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13 **EIGHTH JUDICIAL DISTRICT COURT**

14 **STATE OF NEVADA**

15 GREATER LAS VEGAS SHORT TERM  
16 RENTAL ASSOCIATION, a non-profit  
17 Nevada corporation; JACQUELINE FLORES,  
18 President and Director,

19 Petitioners,

20 vs.

21 CLARK COUNTY and the BOARD OF  
22 CLARK COUNTY COMMISSIONERS, a  
23 political subdivision of the State of Nevada;  
24 and the STATE OF NEVADA,

Defendants.

Case No. A-22-856311-P  
Dept. No. 8

**REPLY TO CLARK COUNTY'S  
OPPOSITION TO MOTION FOR  
PRELIMINARY INJUNCTION**

19 The Greater Las Vegas Short Term Rental Association, a non-profit Nevada corporation,  
20 and Jacqueline Flores, President and Director (Rental Association), by and through their legal  
21 counsel, Joseph C. Reynolds, Esq., and Alex R. Velto, Esq., of HUTCHISON & STEFFEN,  
22 PLLC, filed a Motion on October 3, 2022, requesting this Court to issue a Preliminary Injunction  
23 enjoining enforcement of newly-enacted ordinances in Title 7, Chapter 7.100 of the Clark County  
24 Code regarding short term rentals in unincorporated Clark County due to their violation of

1 provisions of the Nevada Constitution and United States Constitution, as well as Nevada  
2 statutory law.

3 Clark County and the Board of Clark County Commissioners (Clark County) filed an  
4 Opposition to the Preliminary Injunction on November 4, 2022. The Rental Association hereby  
5 files its Reply to Clark County’s Opposition. This matter is currently set for a hearing before  
6 this Court on November 17, 2022. As set forth below, Clark County’s Opposition is misplaced.  
7 The Rental Association respectfully submits that issuance of a preliminary injunction is  
8 necessary, appropriate, and supported by well-settled law under the unique facts of this case.  
9 This Reply is supported by the accompanying Memorandum of Points and Authorities, which is  
10 incorporated by reference herein.

11 DATED this 11th day of November, 2022.

12  
13 HUTCHISON & STEFFEN, PLLC

14 /s/ Joseph C. Reynolds

15 Joseph C. Reynolds (8630)

16 Alex R. Velto (14961)

17 *Attorneys for Petitioners*

18 *Greater Las Vegas Short Term Rental Association*  
19 *and Jacqueline Flores, President and Director*  
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1 MEMORANDUM OF POINTS AND AUTHORITIES

2 The Rental Association filed a fifty-nine (59) page Motion for a Preliminary Injunction.  
3 Clark County filed a seventy-six (76) page Opposition.<sup>1</sup> The Rental Association respectfully  
4 submits that the issues before this Court have been, for the most part, thoroughly addressed.  
5 Accordingly, the Rental Association will not re-address or re-hash every disagreement with  
6 Clark County’s view and interpretation of the applicable law or arguments raised in its opposition.  
7 The Rental Association stands by the arguments, points, and authorities set forth in its motion.  
8 Only those issues and arguments raised by Clark County in its opposition that the Rental  
9 Association believes will be most beneficial to this Court will be addressed, clarified, and  
10 responded to in the instant Reply.

11 As a threshold matter, however, the Rental Association must note that it is disappointed  
12 in the aggressive and disparaging posture and tone assumed by Clark County in its opposition  
13 not only against the Rental Association, and its President and Director Jacqueline Flores, but  
14 short-term rental operators and patrons everywhere. Throughout its opposition, Clark County  
15 uses inflammatory and disparaging hyperbole to attack the Rental Association, Ms. Flores, and  
16 the short-term rental industry. This is both unfair and unnecessary.

