IN THE SUPREME COURT OF THE STATE OF NEVADA

GREATER LAS VEGAS SHORT TERM RENTAL ASSOCIATION, a nonprofit Nevada corporation; and JACQUELINE FLORES, President and Director,

Appellants/Cross-Respondents,

vs.

CLARK COUNTY; CLARK COUNTY BOARD OF COMMISSIONERS, a subdivision of the State of Nevada; and the STATE OF NEVADA,

Respondent/Cross-Appellants.

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Case No.: 86264

APPEAL
From the Eighth Judicial District Court, Clark County
The Honorable Jessica K. Peterson, District Judge
District Court Case No. A-22-856311-P

RESPONDENT'S ANSWERING BRIEF AND OPENING BRIEF ON CROSS-APPEAL

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NRAP 26.1 DISCLOSURE STATEMENT

The undersigned counsel of record certifies that the following are persons and entities described in Nevada Rule of Appellate Procedure (NRAP) 26.1(a) that must be disclosed. CLARK COUNTY is a political subdivision of the State of Nevada and has no parent company or stock. Clark County was represented in the district court below, and is also represented on appeal, by the following legal counsel:

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These representations are made so that the Justices of this Court may evaluate possible disqualifications or recusals.

Dated: November 6, 2023.

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JURISDICTIONAL STATEMENT

Clark County appealed from a district court granting in part and denying in part a motion for preliminary injunction upon a civil complaint for declaratory and injunctive relief. *See* 2 Joint Appendix ("JA") at 188-253, 254-312. The district court issued its order on February 16, 2023. 5 JA 685-706. Notice of entry of the order was issued and served on February 22, 2023. 5 JA 721-745. On March 13, 2023, Greater Las Vegas Short Term Rental Association ("GLVSTRA") filed a notice of appeal. 5 JA 746-748.

Clark County filed its notice of appeal to this Court on March 23, 2023, within 14 days after the date of GLVSTRA's notice of appeal. 5 JA 754-759. This appeal was timely filed pursuant to NRAP 4(a)(2) and this Court has jurisdiction pursuant to NRAP 3A(b)(3).

ROUTING STATEMENT

This is an appeal from a district court order granting in part and denying in part a motion for preliminary injunction. Thus, this case is presumptively assigned to the Court of Appeals. NRAP 17(b)(12).

GLVSTRA claims no personal injury, never applied for a short-term rental license, was never fined for operating without a license and is challenging a law that does not contain an appropriation or expenditure of tax money. 5 JA 730. However, the District Court expanded the public-importance exception to provide standing in

this case to GLVSTRA because it believed that the Supreme Court of Nevada would expand the public-importance exception to provide standing in this case. 5 JA 729.

Clark County business license regulations that apply to short-term rentals only in unincorporated Clark County, do not apply to properties in the City of Las Vegas nor do the regulations apply to the rest of the state. Thus, there is no statewide importance under NRAP 17(a)(12).

Further, the challenged regulations only apply to individuals who apply for a business license or are currently using their residential property as a business. Clark County's business license regulations do not, and must be interpreted not to, prohibit any constitutionally protected activity. *State v. Castaneda*, 126 Nev. 478, 481, 245 P.3d 550, 552 (2010) ("[E]very reasonable construction must be resorted to, in order to save a statute from unconstitutionality."). Thus, there are no principal issues of first impression involving the constitution under NRAP 17(a)(11).

Further, Clark County Code 7.100 does not involve any criminal fines or penalties. *See* Clark County Code 7.100. Clark County believes its ordinance never provided any new criminal penalties, but in an abundance of caution, it amended its ordinance after the preliminary injunction to clarify that the ordinance does not involve any criminal penalties and only authorizes civil fines for operating without a license or in violation of the regulations. 5 JA 760-777.

This appeal is about who has standing to sue under the public-importance

exception to the general standing requirement, which is settled law. *Schwartz v. Lopez*, 132 Nev. 732, 743, 382 P.3d 886, 894 (2016); And whether the preliminary injunction was properly granted. Thus, the case should be assigned to the Court of Appeals.

STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

A. Whether GLVSTRA had standing to bring a civil action to challenge Clark County's ordinance, either under general standing or the public-importance exception?

B. Whether it was proper for the District Court to preliminarily enjoin several parts of Clark County's ordinance?

STATEMENT OF THE CASE

During the 2021 Nevada Legislative Session, the Nevada Legislature passed AB 363 and it was signed into law by the Governor. AB 363 requires Clark County to adopt an ordinance which does not totally prohibit short-term rentals in all residential zones and allows at least some short-term rentals to get a business license. NRS 244.353545(4). AB 363 allows Clark County some discretion to adopt additional restrictions, such as limiting the number of licenses and increasing certain distance restrictions. NRS 244.35358. However, AB 363 also requires Clark County to adopt very specific restrictions, such as the minimum and maximum fines for operating a short-term rental without a business license and specific standards for deciding the amount of fine that can be imposed within that range. NRS 244.353545(3).

Long before AB 363 was passed, Clark County had regulated and prohibited short-term rentals in certain zones under a variety of other statutory grants of authority. *See* NRS 244.189(c); 244.146(2); 244.137(6)(a); NRS 244.3605; NRS

244.35355; CCC 30.44.010(b)(7)(C); CCC 7.100; CCC 11.14; CCC 1.14. Generally, Clark County prohibited short-term rentals, unless a residential property owner was able to obtain a business license for a "vacation home." *See* CCC 6.12.982.

On June 21, 2022, Clark County adopted Ordinance 4959 in response to AB 363. In doing so, Clark County attempted to strike a balance between allowing the short-term rentals in areas where they were previously not allowed and protecting existing homeowners from the short-term guests' disruptive behavior and nuisance level activity that is commonly associated with short-term rentals.

On August 2, 2022, GLVSTRA filed a petition, asking the District Court to declare the whole ordinance unconstitutional and enjoin its enforcement. On October 3, 2022, GLVSTRA filed a Second Amended Complaint for Declaratory and Injunctive Relief and a Motion for Preliminary Injunction. On October 18, 2022, Clark County filed an answer and Counterclaim. On November 4, 2022, Clark County filed its Opposition to the Motion for Preliminary injunction. On November 8, 2022, GLVSTRA moved to dismiss Clark County's counterclaims.

On November 17, 2022, the District Court held a hearing and ordered the parties to submit supplemental briefing. GLVSTRA was ordered to provide supplemental briefing on the constitutional issues. Clark County was ordered to provide supplemental briefing on the standing issue. The District Court also allowed time for each party to file a response to the supplemental brief submitted by the

opposing party. On December 1, 2022, Clark County and GLVSTRA both filed supplements as directed by the District Court.

On December 13, 2022, before all the preliminary injunction briefing allowed by the Court had been completed and before Clark County had a chance to oppose a December 6, 2022 Motion to Dismiss Clark County's First Amended Counterclaim, the District Court held a hearing on GLVSTRA's first motion to dismiss and indicated that it was leaning toward granting both the preliminary injunction and first motion to dismiss. 4 JA 583-588. Clark County argued that the first motion to dismiss was moot because Clark County was allowed to file a first amended counterclaim without seeking leave of the Court. 4 JA 590. The District Court initially said it would give Clark County an opportunity to file an opposition, but then later in the same hearing granted GLVSTRA's first Motion to Dismiss and held that Clark County could not bring counterclaims against Jacqueline Flores because she was only included in the suit in her capacity as director of GLVSTRA. 4 JA 583-584, 590-592. On December 15, 2022, Clark County filed its response to GLVSTRA's supplemental briefing.

On December 19, 2022, a hearing was held on the preliminary injunction. At the hearing, the District Court granted the preliminary injunction in-part and denied the preliminary injunction in-part. The District Court provided at the hearing that it was finding that eight parts of Clark County's ordinance were unconstitutionally

vague on its face. 4 JA 663-670.

The eight parts of the ordinance specified in the oral ruling were, (1) CCC 7.100.090(c)(2) requiring that applications be signed under penalty of perjury; (2) CCC 7.100.090(c)(7) authorizing Clark County to request any document or information; (3) CCC 7.100.100(h) and CCC 7.100.170(i)(2) allowing Clark County to inspect premises without notice or cause; (4) CCC 7.100.110(a) authorizing Clark County to deny a license for failure to cooperate; (5) CCC 7.110.110(c) authorizing Clark County to mandate any terms or conditions it deems necessary; (6) CCC 7.100.160(1)(c) prohibiting short-term renters from being outside the same family or group; (7) CCC 7.100.180(b) prohibiting parties, weddings, events and other gatherings; and (8) prohibiting activities that annoy or disturb another person. 4 JA 663-670.

