *Id.* at 1:14:48.

²² *Id.* at 1:14:40.

1 81. CCC 16.13.030 is also vague because it invites seriously discriminatory
2 enforcement.

3 82. “[L]aws must provide proper ‘precision and guidance’ to ensure that ‘those
4 enforcing the law do not act in an arbitrary or discriminatory way.’” *Butcher*, 38 F.4th at 1168
5 (quoting *Fox Television Stations*, 567 U.S. at 253).
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7 83. “A law is void for vagueness if it ‘lack[s] any ascertainable standard for inclusion
8 and exclusion.’” *Tingley*, 47 F.4th at 1090 (quoting *Kashem*, 941 F.3d at 374).

9 84. Vague laws concerning speech in particular “poses heightened risks of arbitrary
10 enforcement, inviting disparate treatment of less popular speakers or viewpoints.” *Butcher*, 38
11 F.4th at 1169 (citing *NAACP v. Button*, 371 U.S. 415, 435, 83 S. Ct. 328, 9 L. Ed. 2d 405 (1963)
12 (“[A] vague and broad statute lends itself to selective enforcement against unpopular causes.”)).
13

14 85. Vague laws must be invalidated to prevent standardless sweeps that would allow
15 law enforcement, prosecutors, and juries to pursue “personal predilections.” *Williams v. Skolnik*,
16 2008 U.S. Dist. LEXIS 98777, *10–*11 (D. Nev. Oct. 30, 2008) (quoting *Kolendar v. Lawson*,
17 461 U.S. 352, 358 (1983)).
18

19 86. Commissioner Gibson said that law enforcement officials may “exercise their
20 discretion” to enforce CCC 16.13.030.

21 87. As stated by LVMPD’s representative Undersheriff Walsh and Clark County
22 Sheriff McMahill, law enforcement officers will not enforce CCC 16.13.030 against all who stop
23 or stand on the pedestrian bridges.
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25 88. Sheriff McMahill has said law enforcement will allow people to stop or stand on
26 the pedestrian bridges if engaging in certain activities, such as taking photographs, but
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1 Commissioner McCurdy has said law enforcement will enforce CCC 16.13.030 against those
2 engaging in protected activities, such as street performing.

3 89. “Absent objective standards, government officials may use their discretion to
4 interpret the policy as a pretext for censorship.” *Hopper v. City of Pasco*, 241 F.3d 1067, 1077 (9th
5 Cir. 2001).

6
7 90. Clark County and law enforcement officials have stated that it will enforce CCC
8 16.13.030 in a discriminatory manner in violation of the United States and Nevada Constitutions.

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10 **B. SECOND CAUSE OF ACTION: VIOLATION OF ARTICLE 1, SECTION 8
OF THE NEVADA CONSTITUTION**

11 91. Plaintiffs incorporate paragraphs 1 – 90 as though fully set forth herein.

12 92. Article 1, Section 8(2) of the Nevada Constitution provides: “No person shall be
13 deprived of life, liberty, or property, without due process of law.” Nev. Const. art. 1, § 8(2).

14
15 93. Nevada’s due process clause is coextensive with the due process clause found in
16 the United States Constitution. *Hernandez v. Bennett-Haron*, 128 Nev. 580, 587, 287 P.3d 305,
17 310 (2012) (“[T]he similarities between the due process clauses contained in the United States and
18 Nevada Constitutions permit us to look to federal precedent for guidance.”).

19
20 94. This cause of action incorporates by reference all allegations and legal authority
21 from Paragraphs 53 through 90.

22 **C. THIRD CAUSE OF ACTION: VIOLATION OF THE FIRST AMENDMENT
23 OF THE UNITED STATES CONSTITUTION**

24 95. Plaintiffs incorporate paragraphs 1 – 94 as though fully set forth herein.

25 96. The First Amendment provides that “Congress shall make no law . . . abridging the
26 freedom of speech.” U.S. Const. amend I.

1 97. “While the First Amendment literally forbids the abridgment only of speech, the
2 Supreme Court has long recognized that its protection does not end at the spoken or written word.”
3 *United States v. Swisher*, 811 F.3d 299, 310 (9th Cir. 2016) (cleaned up) (citation and quotation
4 marks omitted).

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6 98. “Indeed, ‘we have never seriously questioned that the processes of writing words
7 down on paper, painting a picture, and playing an instrument are purely expressive activities
8 entitled to full First Amendment protection.’” *Project Veritas v. Schmidt*, 72 F.4th 1043, 1054 (9th
9 Cir. 2023) (quoting *Anderson v. City of Hermosa Beach*, 621 F.3d 1051, 1062 (9th Cir. 2010)).