17 For example, Clark County proclaims that the Rental Association’s interest in this case  
18 “is only about money and it is only brought under the guise of constitutional protections.” *See*  
19 Clark County Opposition, at 9. Clark County alleges that the Rental Association makes money  
20 “by violating the law, annoying their neighbors and turning their residential properties into hotels  
21 and party houses.” *Id.* Clark County further implies that the Rental Association “couldn’t care  
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23 <sup>1</sup> At the inception of this case, the Rental Association has maintained that that it raises legal issues, some of which  
24 are first impression, under the Nevada and United States Constitution that are matters of high public importance, *i.e.*,  
short term rentals in unincorporated Clark County, Nevada. As such, the Rental Association waives any objection  
to the page length of Clark County’s Opposition, which exceeds thirty (30) pages pursuant to EDCR 2.20(a).

1 less” about the neighborhood and their community, *id.* at 1, and that it advocates for a remedy  
2 that will cause “chaos and increase party shootings and domestic disputes throughout many  
3 neighborhoods.” *Id.* at 10. Clark County specifically attempts to co-mingle Ms. Flores’ alleged  
4 personal citation history with Clark County that dates back to 2018 and are patently unrelated  
5 and irrelevant to the new ordinances being challenged in this action. *Id.* at 3.

6 The Rental Association is a non-profit grassroots organization incorporated with the  
7 Office of the Nevada Secretary of State. It recognized under Nevada law. Its membership has  
8 diverse backgrounds, educations, ages, families, and careers. Jurisdictions throughout the nation  
9 are revieing short-term rental laws and policies. Nevada is no different. By requesting review  
10 and relief from this Court and availing itself of the judicial process, the Rental Association is  
11 exercising a core democratic right. Many of the claims being asserted are ones of first impression  
12 in Nevada. They certainly involve the Nevada Constitution and the United States Constitution.  
13 And these matters are of public importance.

14 As set forth in its Motion for a Preliminary Injunction, the Rental Association is not  
15 opposed to all regulation of short-term rentals in unincorporated Clark County. It is not opposed  
16 to a licensure requirement. It is not opposed to paying reasonable fees and taxes. What it is  
17 opposed to are the provisions in Chapter 7.100 of the Clark County Code as they currently exist.  
18 Those provisions violate our State and federal constitutions. They not only go too far and cross  
19 the boundaries of constitutionally permissible government regulation; but they contain vague  
20 and overbroad terms and phrases, invade privacy rights, single-out short-term rentals from other  
21 businesses, and are riddled with discretionary and subjective provisions that will create arbitrary  
22 and capricious enforcement based upon the subjective and personal views of Clark County, and  
23 its employees and officials. These are not the hallmarks of a good law.

1 Clark County’s chosen method of response to this legal action, whereby it has disparaged,  
2 retaliated against, and attempted to vilify the Rental Association and its members, including Ms.  
3 Flores, for even questioning the meaning and validity of its newly-enacted ordinance underscores  
4 the Rental Association’s very concerns with the ordinance itself. Clark County’s response has  
5 been chilling and hostile. The ordinance does not survive constitutional and critical review.  
6 Respectfully, it must be enjoined.

7 Responses to Clark County’s Opposition are set forth below.

8 I. THE RENTAL ASSOCIATION HAS PROPER STANDING

9 Clark County contends that the Rental Association lacks standing because they have no  
10 unique interests from the public at large. *See* Clark County Opposition at 7. This is incorrect.

11 First, this misconstrues the standing requirement under the public importance doctrine  
12 first articulated by the Nevada Supreme Court in the *Schwartz v. Lopez*, 132 Nev. 732, 382 P.3d  
13 886 (2016), line of authorities. Demonstration of an injury-in-fact is not required under this  
14 exception to traditional standing doctrine. Rather, a key inquiry is whether the party raising the  
15 challenge is in the best position to advocate for it. *See Morency v. Nev. Dep’t of Educ.*, 137 Nev.  
16 Ad. Op. 63, \_\_,496 P.3d 584, 588 (2021) (citing *Schwartz*, 132 Nev. at 743, 382 P.3d at 894  
17 (internal citations omitted)). Here, the Rental Association’s mission is to advocate for and  
18 educate on short term rental issues and policies in Nevada. It is a non-profit, grassroots  
19 organization. It does not have a personal or individualized monetary interest in the outcome of  
20 this litigation—it is a legal non-profit entity—and its advocacy addresses and represents range  
21 of concerns maintained by a broad membership. Additionally, and as evident by Clark County’s  
22 response to and posture towards Ms. Flores in this litigation, citizens who may raise individual  
23 legal challenges risk retaliation. The Rental Association clearly satisfies this standard.