The District Court ordered the parties to work together to draft a combined order and that it "meet the contours of what was discussed today." 4 JA 671. While the District Court did not discuss the fines during the hearing or find that they were unconstitutional for being discretionary and cumulative, GLVSTRA submitted a proposed order to the Court that contained that language. Ultimately, the District Court signed an order that held that CCC 7.100.230(b) and CCC 7.100.230(d)(1)(i) were likely unconstitutionally discretionary and cumulative and enjoined the fines. 5 JA 685-706.

On February 16, 2023, the District Court filed its orders granting the preliminary injunction in-part and granting GLVSTRA's first motion to dismiss. Notice of Entry for both was filed on February 22, 2023. On March 13, 2023, GLVSTRA filed a Notice of Appeal, appealing the denial of the parts of its preliminary injunction motion that were not granted. On March 23, 2023, Clark County filed its Notice of Appeal, appealing the granting of the preliminary injunction.

STATEMENT OF FACTS

Jacqueline Flores and GLVSTRA have not alleged that they were cited for a violation of the law that they are challenging in the instant case. They have also not alleged that they were denied a business license to operate a short-term rental under the challenged laws. Further, they have not alleged that any of their members were cited for a violation under the challenged ordinance or that any of their members had even applied for a business license under the challenged ordinance. 2 JA 188-253. There are no factual allegations in the Second Amended Complaint, which would allow GLVSTRA to make an as applied constitutional challenge to the laws being challenged in this case. 2 JA 188-253; 4 JA 558.

Jacqueline Flores was fined by Clark County, under older laws, for operating an unlawful short-term rental in the past, but it was before the challenged ordinance was put in place. 2 JA 329-340. Further, the laws used to issue Jacqueline Flores those fines are not challenged in this case. 2 JA 188-253, 336. Jacqueline Flores has never been cited under the new ordinance. 2 JA 331. Clark County did file counterclaims against Jaqueline Flores for her failure to pay transient lodging taxes and because she never paid her short-term rental fines, which she never appealed. 2 JA 336-337. However, the District Court held that Jacqueline Flores was only a named plaintiff in this case in her role as director of GLVSTRA and thus Clark County's counterclaims were not properly joined to the subject matter of this case.

4 JA 583-584; 5 JA 674-682.

After the preliminary injunction was issued by the District Court, Clark County amended its short-term rental ordinance following the recommendations of the District Court made during oral argument. 5 JA 760-777. While Clark County believes that its ordinance was never facially unconstitutional, the amendments make the ordinance's constitutional interpretation even clearer.

This amendment changed all of the code sections which were enjoined by the District Court, except for the provisions relating to the fines as those provisions were mandated by statute. The amended sections include CCC 7.100.090(c)(2), CCC 7.100.090(c)(7), CCC 7.100.100(h), CCC 7.100.170(i)(2), CCC 7.100.110(a), CCC 7.110.110(c), CCC 7.100.160(1)(c), and CCC 7.100.180(b). Only CCC 7.100.230(b) and CCC 7.100.230(d)(1)(i) were left unamended. Thus, Clark County is only appealing the District Courts order on the issue of standing and on the enjoinment of CCC 7.100.230(b) and CCC 7.100.230(d)(1)(i).

SUMMARY OF THE ARGUMENT

This case is primarily about the standing requirements and when it is appropriate to grant a preliminary injunction when there is a facial challenge to a law without any personal injury.

"Nevada has a long history of requiring an actual justiciable controversy as a predicate to judicial relief … Moreover, litigated matters must present an existing

controversy, not merely the prospect of a future problem." *Doe v. Bryan*, 102 Nev. 523, 525, 728 P.2d 443, 444 (1986) (upholding a district court's dismissal of a complaint for lack of standing because "[the plaintiffs] had never been arrested, prosecuted or threatened with prosecution" under a statute). The very narrow public-importance exception to general standing requires a taxpayer to challenge a law which relates to unconstitutional legislative expenditures. *Schwartz v. Lopez*, 132 Nev. 732, 743, 382 P.3d 886, 894 (2016). Here, GLVSTA claims no injury, challenges no unconstitutional expenditure and also fails to demonstrate how they suffered a unique or particularized injury from the general public. *Blanding v. City of Las Vegas*, 52 Nev. 52, 69, 280 P. 644, 648 (1929). Thus, GLVSTA has no standing.

During oral argument for the preliminary injunction the District Court explained why it was finding standing in this case:

> Under the public interest exception, while I understand that there were rulings and case law precedent that were handed down from *Schwartz* regarding the second factor and it needing to be appropriations, right? I understand that. *Cannizzaro* took it a step further and I don't necessarily think as I sit here today that if I were to deny this on standing grounds and dismiss it on standing grounds that the Supreme Court wouldn't come back and say we're going to extend this again.
>
> I think that there is enough here that they would likely extend it again, and what I don't want to see happen because I was in practice when the whole HOA debacle went down and we had 32 different departments that were making different decisions until we got SFR, I don't want to see that happening here where the County starts issuing licenses and then we have individuals who are filing complaints in various different departments when

> they get fined and one department is saying I find it constitutional and the other department is saying I don't find it constitutional.

JA, Vol. 4, p. 585.

The District Court removed the second prong of the public-interest exception to general standing, so that there does not need to be a challenge to an unconstitutional legislative appropriation of tax money. The District Court did this because it believed that this Court would expand the public-interest exception. This is not the correct legal procedure and district courts are bound to follow legal precedent of a higher court, until the higher court changes precedent. *Eulitt ex rel. Eulitt v. Maine, Dep't of Educ.*, 386 F.3d 344, 349 (1st Cir. 2004) (holding that a district court must follow binding precedent "unless it has unmistakably been cast into disrepute by supervening authority.").

Lastly, when making a facial challenge, the challenger bears the burden of "demonstrating that there is no set of circumstances under which the statute would be valid." *Schwartz v. Lopez*, 132 Nev. 732, 745, 382 P.3d 886, 895 (2016). Conversely, the District Court relied upon hypothetical situations provided by GLVSTRA in which Clark County's ordinance could violate someone's constitutional rights, rather than narrowly construing the laws and then pointing to a situation in which the ordinance would not be unconstitutional. 4 JA 636-639. Clearly, GLVSTRA has not shown how the challenged laws are being used and interpreted by Clark County with any specific facts, so it can only make up how it

thinks Clark County will apply the laws in the future. However, this is not enough to obtain a preliminary injunction because this is not enough to show irreparable harm and a likelihood to be successful on the merits of a facial challenge.

ARGUMENT

A. Standard Of Review

A party seeking a preliminary injunction must show a likelihood of success on the merits of their case and that they will suffer irreparable harm without preliminary relief. *Clark Cty. Sch. Dist. v. Buchanan*, 112 Nev. 1146, 1150, 924 P.2d 716, 719 (1996). "[T]his court will only reverse the district court's decision when the district court abused its discretion or based its decision on an erroneous legal standard or on clearly erroneous findings of fact." *Excellence Cmty. Mgmt., LLC v. Gilmore*, 131 Nev. 347, 351, 351 P.3d 720, 722 (2015) (quoting *Boulder Oaks Cmty. Ass'n v. B & J Andrews Enters., LLC*, 125 Nev. 397, 403, 215 P.3d 27, 31 (2009) (internal quotation marks omitted)). "A decision that lacks support in the form of substantial evidence is arbitrary or capricious and, therefore, an abuse of discretion." *Finkel v. Cashman Prof'l, Inc.*, 128 Nev. 68, 72-73, 270 P.3d 1259, 1262 (2012) (quoting *Stratosphere Gaming Corp. v. Las Vegas*, 120 Nev. 523, 528, 96 P.3d 756, 760 (2004) (internal quotation marks omitted)). "An abuse of discretion can occur when the district court bases its decision on a clearly erroneous factual determination

or it disregards controlling law." *MB Am., Inc. v. Alaska Pac. Leasing Co.*, 132 Nev. 78, 88, 367 P.3d 1286, 1292 (2016).

Factual determinations will be set aside only when clearly erroneous or not supported by substantial evidence, but questions of law are reviewed de novo. *S.O.C., Inc. v. Mirage Casino-Hotel*, 117 Nev. 403, 407, 23 P.3d 243, 246 (2001). Here, the District Court's order was based on a facial interpretation of Clark County's ordinance without any specific facts to apply. Further, the District Court's order disregards controlling law regarding standing. Thus, de novo review is appropriate.