10
11 99. CCC 16.13.030 impacts speech and expressive conduct on pedestrian bridges.

12 100. Clark County has admitted that activities protected by the First Amendment are
13 impacted by CCC 16.13.030.

14 101. “[P]ublic streets and sidewalks have been used for public assembly and debate, the
15 hallmarks of a traditional public forum.” *Frisby v. Schultz*, 487 U.S. 474, 480 (1988).

16
17 102. “The protections afforded by the First Amendment are nowhere stronger than in
18 streets and parks, both categorized for First Amendment purposes as traditional public fora.”
19 *Berger v. City of Seattle*, 569 F.3d 1029, 1035–36 (9th Cir. 2009) (citations omitted).

20 103. “Sidewalks, of course, are among those areas of public property that traditionally
21 have been held open to the public for expressive activities and are clearly within those areas of
22 public property that may be considered, generally without further inquiry, to be public forum
23 property.” *United States v. Grace*, 461 U.S. 171, 179 (1983).

24
25 104. “A thoroughfare sidewalk, seamlessly connected to public sidewalks at either end
26 and intended for general public use” is “a public sidewalk, and consequently, a traditional public
27 forum from which [private owners] have no right to exclude members of the public.” *Perez-*
28

1 *Morciglio v. Las Vegas Metro. Police Dep't*, 820 F. Supp. 2d 1100, 1111 (D. Nev. 2011) (citing
2 *Venetian Casino Resort, L.L.C. v. Loc. Joint Exec. Bd. of Las Vegas*, 45 F. Supp. 2d 1027, 1036
3 (D. Nev. 1999)).

4
5 105. “[T]he intent of a government to create a nonpublic forum has no direct bearing
6 upon traditional public forum status.” *Am C.L. Union of Nev. v. City of Las Vegas*, 333 F.3d 1092,
7 1104 (9th Cir. 2003).

8
9 106. “The sidewalks along the Las Vegas Strip dedicated to public use are public fora.”
10 *Santopietro*, 73 F.4th at 1024.

11
12 107. The pedestrian bridges are part of the public sidewalk system in the resort corridor.
CCC 16.13.010.

13
14 108. The government bears “an extraordinarily heavy burden” when it seeks to regulate
15 free speech in a traditional public forum. *Am. C.L. Union of Nev. v. City of Las Vegas*, 333 F.3d
16 1092, 1098 (9th Cir. 2003) (internal quotation marks omitted).

17
18 109. The First Amendment protects several activities in traditional public forums that
are prohibited by CCC 16.13.030.

19
20 110. Performances by street performers and show girls are protected activities under the
First Amendment. *Santopietro*, 73 F.4th at 1023.

21
22 111. Solicitation of tips is a protected activity under the First Amendment. *Id.*

23
24 112. Leafleting is a protected activity under the First Amendment. *Giebel*, 244 F.3d at
1189.

25
26 113. Clark County has banned stopping or standing to perform, solicit, or leaflet on the
pedestrian bridges.

1 114. Clark County has banned activities that receive the highest protections under the
2 First Amendment.

3 115. Commissioner McCurdy said that CCC 16.13.030 should be enforced equally
4 against street performers and show girls on the pedestrian bridges.
5

6 116. Sheriff McMahill said CCC 16.13.030 will not be enforced against tourists stopping
7 to take pictures on the pedestrian bridges.

8 117. Regulations that limit protected expressive activity but offer exemptions from
9 regulation based on who engages in the expressive activity violate the First Amendment. *Perry v.*
10 *Los Angeles Police Dep't*, 121 F.3d 1365, 1371–72 (9th Cir. 1997).
11

12 118. On its face, CCC 16.13.030 is content neutral because it impacts speech and
13 expressive conduct on the pedestrian bridges regardless of the content.

14 119. Content neutral restrictions on speech in traditional public forums are permissible
15 when it is a reasonable restriction of the time, place, and manner of speech. *Ward v. Rock Against*
16 *Racism*, 491 U.S. 781, 791 (1989).
17

18 120. The government may impose reasonable content neutral restrictions on the time,
19 place, and manner of protected speech in public forums when intermediate scrutiny is satisfied by
20 (1) serving a significant government interest, (2) being narrowly tailored, and (3) leaving open
21 ample alternative channels for communication. *Id.*; *Pac. Coast Horseshoeing Sch., Inc. v.*
22 *Kirchmeyer*, 961 F.3d 1062, 1068 (9th Cir. 2020).
23

24 121. All three factors must be satisfied to survive the analysis. *Ward*, 491 U.S. at 791.