1           Second, and with respect to Clark County’s assertion that a government expenditure has  
2 not been sufficiently demonstrated by the Rental Association, it is axiomatic that the enactment  
3 of the new licensing scheme set forth in Chapter 7.100 of the Clark County Code, the processing  
4 and review of applications by employees and officials, and its enforcement has and will continue  
5 to require government time, resources, personnel, and financial expenditure. *See* Sections  
6 7.100.010-.260, inclusive.

7           II.       THE RENTAL ASSOCIATION HAS SHOWN SUFFICIENT HARM

8           Clark County contends that the Rental Association has failed to show the harm necessary  
9 to support a preliminary injunction. *See* Clark County Opposition, at 8-9. Specifically, it  
10 maintains: “There is no valid claim of irreparable harm if the damages are the destruction of an  
11 illegal business.” *Id.* at 8. This is incorrect.

12           Here, the harm is the constitutional infirmity of Chapter 7.100 of the Clark County Code  
13 in itself. This is sufficient harm, and authorities from multiple jurisdictions support the Rental  
14 Association’s position. *See Preston v. Thompson*, 589 F.2d 300, 303 n.3 (7th Cir. 1978) (“The  
15 existence of a continuing constitutional violation constitutes proof of an irreparable harm, and  
16 its remedy certainly would serve the public interest.”); *Cohen v. Coahoma Cnty, Miss.*, 805  
17 F.Supp. 398, 406 (N.D.Miss. 1992) (“It has been repeatedly recognized by federal courts at all  
18 levels that violations of constitutional rights constitutes irreparable harm *as a matter of law.*”)  
19 (emphasis added); *Back v. Carter*, 933 F. Supp. 738, 754 (N.D.Ind. 1996) (“When violations of  
20 constitutional rights are alleged, further showing of irreparable injury may not be required if  
21 what is at stake is not monetary damages.”);<sup>2</sup> *Baskin v. Bogan*, 983 F.Supp.2d 1021, 1028  
22 (S.D.Ind. 2014) (“[T]he court reaffirms its conclusion that a constitutional violation . . . is indeed  
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24           <sup>2</sup> Of note, the Rental Association is not currently seeking monetary damages from Clark County—only declaratory and injunctive relief.

1 irreparable harm for purposes of preliminary injunctive relief.”). Violation of the Nevada and  
2 United States Constitutions is sufficient harm.

### 3 III. BALANCING OF HARSHIPS FAVORS THE RENTAL ASSOCIATION

4 Clark County contends that it “will be forced to endure great hardship if this Court enjoins  
5 the enforcement of the ordinance.” Clark County Opposition, at 10. It adds: “Clark County  
6 would effectively have its zoning authority and other legislatively delegated authority to regulate  
7 short term rentals stripped by the [C]ourt.” *Id.* This is incorrect. Clark County has no zoning  
8 or legislatively delegated authority to regulate anything where that authority is exercised outside  
9 of constitutional proscriptions. In other words, a government entity cannot experience a hardship  
10 by being ‘stripped’ of authority that contravenes its limitations because it never properly had that  
11 authority in the first place. To the contrary, the Rental Association submits that the failure to  
12 correct an unlawful exercise of government authority is inherently a hardship upon a  
13 government’s citizens, not the government itself. Granting injunctive relief will temporarily  
14 maintain the *status quo* and compel Clark County to reconsider and, hopefully, promptly amend  
15 the current constitutional infirmities of Title 7, Chapter 7.100 in the Clark County Code.

### 16 IV. THE ORDANICE IS VAGUE AND OVERBROAD

17 Clark County contends that provisions of Chapter 7.100 of the Clark County Code are  
18 not ambiguous and, therefore, cannot be vague or overbroad. *See* Clark County Opposition, at  
19 13. However, in so doing, Clark County repeatedly stresses that the language of the ordinance  
20 must be read in “context” in order to properly discern its meaning. *See, e.g.,* Clark County  
21 Opposition, at 14 (line 3), 14 (line 16), 14 (line 22), 15 (line 6), 27 (line 6).