B. GLVSTRA Lacks Standing to Obtain a Preliminary Injunction

NRS 33.010(1) authorizes an injunction when it appears from the complaint that the plaintiff is entitled to the relief requested and at least part of the relief consists of restraining the challenged act. Before a preliminary injunction will issue, the applicant must show "(1) a likelihood of success on the merits; and (2) a reasonable probability that the non-moving party's conduct, if allowed to continue, will cause irreparable harm for which compensatory damage is an inadequate remedy." *Id*. at 408, 23 P.3d at 246. In considering preliminary injunctions, courts also weigh the potential hardships to the relative parties and others, and the public interest. *See, e.g., Clark Co. School Dist. v. Buchanan*, 112 Nev. 1146, 1150, 924 P.2d 716, 719 (1996).

In order to determine whether a plaintiff has shown a likelihood of success on the merits, the court must determine whether the plaintiff has standing, because without standing a plaintiff can never show a likelihood of success on the merits. Standing is a threshold argument and concerns whether the party seeking relief has a sufficient interest in the litigation. *Schwartz v. Lopez*, 132 Nev. 732, 743, 382 P.3d 886, 894 (2016). "Generally, a party must show a personal injury and not merely a general interest that is common to all members of the public." *Id*. at 743 (citing *Doe v. Bryan*, 102 Nev. 523, 525-26, 728 P.2d 443, 444-45 (1986); *Blanding v. City of Las Vegas*, 52 Nev. 52, 69, 280 P.644, 648 (1929) (requiring property owner to show special or peculiar injury different from that sustained by general public in order to maintain complaint for injunctive relief)).

GLVSTRA does not have standing either under the general test or the public-interest exception.

1. GLVSTRA has no Special Injury and Lacks General Standing

GLVSTRA lacks general standing because like in *Doe* and *Blanding*, GLVSTRA has not been cited for a violation or been specially injured under the challenged ordinance and has no injury different from that sustained by the general public. GLVSTRA admitted that it has no injury. "Demonstration of an injury-in-fact is not required…" 3 JA 445. GLVSTRA also admits that it has no "personal or individualized monetary interest in the outcome of this litigation." 3 JA 445.

However, GLVSTRA claims that no injury or interest in the outcome of the litigation is needed for it to have standing because it is in the "best position to advocate." 3 JA 445 (citing *Morency v. Nev. Dep't of Educ.*, 137 Nev. Ad. Op. 63, __, 496 P.3d 584, 588 (2021)). However, *Morency* says that plaintiffs lack general standing where there is no personalized-injury and the case only reiterates that there is a public-importance exception to the general standing requirement. *Id*. at 588. A "requirement of standing is that the litigant personally suffer injury that can be fairly traced to the allegedly unconstitutional statute…" *Id*. at 588. Thus, being in the best position to litigate, even if true, can never alone provide standing. Further, at the hearing on November 17, 2022, GLVSTRA argued that it is not claiming monetary damages and said that the part of its Amended Complaint that asks for damages should be stricken. 3 JA 460-461. Thus, it is clear and undisputed that GLVSTRA lacks general standing because it has claimed no personalized-injury and there is only a question of whether the public-importance exception applies.

2. GLVSTRA Lacks Standing under the Public-Importance Exception

GLVSTRA claims that the public-importance exception applies to them. However, they provide little to support this claim. GLVSTRA posits that it is in the best position to advocate, that they represent a "range of concerns maintained by a broad membership" and that a government expenditure is axiomatic. 3 JA 445-446. However, the correct legal standard requires a more comprehensive analysis under

a three-prong test, which GLVSTRA fails to pass.

"In appropriate cases, however, "we may grant standing to a Nevada citizen to raise constitutional challenges to legislative expenditures or appropriations without a showing of a special or personal injury." *Id*. at 589 (quoting *Schwartz*, 132 Nev. at 743). For this exception to apply, a plaintiff must demonstrate that (1) the case involves an issue of significant public importance, (2) the case involves a challenge to a legislative expenditure or appropriation on the basis that it violates a specific provision of the Nevada Constitution, and (3) there is no one else in a better position who will likely bring an action and the plaintiff is capable of fully advocating her position in court. *Id*. at 589.

Nevada has the following case law interpreting in which situations this exception applies. *Schwartz v. Lopez*, 132 Nev. 732, 382 P.3d 886 (2016), is the first case where the Nevada Supreme Court recognized this public-importance exception. "We now recognize an exception to this injury requirement…" *Id* at 743. "We stress, as have other jurisdictions recognizing a similar exception to the general standing requirements, that this public-importance exception is narrow and available only if the following criteria are met." *Id*. at 743 (emphasis added). In *Schwartz*, the Court held that the public-importance exception applied to that case because parents were challenging an issue involving statewide public education funding, the challenge involved the appropriation of state tax money into private school trust accounts on

the basis that the appropriation itself violated a specific constitutional provision and there was not likely to be any other individuals who could bring a challenge to the law. *Id*. at 744.

Since *Schwartz*, only four Nevada Supreme Court opinions have substantively discussed the public-importance exception: *Katz v. Incline Village General Improvement District*, 134 Nev. 967, 414 P.3d 300 (2018) (unpublished) (declining to find the public-importance exception, where an individual filed a declaratory action for various claimed statutory violations); *Laborers' International Union of North America, Local 169 v. Douglas County*, 135 Nev. 673, 454 P.3d 1259 (2019) (unpublished) (declining to find the public-importance exception, because the union only requested declaratory relief to declare that county's request for public work proposals violated statue and did not allege that the county "violated a specific Nevada constitutional provision via an expenditure or appropriation"); *Morency v. Department of Education*, 137 Nev. Adv. Op. 63, 496 P.3d 584 (2021) (applying the public-importance exception, because the parents and businesses that benefited from tax credits for education scholarships claimed the legislation changed the appropriation of tax money for those scholarships and that the appropriation itself violated a specific constitutional provision, affected the financial concerns of individuals throughout the state and there was no one else likely to bring a challenge); and *Nevada Policy Research Institute, Inc. v. Cannizzaro*, 138 Nev. Adv.

Op. 28, 507 P.3d 1203 (2022) (declining to find the public-importance exception because the challenge to state senators serving as prosecutors under a separation of powers theory did not challenge a legislative expenditure or appropriation, but the Court did expand the public-importance exception where an appropriate party seeks to enforce a public official's compliance with Nevada's separation-of-powers clause, the issue is likely to recur and there is need for future guidance).

Obviously, this Court has severely limited how many cases in which the public-importance exception should apply. It is important to note that *Cannizzaro*, found no public-importance exception on the basis that the constitutional challenges were not directed at an expenditure or appropriation of tax money. Even though *Cannizzaro* delt with employees of the state government presumably paid with tax money, the normal public-importance exception did not apply because the constitutional challenge was not based on the employees being paid with tax money, it was based on an employee serving in two branches of government at the same time. This shows that the case needs to do more than involve tax money, the constitutional violation must come because of the appropriation of tax money itself. While, *Cannizzaro* did ultimately create a new standing exception, it only applies to separation of powers cases, which is not in question here.

In all of the above cases, the Court focuses on the likelihood that a similar plaintiff will have standing in the future and be likely to bring suit. In the two cases

where the Court found that the public-importance exception applied they did so because almost no conceivable plaintiff would ever have standing or motivation to litigate in the future. Both those cases were based on the funding of education. In these cases almost no individual plaintiff would ever have a personal injury. Further, the challenged appropriations were alleged to violate a specific part of the Nevada constitution. The Court does not find the public-importance exception where there is likely to be someone injured by the law in the future and that person will likely bring suit. This makes sense because generally courts should not be used to review every legislative decision without an injured party and without a ripe controversy.

Here, Clark County's short-term rental ordinance and the State's law requiring Clark County to adopt a short-term rental ordinance in accordance with its terms are more similar to *Doe v. Bryan* and *Blanding*, because as soon as an individual is denied a short-term rental license or is cited for a penalty under the new law, that individual will have standing. There will likely be numerous constitutional challenges to Clark County's short-term rental ordinance brought by plaintiffs with an actual interest in the outcome of the case. These plaintiffs will have skin in the game. Courts look to whether a plaintiff has damages because that is the best indication that they will be properly motivated to litigate the case. It is clear based on the above caselaw that the instant case is very different, and the public-importance exception should not apply. However, in *Schwartz* the Court the Court

also provides case examples for each prong of the exception test from other jurisdictions, these three prongs and the *Schwartz* case citations will be discussed separately below to provide a detailed look into what the standard is for each prong.

a. This case does not involve an issue of significant public importance

For the first prong, significant public importance, *Schwartz* cites *Trs. For Alaska v. State,* 736 P.2d 324, 329 (Alaska 1987). *Id*. at 743. *Trs. For Alaska* specifies that significant public importance is measured in part by determining whether there is an issue of a specific constitutional limitation. *Trs. For Alaska*, 736 P.2d at 329. In *Trs. For Alaska* the court held there was an issue of significant public importance because the case involved the state leasing 50,000 mining claims without the payment of rent in violation of a specific constitutional provision that required the State to receive rent for mining leases and the possibility of losing all of those mining claims to the Federal Government. *Id*. at 330 (conversely a taxpayer challenging the sale of 20 acres in a different case was not significant because of the magnitude of its economic impact on the state). In *Schwartz,* the Court held that there was an issue of significant public importance because the case involved the state diverting funds away from public schools statewide into private schools, even though the Nevada Constitution specifically provides that the legislature must sufficiently fund public education before making other appropriations. *Schwartz,*

132 Nev. at 744. In *Morency*, the Court held that there was an issue of significant public importance because the case involved the State budget, limiting the amount of tax credits for scholarship donations statewide and violating the supermajority vote requirement under the Nevada Constitution. *Morency*, 496 P.3d at 589.