25 122. CCC 16.13.030 does not serve a significant government interest.
26
27
28

1 123. “[The government] is not free to foreclose expressive activity in public areas on
2 mere speculation about danger.” *Bay Area Peace Navy v. United States*, 914 F.2d 1224, 1227 (9th
3 Cir. 1990).

4 124. The government cannot provide speculative or hypothetical concerns as a basis for
5 infringing upon rights. *Id.*; *Carachuri-Rosendo v. Holder*, 560 U.S. 563, 581 (2010) (rejecting the
6 government’s reasoning to deport a lawful resident as “hypothetical,” “misleading,” and
7 “speculative”); *Pub. Employees’ Ret. Sys. v. Reno Newspapers, Inc.*, 129 Nev. 833, 839 (2013)
8 (finding that the government may not withhold public records based on “hypothetical and
9 speculative” concerns); *Craven v. Univ. of Colo. Hosp. Auth.*, 260 F.3d 1218, 1227–28 (10th Cir.
10 2001) (reiterating that the government must “articulate specific concerns” and not “rely on purely
11 speculative allegations” when regulating an employee’s speech); *United States v. Lymon*, 2016
12 U.S. Dist. LEXIS 170816, *6–*7 (D.N.M. Dec. 9, 2016) (holding the government cannot delay
13 sentencing of a defendant by relying on a “remote possibility”).

14 125. If CCC 16.13.030 does serve a significant government interest, it is not narrowly
15 tailored to a legitimate significant government interest as it bans all “standing” or “stopping” on
16 the pedestrian bridges for any purpose other than to wait for the escalator or elevator.

17 126. Even if CCC 16.13.030 was narrowly tailored to serve a significant government
18 interest, it still does not leave open ample alternative channels for communication because the only
19 alternatives for people wanting to engage in protected activity is in less visible and more dangerous
20 areas of the resort corridor.

21 **D. FOURTH CAUSE OF ACTION: VIOLATION OF ARTICLE 1, SECTION 9**
22 **OF THE NEVADA CONSTITUTION**

23 127. Plaintiffs incorporate paragraphs 1 – 126 as though fully set forth herein.
24

1 128. Article 1, Section 9 of the Nevada Constitution provides: “Every citizen may freely
2 speak, write and publish his sentiments on all subjects being responsible for the abuse of that right;
3 and no law shall be passed to restrain or abridge the liberty of speech or of the press.” Nev. Const.
4 art. 1, § 9.
5

6 129. The protections offered by Article 1, Section 9 are “co-extensive to” those offered
7 by the First Amendment of the United States Constitution. *S.O.C., Inc. v. Mirage Casino-Hotel*,
8 117 Nev. 403, 415, 23 P.3d 243, 251 (2001).

9 130. This cause of action incorporates by reference all allegations and legal authority
10 from Paragraphs 95 through 126.
11

12 **E. FIFTH CAUSE OF ACTION: VIOLATION OF TITLE II OF THE**
13 **AMERICANS WITH DISABILITIES ACT, 42 U.S.C. § 12131 ET SEQ.**

14 131. Plaintiffs incorporate paragraphs 1 – 130 as though fully set forth herein.

15 132. Congress enacted the ADA to “provide clear, strong, consistent, enforceable
16 standards addressing discrimination against individuals with disabilities.” 42 U.S.C. §
17 12101(b)(2).
18

19 133. Title II of the ADA states that “no qualified individual with a disability shall, by
20 reason of such disability, be excluded from participation in or be denied the benefits of the services,
21 programs, or activities of a public entity, or be subjected to discrimination by any such entity.” 42
22 U.S.C. § 12132.

23 134. “A city sidewalk is . . . a ‘service, program, or activity’ of a public entity within the
24 meaning of Title II.” *Cohen v. City of Culver City*, 754 F.3d 690, 694 (9th Cir. 2014) (quoting
25 *Barden v. City of Sacramento*, 292 F.3d 1073, 1076 (9th Cir. 2002)).
26
27
28

1 135. “Congress enacted the ADA because discrimination against people with disabilities
2 is ‘most often the product, not of invidious animus, but rather of thoughtlessness and
3 indifference—of benign neglect.’” *Id.* (quoting *Alexander v. Choate*, 469 U.S. 287, 295, 105 S. Ct.
4 712, 83 L. Ed. 2d 661 (1985)).