22 Yet, under established maxims of statutory construction, looking to the broader context  
23 of an ordinance is only to occur when ambiguity exists. Only then does context become relevant.  
24 *See Estate of Maxey v. Darden*, 124 Nev. 447, 454, 187 P.3d 144, 149 (2008) (“When . . . a

1 statute is susceptible to more than one reasonable interpretation, it is ambiguous, and we must  
2 then look beyond the plain language to examine the statute in the context of the entire statutory  
3 scheme, reason, and public policy. . . .”) (internal quotations and citations omitted). Clark  
4 County’s insistence that construction of the ordinance in the broader ‘context’ is necessary to  
5 discern its meaning is recognition of its very ambiguity. In so doing, Clark County is unclear  
6 whether it means the context of the ordinance or ‘life in general.’ Either way, it is a problem.

7 More importantly, Chapter 7.100 of the Clark County Code has both civil administrative  
8 and criminal repercussions. See Section 7.100.230(f) (providing for “the issuance of a  
9 misdemeanor citation to *any person for any violation of the provisions of this Chapter*”)  
10 (emphasis added). The Nevada Supreme Court has held that “[v]agueness may invalidate a  
11 criminal law for either of two independent reasons: (1) if it ‘fails to provide a person of ordinary  
12 intelligence fair notice of what is prohibited’ or (2) if it ‘is so standardless that it authorizes or  
13 encourages seriously discriminatory enforcement.’” *State v. Castaneda*, 126 Nev. 478, 481, 245  
14 P.3d 550, 553 (2010) (quoting *Chicago v. Morales*, 527 U.S. 41, 56 (1999)). With respect to the  
15 Rental Association’s challenges to the meaning of the terms “family” or “group” in Section  
16 7.100.160 or the limitations placed on people at “gatherings” or “parties” in Sections 7.100.180,  
17 Clark County chastises the Rental Association for being unable to complete “basic arithmetic”  
18 in understanding what it intends to prohibit. Clark County Opposition, at 16. It also chides:  
19 “[T]he terms ‘family’ or ‘group’ are not ambiguous when viewed in context and *have almost*  
20 *zero relationship to the enforcement* of § 7.100.160(c)(1).” *Id.* at 14 (emphasis added). How  
21 can Clark County maintain that the meaning of terms within an ordinance that prohibits conduct  
22 (and carries both civil and criminal penalties) have ‘almost zero relationship’ to its enforcement.  
23 The Rental Association disputes the very tenets of that assertion. Again, how is an ordinary,  
24



1 reasonable person supposed to know what is prohibited conduct—the terms ‘family’ or ‘party’  
2 have different meanings to different people. They are undefined.

3 Clark County further berates the Rental Association: “It is nonsensical to believe that the  
4 discretionary reductions of penalties or fines constitutes constitutional ambiguity.” *Id.* at 19.  
5 However, the discretion is the problem. The discretion to arbitrarily *reduce* penalties and fines  
6 equates to, and is invariably synonymous with, the discretion to also arbitrarily *increase* penalties  
7 and fines. Discretion without objective standards, especially in the context of a penal regulation,  
8 is facially unconstitutional. An ordinary person is left to guess at what conduct is prohibited and  
9 what they could (or could not) expect as a penalty if a violation occurs. It’s left to chance, and  
10 the ‘discretion’ of whatever Clark County employee or official is in charge at the time.

#### 11 V. DUE PROCESS STANDARDS ARE NOT CONFLATED

12 Clark County contends that the Rental Association has somehow “invented” its own  
13 standard and improperly conflates its arguments that the ordinance violates due process by  
14 providing for arbitrary and capricious enforcement with its argument that the ordinance is vague.  
15 Clark County Opposition, at 22. This is incorrect.