Here, the regulation of short-term rentals in Clark County may be an important issue for those operating short-term rentals around the strip and their neighbors. However, it does not reach the level of statewide importance like issues of funding public education with tax money. The opinions above all specifically mention the issues being of statewide importance, but in this case short-term rental operators are only a small percentage of one county. Further, unlike *Trs. For Alaska*, there is no specific constitutional limitation on the regulation of short-term rental businesses. Short-term rentals are not specifically protected in the constitution like the funding of public education is. Lastly, here the short-term rental ordinance has little economic impact on the state. This case is very different than other cases where the Court found a significant public interest.

Thus, GLVSTRA fails to meet the first prong of the public-interest exception because it has failed to show that this case involves an issue of significant public importance.

b. This case does not challenge a legislative expenditure or appropriation on the basis that it violates a specific provision of the Nevada Constitution

For the second prong, legislative expenditure or appropriation, *Schwartz* cites *Dep't of Admin. v. Horne*, 269 So.2d 659, 662-63 (Fla. 1972). *Schwartz*, 132 Nev. at 743. *Dep't of Admin* adopts the United States Supreme Court's expenditure requirement:

> "[A] taxpayer will have standing consistent with Article III to invoke federal judicial power when he alleges that congressional action under the taxing and spending clause is in derogation of those constitutional provisions which operate to restrict the exercise of the taxing and spending power. *Dep't of Admin*, 269 So.2d at 663 (quoting *Flast v. Cohen*, 392 U.S. 83, 105-106, 88 S.Ct. 1942, 1955).

In *Dep't of Admin* the state passed a general appropriations act, which required the comptroller to distribute state funds, and the taxpayers who challenged the act claimed that the act violated specific provisions of the state constitution that limited what tax funds could be spent on. *Id*. at 660. The court notes that expenditures, the spending of tax money, and appropriations, dedicating tax money for a specific use, are distinguished without a difference for purposes of the standing exception. *Id*. at 660. *Schwartz* provides that an appropriation is "the setting aside from the public revenue of a certain sum of money for a specified object, in such manner that the executive officers of the government are authorized to use that money, and no more, for that object, and no other." *Schwartz*, 132 Nev. at 753. The court found that there was a challenge to a legislative expenditure or appropriation on the basis that it violates a specific constitutional provision because the bill authorized the creation

of education savings accounts into which public funds were transferred from the state Distributive School Account for parents to use to subsidize private school tuition. *Id*. at 738. *Morency* also found the challenged law had an appropriation because the tax credits given to businesses who donated to scholarship funds were in effect funded with tax revenue and the parents that challenged the law claimed that the tax credits law violated a specific constitutional provision which required a supermajority vote to approve that type of appropriation. 496 P.3d at 591. Standing was not given in these cases because the tax credits or the private trust accounts violated the constitution, but because the legislative act of making the appropriation of tax money into the trust accounts and tax credits allegedly violated a specific constitutional provision that prohibits that type of appropriation.

Here, there is no expenditure or appropriation of tax money involved and there is no claim that an expenditure or appropriation violates a specific provision of the Nevada Constitution. The short-term rental statutes simply tell the County that they have to pass an ordinance and the ordinance provides the regulations for operating a short-term rental business. GLVSTRA has claimed that parts of the ordinance and statutes violate the constitution, but that is not challenging an expenditure or appropriation of tax money on the basis that it violates a specific part of the Nevada Constitution.

GLVSTRA seems to claim that if the County spends any money on

enforcement of the new ordinance or on the administrative processing of applications that it is an expenditure or appropriation. 3 JA 446. But, that is not the correct standard and not enough. As shown in *Cannizzaro*, paying an employee to do a job is not an appropriation, even if that employee's job violates the constitution. Further, GLVSTRA's interpretation of appropriation would totally destroy the narrow exception, making this second prong of the exception test apply in every conceivable situation. No tax funds are being appropriated here, there is just a new method for the licensing of certain businesses and penalties for violating those licensing requirements.

Clark County was given no tax money by the state to adopt or administer this ordinance and the costs of administrating and enforcing the ordinance will come from application fees and fines. Further, even if Clark County was given an appropriation of tax money for the program's administration, GLVSTRA are not claiming that the appropriation of the tax money itself is a violation of a specific provision of the Nevada Constitution. The expenditure or appropriation itself must be the alleged constitutional violation.

Lastly, even if GLVSTRA could allege that it is challenging a law that can be considered an expenditure or appropriation of tax money, it has not shown that the appropriation is in violation of a specific constitutional provision. Claiming a due process violation or a first amendment violation is not enough. In *Schwartz* there

was an alleged violation of the specific Nevada Constitutional provision that the legislature must first fund public education before funding other things. In *Morency* there was an alleged violation of the specific Nevada Constitutional provision that the legislature cannot adopt an appropriation without a supermajority vote. Here, GLVSTRA has not alleged that any appropriation violates a specific Nevada Constitutional provision, which prohibits that appropriation.

Thus, GLVSTRS fails to meet this second prong of the public-interest exception because it is not challenging legislative expenditure or appropriation of tax money on the basis that it violates a specific provision of the Nevada Constitution.

c. There are others in a better position who will likely bring an action and GLVSTRA is not capable of fully advocating its position

For the third prong, no one else better to who will likely bring an action, *Schwartz* cites *Utah Chapter of Sierra Club v. Utah Air Quality Bd.*, 148 P.3d 960, 972-73 (Utah 2006) and *Trs. For Alaska*, 736 P.2d at 329-30. *Schwartz*, 132 Nev. at 743. In *Utah Chapter of Sierra Club*, the court found that if the Sierra Club could not challenge the law, it would likely escape review. 148 P.3d at 972. However, the court also held that the Sierra Club also had to show "a real and personal interest in the dispute" and the ability to fully and fairly litigate the dispute. *Id*. at 973. In *Trs. For Alaska*, the court found that a plaintiff must be appropriate in several respects

and standing may be denied if there is a plaintiff more directly affected by the challenged conduct in question who has or is likely to bring suit. 736 P.2d at 329. Further, standing may be denied if a plaintiff appears to be incapable, for economic or other reasons, of competently advocating the position it has asserted. *Id*. at 330. The court found that in this case the crucial inquiry was whether a more directly concerned potential plaintiff had sued or seemed likely to sue in the foreseeable future. *Id*. at 330. Because plaintiffs were challenging the sale of state land, the court found no one else was likely to have standing to sue, except for the attorney general, who had different interests than the plaintiffs. *Id*. at 330. In *Schwartz*, the Court held that the parents of Nevada public school children had standing because there was no one else in a better position who would likely bring an action against the diversion of funds from public schools. 132 Nev. at 743-44. Similarly, in *Morency*, parents of scholarship recipients and businesses that donated to the scholarship funds and received tax credits had standing because no one else was in a better position and would likely bring an action. 496 P.3d at 589.

Here, there are many individuals and accommodations facilitators, like Airbnb, who are likely to sue in the foreseeable future. Clark County realizes that operating short-term rentals in Las Vegas is extremely profitable and with money comes the incentive to litigate. Also, Clark County's short-term rental ordinance will be used to deny many business license applications, revoke business licenses and

impose thousands of dollars in civil penalties for operating without a license. The ordinance has many aspects, which will surely result in many parties claiming damages and bringing lawsuits with many different constitutional arguments. With these alleged damages comes the specific facts and standing that a plaintiff really needs to appropriately challenge a law.

These plaintiffs will have more interest in advocating their position than GLVSTRA, because they will have a financial interest in operating a short-term rental and in the outcome of the litigation. Further, they will have the additional benefits of having specific facts to demonstrate that a law is being applied in an unconstitutional manner and personal injuries to have a monetary interest in the litigation.