5
6 136. “[T]he ADA proscribes not only ‘obviously exclusionary conduct,’ but also ‘more
7 subtle forms of discrimination—such as difficult-to-navigate restrooms and hard-to-open doors—
8 that interfere with disabled individuals’ full and equal enjoyment’ of public places and
9 accommodations.” *Id.* (quoting *Chapman v. Pier 1 Imps. (U.S.) Inc.*, 631 F.3d 939, 945 (9th Cir.
10 2011) (en banc) (internal quotation marks omitted)).

11
12 137. “To prevail under Title II, the plaintiff must show that: (1) he is a qualified
13 individual with a disability; (2) he was either excluded from participation in or denied the benefits
14 of a public entity's services, programs, or activities, or was otherwise discriminated against by the
15 public entity; and (3) this exclusion, denial, or discrimination was by reason of his disability.” *Id.*
16 at 695.

17
18 138. The term “disability” as used in the ADA is defined as “a physical or mental
19 impairment that substantially limits one or more major life activities of such individual.” 42 U.S.C.
20 § 12102(1)(A).

21
22 139. The term “major life activities” as used in the ADA includes “walking” and
23 “standing.” 42 U.S.C. § 12102(2)(A).

24 140. “An individual is excluded from participation in or denied the benefits of a public
25 program if ‘a public entity's facilities are inaccessible to or unusable by individuals with
26 disabilities.’” *Daubert v. Lindsay Unified Sch. Dist.*, 760 F.3d 982, 985 (9th Cir. 2014) (quoting
27 28 C.F.R. § 35.149).

1 141. Plaintiff McAllister uses a wheelchair because she cannot walk or stand. Ex. 1, ¶
2 4–5.

3 142. Plaintiff McAllister is a qualified individual with a disability under the ADA.

4 143. Clark County is a public entity.

5 144. The pedestrian bridges are part of the public sidewalk system in the resort corridor.

6 145. Clark County is responsible for the pedestrian bridges.

7 146. Plaintiff McAllister cannot always travel without stopping due to their disability.

8 147. Due to her disability, Plaintiff McAllister often must stop unexpectedly. For
9
10 example, she must stop when there is a mechanical malfunction with her wheelchair, her arms tire
11 from using the wheelchair, or when her vision of her path is blocked by other people who are
12 walking in front of her. Ex. 1, ¶ 7–9.

13 148. Stopping or standing on a pedestrian bridge due to disability is not exempted in
14
15 CCC 16.13.030.

16 149. Clark County, as the public entity responsible for the public sidewalk system, has
17 effectively denied Plaintiff McAllister the use of the public sidewalk system for travel across the
18 resort corridor as Plaintiff McAllister cannot always cross a pedestrian bridge without violating
19 CCC 16.13.030 and risking a criminal infraction.

20 150. Clark County has denied Plaintiff McAllister the use of the pedestrian bridges
21 because of her disability.

22 151. Plaintiff McAllister and other people with disabilities that are physically unable to
23 travel across the pedestrian bridges without stopping no longer have an accessible path to travel in
24 the resort corridor.

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1 **VI. PRAYER FOR RELIEF**

2 WHEREFORE Plaintiff seeks judgment as follows:

3 A. Declaratory relief that CCC 16.13.030 violates the Fourteenth Amendment of the United
4 States Constitution;

5
6 B. Declaratory relief that CCC 16.13.030 violates Article 1, Section 8 of the Nevada
7 Constitution;

8 C. Declaratory relief that CCC 16.13.030 violates the First Amendment of the United States
9 Constitution;

10 D. Declaratory relief that CCC 16.13.030 violates Article 1, Section 9 of the Nevada
11 Constitution;

12
13 E. Declaratory relief that CCC 16.13.030 violates Title II of the Americans with Disabilities
14 Act, 42 U.S.C. § 12131 *et seq.*;

15 F. Injunctive relief prohibiting Defendant from enforcing CCC 16.13.030;

16 G. Costs and attorneys' fees; and

17 H. Any further relief the Court deems appropriate.

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1
2 DATED this 16th day of February, 2024.
3

4 /s/ Tatiana R. Smith

5 CHRISTOPHER M. PETERSON

Nevada Bar No.: 13932

6 TATIANA R. SMITH

Nevada Bar No.: 16627

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