16 It is settled law by the Nevada Supreme Court that “[t]he doctrine that a statute is void  
17 for vagueness is predicated upon its repugnancy to *the due process clause* of the Fourteenth  
18 Amendment to the United States Constitution.” *Sheriff, Washoe County v. Burdg*, 118 Nev. 853,  
19 857, 59 P.3d 484, 486 (2002) (quoting *Woofter v. O’Donnell*, 91 Nev. 756, 762, 542 P.2d 1396,  
20 1400 (1975)) (emphasis added). And the United States Supreme Court has recognized that “the  
21 guaranty of due process, as has often been held, demands only that the law shall not be  
22 unreasonable, arbitrary, or capricious, and that the means selected that have a real and substantial  
23 relation to the object sought to be attained.” *Nebbia v. People of New York*, 291 U.S. 502, 510-  
24 11 (1934); *see Truax v. Corrigan*, 257 U.S. 312, 332 (1921) (“The due process clause requires

1 that every man shall have the protection of his day in court, and the benefit of the general law, a  
2 law which hears before it condemns, which proceeds not arbitrarily or capriciously but upon  
3 inquiry, and renders judgment only after trial, so that every citizen shall hold his life, liberty,  
4 property and immunities under the protection of the general rules which govern society.”).  
5 Accordingly, challenges to a law on grounds of vagueness, being arbitrary and capricious, or  
6 both, are grounded in the due process clauses of the Nevada and United States Constitutions.  
7 Such challenges share that commonality—it is not an improper commingling of standards or  
8 constitutional frameworks or theories.

9 What Clark County may be arguing is that actions or decisions can be arbitrary and  
10 capricious; but an unenforced law cannot. To be clear, the Rental Association contends that  
11 Chapter 7.100 of the Clark County Code as written and on its face is both currently vague and  
12 will also lead to arbitrary and capricious application and enforcement in the future. Both of these  
13 occurrences violate due process.

#### 14 VI. VALID PROPERTY INTERESTS ARE BEING TAKEN

15 Clark County contends that the Rental Association has no property right in a short-term  
16 rental license because whether or not to grant the license is solely within its discretion and,  
17 therefore, it has no protectable constitutional interest *at this time* to support an unconstitutional  
18 government taking claim. Clark County Opposition, at 35. This is incorrect.

19 Both the Nevada Supreme Court and the United States Supreme Court have recognized  
20 that “[a] protected property interest exists when an individual has a reasonable expectation of  
21 entitlement derived from ‘existing rules or understandings that stem from an independent source  
22 such as state law.’” *Burgess v. Storey County Board of Commissioners*, 116 Nev. 121, 124, 992  
23 P.2d 856, 858 (2000) (quoting *Bd. of Regents v. Roth*, 408 U.S. 564, 577 (1972)). Nevertheless,  
24 Clark County misunderstands the Rental Association’s argument.

1 The property interests underlying the Rental Association’s takings challenges are  
2 grounded in the infringement and deprivation of the use and enjoyment of real property, *i.e.*,  
3 one’s own home, *as a condition* of applying-for and maintaining a short-term rental license under  
4 Chapter 7.100 of the Clark County Code. The government taking occurs when an individual has  
5 to forgo other constitutional rights and the use and enjoyment of their property that lack a rational,  
6 let alone compelling, relationship to any valid governmental health, safety or zoning interests as  
7 a condition of operating a short-term rental, *i.e.*, the outright prohibition of any light omitting  
8 from the house that may ‘annoy’ another person or using the property for any purpose other than  
9 dwelling, lodging, or sleeping. *See* Section 7.100.180(c) and Section 7.100,180(a), respectively.  
10 These are but a few examples set forth in the Rental Association’s motion of provisions in the  
11 ordinance that form the basis of the Rental Association’s government taking claims. (Of note,  
12 the discretionary deprivation of a license is raised by the Rental Association as being violative  
13 of several other constitutional provisions—but not as a government taking). Clark County  
14 appears to expend much effort attempting to dispel a government taking’s claim that the Rental  
15 Association has not raised.