Here, GLVSTRA does not have the same financial resources or incentive to litigate something to the extent that Airbnb or an individual operator that owns thirty to sixty short-term rental properties. GLVSTRA admits that it has no financial interest in the outcome of the instant litigation. GLVSTRA may be a non-profit with a vast group of supporters, but that does not mean they are best situated to bring litigation. Having a financial incentive in the outcome of the litigation and the likelihood of a foreseeable suit in the future are the biggest indicators of suitability. Here, both indicators support Clark County's claim that GLVSTRA are not the best party to litigate these issues.

Thus, GLVSTRA has failed to meet this third prong of the public-importance exception because it has not shown that there are no other plaintiffs that are in a better position and likely to bring suit in the foreseeable future.

C. The Preliminary Injunction Is Based on an Erroneous Legal Standard

Even if GLVSTRA were to have standing, it is still legally improper to grant a preliminary injunction in this case.

A preliminary injunction is appropriate where the moving party can demonstrate that (1) "it has a reasonable likelihood of success on the merits"; and (2) "absent a preliminary injunction, it will suffer irreparable harm for which compensatory damages would not suffice." *Elk Point County Club Homeowners' Association, Inc. v. K.J. Brown, LLC*, 138 Nev. Adv. Op. 60, 515 P.3d 837, 839 (2022). "While the moving party need not establish certain victory on the merits, [it] must make a prima facie showing through substantial evidence that [it] is entitled to the preliminary relief requested." *Shores v. Glob. Experience Specialists, Inc.*, 134 Nev. 503, 507, 422 P.3d 1238, 1242 (2018); *see Coronet Homes, Inc. v. Mylan*, 84 Nev. 435, 437, 442 P.2d 901, 902 (1968) (observing that in the absence of testimony, exhibits, or documentary material to support a request for preliminary injunctive relief, such relief should be denied); *see also Kuban v. McGimsey*, 96 Nev. 105, 605 P.2d 623 (1980) (court upheld dismissal of brothel owners' complaint for injunctive relief when the city limited the number of brothel licenses that were issued because

there is no deprivation of property where a business is regulated for health and safety reasons and even the added costs of having to regulate many businesses is a sufficient basis to limit licenses).

In considering a preliminary injunction, courts also "weigh the potential hardships to the relative parties and others, and the public interest." *Univ. and Cmty. Coll. Sys. Of Nev. v. Nevadans for Sound Gov't*, 120 Nev. 712, 721, 100 P.3d 179, 187 (2004). Preliminary injunction is the strong arm of equity, which should not be extended to cases that are doubtful or do not come within well-established principles of law. *City of Boulder City v. BFE, LLC*, 510 P.3d 814 (Nev. 2022) (unpublished), citing *Detroit Newspaper Publishers Ass'n v. Detroit Typographical Union No. 18*, 471 F.2d 872, 876 (6th Cir. 1972). Preliminary injunctions that go beyond the preservation of the then existing status quo should not be lightly issued. *City of Boulder City v. BFE, LLC*, 510 P.3d 814 (Nev. 2022) (unpublished) (holding the district court abused discretion by issuing a preliminary injunction that allowed the applicant to operate a fuel tanker in violation of the fire department's interpretation of the fire code), citing *King v. Saddleback Junior Coll. Dist.*, 425 F.2d 426, 427 (9th cir. 1970) (explaining that the district court abused its discretion because it decreed that the school applicants should be permitted to register in violation of the school's dress code regulation prior to a determination of the regulation's validity).

In considering a constitutional challenge, the court must start with the presumption in favor of constitutionality and should only interfere only when the Constitution is clearly violated. *Schwartz v. Lopez*, 132 Nev. 732, 745, 382 P.3d 886, 895 (2016). When making a facial challenge, the challenger bears the burden of "demonstrating that there is no set of circumstances under which the statute would be valid." *Id*. at 745. The rules of statutory construction apply and the court must look to the plain language of the provision if it is unambiguous. *Id*. at 745. Only if there is more than one reasonable interpretation, should the court look beyond the plain language and consider the history, public policy and reason in order to ascertain the intent of the drafters and then the court must interpret the ordinance to avoid absurd results. *Id*. at 745.

1. GLVSTRA is not Likely to Succeed on the Merits

GLVSTRA's Motion for Preliminary Injunction asserted disfavored facial challenges to the constitutionality of Clark County Code § 7.100.050, et seq. under both the Nevada State Constitution and the United States Constitution. 2 JA 254-312. The basis of GLVSTRA's arguments turn on the speculative contention that the ordinance "leave[s] an ordinary reasonable person to simply guess at [the vague terms'] meaning and what conduct is illegal." 2 JA 269. Notably, as the ordinance only recently went into effect, GLVSTRA can point to no instance, in their own experiences or otherwise, that shows that the subject ordinance is too vague or

overbroad to be constitutionally understood or enforced. 2 JA 254-312 Accordingly, its arguments in this regard are based on nothing but speculation.

Facial challenges like those being raised by GLVSTRA here "are disfavored for several reasons." *Washington State Grange v. Washington State Republican Party*, 552 U.S. 442, 450, 128 S. Ct. 1184, 1191, 170 L. Ed. 2d 151 (2008). Facial challenges frequently rely on speculation or interpretation of statutes "on the basis of factually barebones records." *See Sabri v. United States*, 541 U.S. 600, 609, 124 S.Ct. 1941, 158 L.Ed.2d 891 (2004) (internal quotation marks and brackets omitted). "Facial challenges … are especially to be discouraged" because "not only do they invite judgments on fact-poor records, but they entail a further departure from the norms of adjudication in federal courts: overbreadth challenges call for relaxing familiar requirements of standing, to allow a determination that the law would be unconstitutionally applied to different parties and different circumstances from those at hand." *Sabri v. United States*, 541 U.S. 600, 609–10, 124 S. Ct. 1941, 1948, 158 L. Ed. 2d 891 (2004). Courts "have recognized the validity of facial attacks alleging overbreadth (though not necessarily using that term) in relatively few settings, and, generally, on the strength of specific reasons weighty enough to overcome [the courts'] well-founded reticence." *Sabri v. United States*, 541 U.S. 600, 609–10, 124 S. Ct. 1941, 1948, 158 L. Ed. 2d 891 (2004); *see also Broadrick v. Oklahoma*, 413 U.S. 601, 93 S.Ct. 2908, 37 L.Ed.2d 830 (1973).

Declaring statutes unconstitutional "frustrates the intent of the elected representatives of the people." *Regan v. Time, Inc.*, 468 U.S. 641, 652, 104 S.Ct. 3262, 82 L.Ed.2d 487 (1984) (plurality opinion); *see also Ayotte v. Planned Parenthood of N. New England*, 546 U.S. 320, 329–31, 126 S. Ct. 961, 967–69, 163 L. Ed. 2d 812 (2006). The constitutional mandate to the courts encourages judicial restraint such that the courts refrain from "rewrit[ing] state law to conform it to constitutional requirements…." *Ayotte v. Planned Parenthood of N. New England*, 546 U.S. 320, 329–31, 126 S. Ct. 961, 967–69, 163 L. Ed. 2d 812 (2006) (citing *Virginia v. American Booksellers Assn., Inc.*, 484 U.S. 383, 397, 108 S.Ct. 636, 98 L.Ed.2d 782 (1988)). Invalidating a statute, without taking into consideration the intent and desire of the legislature, circumvents the intent of the legislature. *See Califano v. Westcott*, 443 U.S. 76, 94, 99 S.Ct. 2655, 61 L.Ed.2d 382 (1979) (Powell, J., concurring in part and dissenting in part); *see also Dorchy v. Kansas*, 264 U.S. 286, 289–290, 44 S.Ct. 323, 68 L.Ed. 686 (1924) (opinion for the Court by Brandeis, J.); *Minnesota v. Mille Lacs Band of Chippewa Indians*, 526 U.S. 172, 191, 119 S.Ct. 1187, 143 L.Ed.2d 270 (1999).

Here, GLVSTRA can point to no instance where the terms it claims are vague or ambiguous have led to issues in the enforcement of the subject Clark County ordinance. It can similarly point to no instance where enforcement was inconsistent or exceeded the scope of the ordinance because of some purported overbreadth

inherent in the language of the ordinance. In fact, given that the ordinance only recently came into effect, there are no facts in this case that indicate anyone has ever been cited under this ordinance. Despite the lack of any articulable facts supporting their assertions, GLVSTRA seeks to have the Court supplant its wisdom with that of the legislature based on nothing more than conjecture and GLVSTRA's unilateral and selective interpretation of the County's ordinance.