16 **VII. A NEGATIVE ECONOMIC IMPACT HAS BEEN SUFFICIENTLY ALLEGED**

17 Clark County contends that the Rental Association has failed to allege any negative  
18 economic impact the ordinance will have on their property. Clark County Opposition, at 39.  
19 However, Clark County has overlooked the Affidavit of Jacqueline Flores, which is attached as  
20 Exhibit 1 to the Rental Association’s October 3, 2022, Motion for a Preliminary Injunction.

21 **VIII. THE ORDINANCE UNREASONABLY INVADES PRIVACY**

22 Clark County asserts several arguments contending that the ordinance does not invade a  
23 short-term rental operator’s or patron’s privacy because the invasions are consistent with United  
24 States Supreme Court precedent. Clark County Opposition, at 43-45. This is incorrect.

1 First, Clark County contends that the United States Supreme Court’s holding in *Loretto v.*  
2 *Teleprompter Manhattan CATV Corp*, 458 U.S. 419, 440 (1982), is inapplicable to support the  
3 Rental Association’s government takings claim because the Court’s opinion in *Loretto* contained  
4 dicta that it did not apply to a State’s power to require landlords “to comply with building codes  
5 and provide utility connections, mailboxes, smoke detectors, fire extinguishers, and the like . . . .”  
6 What Clark County overlooks is that the Rental Association is not challenging code requirements  
7 for the installation of smoke detectors or exit signs that are proven to protect an occupant’s health  
8 and safety in the event of an emergency.

9 Here, the Rental Association is challenging the requirement that video surveillance and  
10 noise monitor devices be installed at a residential property as a condition of obtaining a short-  
11 term rental license. These are markedly different than the real property fixtures exempted from  
12 the holding in *Loretto*. The purpose of a video camera or noise monitoring device is not to protect  
13 the health and safety of anyone in the event of an emergency. Rather, these are mechanisms and  
14 fixtures to be installed in and around a short-term rental operator’s home for the sole purpose of  
15 Clark County gathering surveillance information 24 hours a day on the homeowner’s activities,  
16 as well as those of their visitors and neighbors.

17 Second, Clark County contends that the United States Supreme Court’s holding in *Cedar*  
18 *Point Nursery v. Hassid*, 591 U.S. \_\_\_, \_\_\_, 141 S.Ct. 2063, 2072 (2021), is inapplicable because  
19 the Court’s opinion in *Cedar Point* contained dicta that it did not apply to “reasonable health and  
20 safety inspections” by the government. Again, Clark County misconstrues the Rental  
21 Association’s complaint. The Rental Association does not object to ‘reasonable health and safety  
22 inspections’ of short-term rental properties by Clark County. The Rental Association objects to  
23 the current language of Chapter 7.100 of the Clark County Code that permits those inspections to  
24 occur “with or without notice” at anytime and for any reason. *See* Section 7.100.170(i)(2).

1 The lack of standards and limitations to the access to the home that the current draft of the  
2 ordinance permits its what is unconstitutional. It allows unfettered discretion for Clark County  
3 to show up and enter a licensee’s home. Absent an exigency, this is patently unconstitutional. It  
4 is certainly far afield from the ‘reasonableness’ alluded to by the Court in *Cedar Point*.

5 Finally, Clark County contends no unconstitutional invasion of privacy could occur from  
6 the installation of video cameras or noise monitors because a Clark County resident or visitor  
7 has no reasonable expectation of privacy “in the front yard of a person’s home or in sound  
8 emitted outdoors.” Clark County Opposition, at 45. Clark County is correct that, in a criminal  
9 law context, a person generally does not have a reasonable expectation of privacy in their front  
10 yard. However, Clark County again misunderstands the full aspect of the Rental Association’s  
11 claim. The invasion of privacy is raised as a government takings claim due to the requirement  
12 that the video camera and noise monitoring be installed *on the home as a permanent fixture* with  
13 the sole purpose of gathering information 24 hours a day. Moreover, the noise monitoring device  
14 will invariable not only capture sound emitting from a short term rental’s yard, but also sound,  
15 such as personal conversations, which stay within the confines of the yard itself—an expectation  
16 of privacy certainly exists in personal conversations and sounds that cannot be heard outside of  
17 a yard. That is undoubtedly unreasonable government intrusion that offense the Fourth and Fifth  
18 Amendments to the United States Constitution.