The relief GLVSTRA seeks is speculative, not based on an actual injury, and pushes the bounds of traditional standing; thereby highlighting why these sorts of "facial challenges" are disfavored. As GLVSTRA's facial challenges to the constitutionality of the Clark County ordinance are both disfavored and lacking in substantive support, it is not likely to prevail on the merits and, accordingly, the Court should overturn the preliminary injunction issued by the District Court and find that no preliminary injunction is appropriate in this case.

a. Discretion in lowering fines within a legislatively adopted range is not unconstitutional

The District Court enjoined many parts of Clark County ordinance that have since been amended by Clark County in order to clarify the ordinance since the District Court held that it was vague, as such, Clark County believes these issues are moot for purposes of appeal. 5 JA 760-777.

Where the alleged harm caused by a preliminary injunction order or the challenged law no longer exists, the appeal of that preliminary injunction becomes moot. *Cooper v. City of Tucson*, 649 Fed.Appx. 624, 626-27 (9th Cir. 2016). Preliminarily enjoined ordinances no longer govern any individual after they are amended, and the court's enjoinment of that ordinance no longer impacts the legislative body after the ordinance is amended. *Id*. at 626-27. Here, Because Clark County amended all of the provisions enjoined by the District Court, except the provisions that deal with fines, those provisions are no longer laws which apply to GLVSTRA. Further, Clark County is no longer being harmed by the District Court's enjoinment of those provisions, because the preliminary injunction does not apply to the newly enacted provisions. Thus, the issues regarding the old provisions are moot. Further, the amended provisions were never challenged by GLVSTRA in their Second Amended Complaint. 2 JA 188-253. GLVSTRA cannot challenge these amended provisions in the current appeal of the preliminary injunction and it must challenge these amended provisions in District Court first. *Id*. at 627.

Clark County was only unable to amend the fines provision of its ordinance, to attempt to comply with the District Court's instructions, because that provision is required by statute. NRS 244.353545(3); CCC 7.100.230(b), CCC 7.100.230(d)(1)(i).

> The ordinance adopted pursuant to subsection 1 may, in addition to any other penalty provided by law, establish a schedule of civil penalties or

> fines to impose on a person who makes available a residential unit or room within a residential unit without holding an authorization issued pursuant to NRS 244.35356. Any such civil penalty or fine for a single violation must not be less than $1,000 or more than 10,000. If the ordinance includes a schedule of civil penalties of fines pursuant to this subjection, the board of county commissioners must establish standards for determining the amount of the civil penalty or fine which take into account, without limitation: (a) The severity of the violation; (b) Whether the person who committed the violation acted in good faith; and (c) Any history of previous violation of the provisions of the ordinance or any other ordinance related to transient lodging.

NRS 244.353545(3).

Clark County's ordinance adopted the standard required by statute and makes it clear that the fines could be imposed for each separate violation.

> Any person in violation of this chapter shall be subject to the penalties and remedies set forth herein. The penalties and remedies shall be cumulative and may be exercised in any order or combination and at any time.

CCC 7.100.230(b)

> Where a person is alleged to be operating a residential unit or room within a residential unit for the purpose of transient lodging without possessing a valid unexpired short-term rental license, a fine of not less than one thousand dollars and not more than ten thousand dollars. The amount of the fine shall be determined only after taking into account, without limitation, the severity of the violation, whether the person who committed the violation acted in good faith, and any history of previous violations of the provisions of this chapter or any other chapter related to transient lodging.

CCC 7.100.230(d)(1)(i)

The District Court did not mention these provisions during oral argument, but the Order provides the District Court's reasoning in enjoining these provisions:

> These provisions authorize Clark County to issue a citation to a short-term rental owner, or patron, based upon subjective discretion of what constitutes 'good faith' or an egregious violation history that may differ from one Clark County or law enforcement official to another. No standards to ensure fair and equal treatment under the law are provided. The broad grant of discretion and authority to Clark County also implicates the Due Process Clauses set forth in Article 1, Section 8 of the Nevada Constitution and the Fifth, Sixth, and Fourteenth Amendments of the United States Constitution. Accordingly, these Sections of the Ordinance are unconstitutionally vague and/or overbroad and may lead to arbitrary and capricious enforcement.

5 JA 740.

The District Court only held that what constitutes good faith "may" differ and that the sections "may" lead to arbitrary enforcement. The District Court enjoined these sections based on an erroneous legal standard. The legal standard is not whether the ordinance may be interpreted differently or may lead to arbitrary enforcement. The legal standard is whether the ordinance, after being presumed constitutional and narrowly tailored by the court, has "no set of circumstances under which the statute would be valid." *Schwartz v. Lopez*, 132 Nev. 732, 745, 382 P.3d 886, 895 (2016). Any ordinance "may" violate the constitution in a hypothetical situation, but facial challenges are only likely to succeed where the ordinance violates the constitution in every hypothetical situation. The District Court did not find that any part of Clark County's ordinance was unconstitutional in every set of circumstances, it only held that the ordinance may be interpreted differently or lead to arbitrary enforcement in certain circumstances. Further, the District Court also held that "no standards to ensure fair and equal treatment under the law are

provided", but the court did not hold an evidentiary hearing to ask the officers if they have a standard to ensure the fines were not imposed arbitrarily. So, the court made a factual finding that is not supported by substantial evidence. Thus, the District Court used a clearly erroneous legal standard and made factual findings not supported by substantial evidence to enjoin Clark County's ordinance.

Further, municipalities enjoy the power to enforce ordinances using fines when (1) there is a maximum penalty fixed and (2) and there is not unlimited discretion to establish fines without a standard. *City of Las Vegas v. Nevada Industries, Inc.*, 105 Nev. 174, 178, 772 P.2d 1275, 1277 (1989); *see also Wischmeier v. State*, 107 Nev. 371, 811 P.2d 1307 (1991) ($50,000.00 statutory fine for selling $300.00 worth of cocaine is not violation of constitutional rights);

In support of their untenable position that the subject ordinance is unconstitutionally vague and ambiguous, GLVSTRA contends that the "enforcement provisions" of the subject ordinance "are equally vague and arbitrary." 2 JA 282. Notably, GLVSTRA's arguments, which closely mirror those raised in its due process claims, cite to no case law in support of their contention that the enforcement provisions are unconstitutionally ambiguous or arbitrary. 2 JA 282.

While the ordinance is clear regarding the maximum punishment allowable for each violation, GLVSTRA contend that because CCC 7.100.230 allows for application of only a portion of a penalty or a reduction in fines based on

consideration of mitigating factors like the severity of the violation, the good faith intent of the violator, and history of previous violations, that the ordinance is somehow unconstitutionally vague and arbitrary. 2 JA 282.

While there are instances where courts have held that it is unconstitutional NOT to consider mitigating factors when sentencing a criminal defendant, it is upon information and belief that no statute or ordinance has ever been found unconstitutional for discretionary reductions in penalties and/or fines by a court or enforcing entity. *Lockett v. Ohio*, 438 U.S. 586, 608, 98 S. Ct. 2954, 2967, 57 L. Ed. 2d 973 (1978) ("To meet constitutional requirements, a death penalty statute must not preclude consideration of relevant mitigating factors."). In fact, the case law indicates that consideration of mitigating factors is entirely within the discretion of the sentencing entity. *See*, *e.g.*, *Archuleta v. State*, 135 Nev. 606, 443 P.3d 549 (2019); *McKinnon v. State*, 134 Nev. 979, 417 P.3d 1120 (2018) (unpublished).

It is nonsensical to believe that discretionary reductions of penalties or fines constitutes unconstitutional ambiguity. A violator of the subject ordinance is clearly placed on notice of the maximum penalty available for each offense and any reduction thereof is neither guaranteed nor obligatory. Accordingly, a violator of the ordinance, who receives discretionary consideration based on mitigating factors, may find themselves subject to less severe penalties than the maximum penalties proscribed—an outcome that is neither unconstitutional nor unwelcome. Further,

anyone who receives a fine under the provision can file an administrative appeal and seek judicial review to determine if the amount imposed was an abuse of discretion. Lastly, it is possible that Clark County will use this discretion to only impose the minimum fine allowed by the statute, a possibility the District Court did not consider. As GLVSTRA demonstrates no constitutional ambiguity in their arguments regarding the enforcement of penalties for the subject ordinance, the Court should hold that GLVSTRA are not likely to succeed on the merits of the case and overturn the injunction of the District Court which prevents Clark County from imposing these fines.

2. GLVSTRA cannot show Irreparable Harm

A preliminary injunction is available when it appears from the complaint that the moving party has a reasonable likelihood of success on the merits and the nonmoving party's conduct, if allowed to continue, will cause the moving party irreparable harm from which compensatory relief is inadequate. *City of Sparks v. Sparks Mun. Court*, 129 Nev. 348, 357, 302 P.3d 1118, 1124 (2013). GLVSTRA claimed that "the existence of a constitutional violation in itself has been held" by the Supreme Court of Nevada in *City of Sparks* to constitute sufficient irreparable harm to support a preliminary injunction. 2 JA 305. However, the *City of Sparks* court held the exact opposite. The court held that there was a constitutional violation, but that the district court's issuance of a preliminary injunction was "overbroad and

premature." *Id*. at 370. What the Court wrote in the standard of review section is that "a constitutional violation may be difficult or impossible to remedy through money damages, such a violation may, by itself, be sufficient to constitute irreparable harm." *Id*. at 357 (emphasis added). Thus, there is no automatic assumption that monetary damages would be an inadequate remedy in this specific case even if the Court believes a part of the ordinance does violate the constitution. GLVSTRA has cited no cases which show that the inability to receive short term rental payments would constitute irreparable harm.

"[A]cts committed without just cause which unreasonably interfere with a business or destroy its credit or profits, may do an irreparable injury." *State, Dept. of Business and Industry v. Nevada Ass'n Services, Inc.*, 128 Nev. 362, 370, 294 P.3d 1223, 1228 (2012). This includes the revocation of a business license without the opportunity for a notice and a hearing. *Id*. at 1228. However, in this case, GLVSTRA does not have a business license and Clark County has just cause and it is reasonable for it to interfere with businesses that violate the Clark County Code. Even if GLVSTRA received a citation under the new ordinance, which it has not, it would be provided notice and an opportunity to appeal that citation. CCC 7.100.240. There is no valid claim of irreparable harm if the damages are the destruction of an illegal business. There is no valid claim of irreparable harm if GLVSTRA will receive a chance to appeal anything that will burden their business. Further, any

damages are the value of the rent monies, which are easily calculated and are not irreparable.

GLVSTRA claims that with Clark County's ordinance it will be unable to "supplement their income" and they will lose the "financial flexibility to continue working from home…" 2 JA 305-306. GLVSTRA say that obtaining a short-term rental license is the difference between "financially surviving during retirement." 2 JA 306. Jaqueline Flores affidavit states that if she is denied a license, which is still undecided, she will be required to endure "economic exposure." 2 JA 253. It is clear that this case is about money and it is only brought under the guise of constitutional protections.

GLVSTRA claims that it will be irreparably harmed because if it applies for a short-term rental license they will be "forced" to turn over where they are advertising their rental properties. 2 JA 283. GLVSTRA claims this is a violation of the 1st Amendment right to free speech. 2 JA 283. However, even if providing the location of its commercial advertisements was a violation of the 1st Amendment, no one is requiring it to apply for a license. GLVSTRA can ensure the privacy of its home by choosing not to turn their home into a hotel. GLVSTRA can rent its property out for 31 days or more without a short-term rental license. However, many short-term renters do not want to rent long term because they make more money by

violating the law, annoying their neighbors and turning their residential properties into hotels and party houses. Thus, there is no irreparable harm.

3. Balancing of Hardships and Public Interest

GLVSTRA has misinterpreted the balancing of the hardships test. It is not a test to balance the costs of litigation, the financial holdings of each party, or how inconvenient it will be to properly litigate the issues after they are ripe for adjudication. 2 JA 307. After reviewing the likelihood of success and irreparable harm, a "district court may also weigh the public interest and the relative hardships of the parties in deciding whether to grant a preliminary injunction." *Clark County School Dist. v. Buchanan*, 112 Nev. 1146, 1150, 924 P.2d 716, 719 (1996). The granting or refusing or an injunction is a matter of discretion and probably the most important consideration of the district court in deciding how to exercise that discretion is the relative interests of the parties and how much damage each party will suffer if the restraint is denied or granted. *Coronet Homes, Inc. v. Mylan*, 84 Nev. 435, 442 P.2d 901 (1968); *Home Finance Co. v. Balcom*, 61 Nev. 301, 127 P.2d 389 (1942). It is the hardships caused by the ordinance or caused by the restraint of the ordinance that the Court must balance. The ordinance will cause little hardship for GLVSTRA and its restraint will cause great hardship for the County and public.

Previously, short-term rentals were totally banned in Clark County, except for individuals with vacation home business licenses, and now they are allowed if

certain conditions of licensing can be met. This ordinance is a benefit to GLVSTRA and it will now have the opportunity to operate a short-term rental legally. GLVSTRA cannot ignore the previous total ban and claim that this new ordinance is the first law that restricted their business activities. The ordinance will require GLVSTRA to follow the requirements of licensing, but those burdens are outweighed by the benefits of having the chance to operate legally. Thus, this ordinance causes no net hardship for GLVSTRA because the ordinance provides more benefits than burdens.

Conversely, Clark County will be forced to endure great hardship if this Court enjoins the enforcement of the ordinance. Clark County would effectively have its zoning authority and other legislatively delegated authority to regulate short term rentals stripped. Clark County would be unable to protect the public from the many nuisances caused by short term rentals. Clark County would lose its ability to act on behalf of the public who mostly wanted this short-term rental regulation. Further, the public would also be forced to endure great hardship if this Court enjoins the enforcement of this ordinance. The public would effectively lose their property right to quiet enjoyment of their property. They would be forced to go from a residential zone to a commercial hotel zone and endure all the public nuisance that come along with that. Thus, if the Court finds a probability of success and irreparable harm, it

should still use its discretion to deny the preliminary injunction in accordance with the balancing of hardships.

Further, keeping with the status quo, which is a prohibition on short term rentals, would benefit the public by keeping the laws predictable. Making a drastic change by allowing all short-term rentals to operate without regulation would cause chaos and increase party shootings and domestic disputes throughout many neighborhoods.

Next, even if the Court finds that the balancing of hardships weighs in favor of the GLVSTRA, the Court can still choose to not exercise its discretion to issue a preliminary injunction because it would be against the public interest. "The public interest analysis for the issuance of [injunctive relief] requires [courts] to consider whether there exists some critical public interest that would be injured by the grant of preliminary relief." *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1138 (9th Cir. 2011). In *Alliance of the Wild Rockies*, the court held that there was a critical public interest in protecting a federal forest from logging. *Id*. at 1138. The public interest in favor of the logging was the providing of jobs that would benefit the local economy. *Id*. at 1138. The Court found that the public interest injured by not providing the jobs did not outweigh the public interest in protecting the forest. *Id*. at 1138.

The majority of the public in Clark County live in residential zones and do not operate short term rentals. They relied on the Clark County Zoning laws that prohibit commercial businesses and hotels from their neighborhoods when they purchased their houses. There is also an affordable housing problem in Nevada that affects a large number of individuals who rent housing or are looking to buy housing. A relatively small amount of the public operates short term rentals illegally in Clark County. The illegal short term rental operators make more money by renting out their properties as short-term rentals, so there would be a small financial benefit for a small portion of the public. But, the harm caused by illegal short term rentals include public nuisances for a far larger amount of the public. This is why the general public was generally in support of a short-term rental ban and petitioned the County to totally ban them. Thus, the public interests weigh in favor of denying the motion for a preliminary injunction. The Court should not cut down the peaceful communities that exist throughout Clark County to benefit relatively few bad faith business owners.

D. Responding to GLVSTRA's Opening Brief

1. Justiciability

GLVSTRA claims that recent precedent from this Court supports this type of action. Opening Brief, p. 18. However, GLVSTRA provides no citation for this claim. GLVSTRA also claims that no known members of the Rental Association

have yet to be formally granted a license, but they have been constructively denied a license. Opening Brief, p. 18. However, GLVSTRA never provided any evidence to the District Court to show that any members ever applied for a short-term rental license. GLVSTRA claims that unconstitutional provisions within the ordinance prevent individuals from applying for a license, but does not say what those provisions are. Opening Brief, p. 18. GLVSTRA cannot claim standing via its member's injuries without providing any evidence that those injuries happened or will happen.

GLVSTRA claims that the District Court found that standing existed. Opening Brief, p. 18. However, it is important to clarify that the District Court did not find that GLVSTRA had standing under the current law. 5 JA 729-730. The District Court held that no Plaintiffs had even claimed personal injury. 5 JA 729-730. The District Court only held that GLVSTRA had standing under an assumed future expansion of the public-importance exception. 5 JA 729-730.

> Even though this case does not involve a separation of powers issue like Cannizzaro, the facts of this case and the legal precedent cited in Cannizaro leads the Court to believe that the Supreme Court of Nevada would expand the public importance exception to provide standing in this case. Therefore, applying Schwartz, Morency, and Cannizzaro to this matter, the Court holds that while Plaintiffs in this case claimed no personal injury, the Plaintiffs have standing under the public importance exception to the general standing requirement.