19 IX. THE ORDINANCE IMPROPERLY PERMITS DISCRETIONARY FINES AND FEES

20 Clark County contends no legal authority to support claim that due process is violated  
21 when fines and citations are cumulatively assessed in any order. Clark County Opposition, at  
22 48. This is incorrect. Imposition of excessive fines and fees is expressly prohibited by Article 1,  
23 Section 6 of the Nevada Constitution and the Eighth Amendment to the United States  
24 Constitution. This constitutional prohibition “limits the government’s power to extract payments,

1 whether in cash or kind, ‘as punishment for some offense.’” *Timbs v. Indiana*, \_\_\_ U.S. \_\_\_,  
2 \_\_\_, 139 S.Ct. 682, 687 (2019) (quoting *United States v. Bajakajian*, 524 U.S. 321, 327–328  
3 (1998) (other internal citations and quotations omitted)). “The Fourteenth Amendment, we hold,  
4 incorporates this protection.” *Id.* By permitting the imposition of ‘cumulative’ fines and in any  
5 order fails to provide adequate notice, standards of enforcement, and allows unfettered discretion  
6 of Clark County to subjectively enforce the law. This not only violates the Eighth Amendment,  
7 but the substantive and procedural due process protections of the Fourteenth Amendment. See  
8 *McConnell v. State*, 120 Nev. 1043, 1063 n.44, 102 P.3d 606, 620 n.44 (“The Eighth Amendment  
9 applies to the states through the Fourteen Amendment’s Due Process Clause.”) (citing *Robinson*  
10 *v. California*, 370 U.S. 660, 666 (1962)).

11 X. THE ORDINANCE FAILS TO PROVIDE EQUAL PROTECTION

12 Clark County contends that the Rental Association fails to adequately demonstrate that  
13 it is being treated differently than similarly situated business and fails to support equal protection  
14 claim: “They simply make no argument, offer no authority, and make no factual analysis . . . .”  
15 Clark County Opposition, at 53. This is incorrect.

16 Clark County misunderstands the Rental Association’s argument and analysis. It is the  
17 absence of prohibitions on similarly-situated businesses as a condition for obtaining a license to  
18 lawfully operate that largely demonstrate the disparate treatment and equal protection violations.  
19 For example, nowhere in Title 6, Chapter 6 of the Clark County Code, which governs business  
20 licenses, and advertising in particular, *see* Sections 612.040-.047, are there requirements that  
21 businesses in unincorporated Clark County have to proactively, and as a condition of a license,  
22 provide information on where and on what internet platforms they may chose to advertise. Yet,  
23 Section 7.100.090(b)(4) of the Clark County Code requires short term rental license applicants  
24 provide this information. Not only does this requirement constitute a prior restraint in violation

1 of the First Amendment, but it also violates equal protection under the law as it treats short-term  
2 rental operators disparate from similarly situated business without satisfying any level of  
3 constitutional scrutiny. Likewise, the requirement that short-term rentals be connected to “a  
4 municipal wastewater system” is another example of disparate treatment. *See* Section  
5 7.100.080(d). Indeed, residents in unincorporated Clark County who use a septic system are *per*  
6 *se* prohibited from even applying for a short-term rental license. Additionally, unlike short-term  
7 rentals, hotels or motels in unincorporated areas not *per se* prohibited from operating within  
8 1,000 or 2,500 feet of one another. *See* Section 7.100.080(f). These are but a few examples.

#### 9 XI. CURRENT AND PROSPECTIVE INJUNCTIVE RELIEF

10 Throughout Clark County’s Opposition are assertions that the Rental Association has  
11 failed to demonstrate adequate harm to be provide injunctive relief, in part, due to the fact that  
12 short-term rental licenses have yet to be issued—Clark County has stated that it will begin doing  
13 so in March 2023. Because the application period is actively open, Clark County maintains that  
14 injunctive relief is inappropriate because harm has yet to materialize. This is incorrect.

15 To be clear, the Renal Association is requesting both current and prospective preliminary  
16 injunctive relief. Not only is current injunctive relief appropriate due to the facial challenges to  
17 the ordinance, as well as the First Amendment prior restraints to involved in the license  
18 application process and *per se* prohibitions on who may even apply; but also, and as previously  
19 discussed, this matter involves challenges under both the Nevada and United States Constitutions  
20 and numerous authorities recognize that harm occurs whenever unconstitutional laws are  
21 permitted to stand and are left unaddressed. *See supra* at 6-7. Prospective injunctive relief is  
22 appropriate where harm is sufficiently threatened, as an injunction by its nature is a “prospective  
23 remedy” that can be employed to remedy not only ongoing harm but to prevent future harm before  
24 it occurs. Here, the Rental Association is respectfully requesting relief on both grounds.

1 CONCLUSION

2 An injunction is extraordinary relief. But it is appropriate in this case.

3 Undoubtedly, this case involves constitutional issues of first impression in Nevada. Short  
4 term rentals are hybrid entities that serve as both homes and business. Interplay exists between  
5 the provisions of the Nevada Constitution and the United States Constitutional that are violated  
6 by Chapter 7.100 of the Clark County Code.

7 Clark County was mandated by the Nevada Legislature to enact regulations that would  
8 permit short-term rentals to operate through the passage of AB 363. Upon doing so, however,  
9 Clark County must adhere to constitutional limitations and its mandates of reasonableness. It  
10 has failed in its initial attempt. Harm is occurring. Left unaddressed, it will become compounded  
11 as March 2023 approaches. Accordingly, the Rental Association respectfully requests that this  
12 Court GRANT its motion and issue a preliminary injunction, in whole or part, and enjoin Chapter  
13 7.100 of the Clark County Code, so that Clark County will amend and revise the current version  
14 of the ordinance in a manner that complies with our constitutional principles.<sup>3</sup>

15 DATED this 11th day of November, 2022.

16 HUTCHISON & STEFFEN, PLLC

17 /s/ Joseph C. Reynolds

18 Joseph C. Reynolds (8630)

18 Alex R. Velto (14961)

19 *Attorneys for Petitioners*  
20 *Greater Las Vegas Short Term Rental Association*  
21 *and Jacqueline Flores, President and Director*

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<sup>3</sup> Where the Rental Association has not directly responded to Clark Count’s Opposition in this Reply, it incorporates herein the points and authorities set forth in its Motion for Preliminary Injunction and its Second Amended Complaint.



CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of Hutchison & Steffen, PLLC and that on this 11th day of November, 2022, I caused the above and foregoing document, entitled **REPLY TO CLARK COUNTY’S OPPOSITION TO MOTION FOR PRELIMINARY INJUNCTION** to be served as follows:

- by placing the same to be deposited for mailing in the Unites States Mail, in a sealed envelope upon which first class postage was prepaid in Las Vegas, Nevada; and/or
- to be sent electronically via the Court’s electronic service system; the date and time of this electronic service is in place of the date and in place of deposit in the mail; and/or
- to be served through Formal Service of Process (Proof of Service to follow)

to the parties or attorney(s) listed below at the address and/or facsimile number indicated below:

James B. Gibson, Chair Board of Clark County Commissioners 500 S. Grand Central Pkwy 6 <sup>th</sup> Floor Las Vegas, NV 89155 <a href="mailto:DistrictG@clarkcountynv.gov">DistrictG@clarkcountynv.gov</a>	Yolanda T. King, County Manager Clark County 500 S. Grand Central Parkway 6 <sup>th</sup> Floor Las Vegas, NV 89155
Aaron D. Ford, Attorney General Office of the Nevada Attorney General 100 N. Carson St Carson City, NV 89701	Jeffrey Rogan, Deputy District Attorney Timothy Allen, Deputy District Attorney Civil Division, Clark County District Attorney <a href="mailto:Jeffrey.Rogan@clarkcountyda.com">Jeffrey.Rogan@clarkcountyda.com</a> <a href="mailto:Timothy.Allen@clarkcountyda.com">Timothy.Allen@clarkcountyda.com</a>

*/s/ Madelyn Carnate-Peralta*  
An Employee of Hutchison & Steffen, PLLC