5 JA 729-730.

First, GLVSTRA argues that it has shown individual injury through Jacqueline Flores' affidavit that claims although she has not applied for a license that she will be personally harmed if she is denied a license. Opening Brief, p. 19; 1 JA 052-53. GLVSTRA even claims that Jacqueline Flores is a "co-plaintiff and party." Opening Brief, p. 19. However, GLVSTRA argued in District Court and the District Court held that Jacqueline Flores is not individually a party in this case. 3 JA 426-427; 5 JA 678. GLVSTRA argued: "Here, Ms. Flores is named in the Second Amended Complaint in her official and representative capacity as the "President and Director" of the Greater Las Vegas Short Term Rental Association solely… She is not a 'plaintiff' in her individual capacity." 3 JA 426. The District Court held: "She is not a 'plaintiff' in her individual capacity… As such, Ms. Flores is not properly an "opposing party" under NRCP 13(b) because she has not acted in a non-representative or individual capacity that would allow for permission joinder of counterclaims against her by Clark County." 5 JA 678. Thus, GLVSTRA should not be able to use the claims made in Jacqueline Flores' affidavit regarding her personal property to obtain standing. If Jacqueline Flores' is only in this suit in her representational capacity as President and Director of GLVSTRA, as GLVSTRA claims, then clearly GLVSTRA cannot prove standing by showing the claimed injuries of a third-party.

The District Court held that Jacqueline Flores claimed no personal injury in the preliminary injunction order on appeal. 5 JA 729-730. And, the District Court held that Jacqueline Flores is only in this case in her representation capacity when it granted GLVSTRA's Motion to Dismiss Clark County's Counterclaims. 5 JA 678, 729-730. While this Court has jurisdiction to decide the issue of whether any plaintiff has a personal injury to obtain standing in order to decide whether the preliminary injunction was proper, the issue of whether Jacqueline Flores is in this case in her personal capacity or representational capacity is not properly on appeal before this Court because that decision was in an order granting a motion to dismiss. However, even if this Court had jurisdiction to overturn the District Court's finding that Jacqueline Flores is in this suit in her personal capacity and allow Clark County's counterclaims to proceed, that would still not be enough for GLVSTRA to have standing due to personal injury.

Assuming Jacqueline Flores is in this suit in her personal capacity, Jacqueline Flores' affidavit is still not enough to show personal injury in order to obtain standing. She does not claim any personal injury that is not merely a general interest that is common to all members of the public. 1 JA 052-053. She never claims she was prosecuted or threatened with prosecution under the challenged ordinance, she just says that she finds the ordinance confusing. 1 JA 053. She does not provide any proof that she applied for a license, was denied a license, or was fined for violating

the ordinance. 1 JA 052-053. Her claimed future constitutional violations are not specific to her and generally apply to anyone in Clark County. Thus, she has not shown personal injury to prove general standing.

Second, GLVSTRA claims standing under the public importance exemption. Opening Brief, p. 19. However, GLVSTRA miscites the second prong of the test. It does not matter if the "case involves a government expenditure." Opening Brief, p. 19. The test requires the case to challenge the legislative expenditure or appropriation on the basis that the expenditure or appropriation violates a specific part of the constitution. *Schwartz v. Lopez*, 132 Nev. 732, 743, 382 P.3d 886, 894 (2016). Even assuming that GLVSTRA can meet the first and third prongs of the test, which Clark County has already argued earlier in this brief, GLVSTRA absolutely cannot meet this second requirement for standing.

GLVSTRA claims that it meets the second prong because the ordinance requires the expenditure of public funds to process license applications and engage in enforcement actions, citing the Clark County Code. Opening Brief, p. 20. However, this interpretation would render the second prong meaningless. Neither the Nevada legislature nor Clark County are appropriating or expending any tax money in the challenged laws. Further, if Clark County elects to spend money enforcing a law or processing an application, that is not a legislative appropriation of tax money. Lastly, even if it were a legislative appropriation of tax money,

GLVSTRA is not claiming that there is a specific constitutional provision that prohibits the use of tax money to process applications or enforce laws. Thus, GLVSTRA has failed to meet the second prong of the public-importance exception.

Third, GLVSTRA also claims that it has standing through organizational representation. This argument was not raised in the District Court and it is improperly raised here. As a result, GLVSTRA also did not present any of the facts required in order to successfully argue that it had organizational representation in District Court. However, GLVSTRA claims that (1) Jacqueline Flores has standing, (2) GLVSTRA's members' interests are germane to GLVSTRA's purpose and (3) the claims do not require Jacqueline Flores' participation. Opening Brief, p. 21.

Clark County disagrees that GLVSTRA has standing through organizational representation. First, Jacqueline Flores does not have standing to challenge any of the laws which GLVSTRA seeks to enjoin. For example, Jacqueline Flores was never cited or threatened with a citation for violating Clark County Code 7.100 and thus was never subject to the fines enjoined by the District Court. 1 JA 052-53. Further, Jacqueline Flores does not claim to be injured by the other parts of the challenge laws, including the distance separation requirements, and has not claimed she was even applied for a business license. 1 JA 052-53. Even if the Court finds that Jacqueline Flores does have standing to challenge one part of the ordinance, such as the application requirements, it does not mean she has standing the challenge

every section of the ordinance which GLVSTRA is challenging. Lastly, Jacqueline Flores does not claim to be a member of GLVSTRA and only claims to be the president and director. 1 JA 052-53. Thus, GLVSTRA fails to meet the first prong of the test because they cannot prove "its members would otherwise have standing to sue in their own right." GLVSTRA *Nat'l Ass'n of Mut. Ins. Cos. V. Dep't of Bus. And Inds., Div of Ins.*, 139 Nev. Adv. Op. 3, __, 524 P.3d 470, 478 (2023).

Further, in the case cited by GLVSTRA, the Court held that an organization must allege a non-speculative injury of its members. *Id*. at 479. GLVSTRA has not alleged any non-speculative injuries or injuries of its undisclosed members. The Court held that injuries were not speculative in the cited case because a declaration provided a list of members and showed that 76 members had already issued new insurance policies in which they would not be able to recover premiums because of the challenged law. *Id*. at 479. GLVSTRA provides no list of members or proof that their members have been injured, so they cannot show any of their members have standing.

Fourth, GLVSTA claims that "ongoing harm" provides standing. GLVSTRA argues because Clark County has deprived "applicants" of short-term rental licenses, it has violated the applicant's constitutional rights. Opening Brief, p. 21. However, again, GLVSTRA does not even claim that these "applicants" are members of GLVSTRA or provide any proof that any of its members either applied or were

denied a license. GLVSTRA also fails to show any legal support for their claim that individuals have a constitutional right to a short-term rental license.

GLVSTRA claims that the existence of a constitutionally invalid law is, itself, irreparable harm, and presumes this provides standing to obtain a preliminary injunction. Opening Brief, p. 21. However, the cases they cite for this proposition do not say this. *Preston v. Thompson*, 589 F.2d 300, n.3 (7th Cir. 1978) ("continuing constitutional violation constitutes proof of an irreparable harm" where prison inmates were locked in cells 24 hours and not allowed to shower); *Cohen v. Coahoma County, Miss.*, 805 F.Supp. 398, 406 (N.D. Miss. 1992) (prisoners were being whipped and threated with physical violence if they did not provide information). Here, GLVSTRA and its members have not shown any evidence that they have been harmed by the ordinance. Clark County has not taken away any of their legally recognized rights. Clark County has not threatened to impose fines on them without providing them due process rights to challenge those fines. If any member of GLVSTRA receives a fine in the future that they think is unconstitutional or an abuse of discretion, they have the right to an administrative appeal and judicial review. CCC 7.100.240. Thus, clearly, GLVSTRA has no injury and has no standing to challenge Clark County's ordinance.

2. Ripeness

GLVSTRA and its members have been prohibited from operating a short-term

rental in a residential neighborhood without a license in unincorporated Clark County for many years under Clark County Code 30.44.070(b)(7)(C). It is unclear what harm Clark County's new ordinance which allows for more individuals to get business licenses may cause to GLVSTRA in the future. However, it is clear that GLVSTRA has not provided any evidence that it or any of its members have been harmed by the new ordinance. GLVSTRA claims that this case involves fundamental constitutional rights, but they do not say what fundamental right they are talking about. Opening Brief, p. 22. GLVSTRA claims that Clark County is requiring it to agree to unconstitutional terms in order to apply for a business license and it cites to CCC 7.100.170(u) as an example. Opening Brief, p. 22. CCC 7.100.170(u) provides that if an individual has a license, that individual has a "[d]uty to comply with all Applicable Laws." CCC 7.100.170(u). GLVSTRA provides no citation to any law that says it is unconstitutional to require licensees to follow all other applicable laws. GLVSTRA did not challenge the constitutionality of CCC 7.100.170(u) in its Amendment Complaint, so it is unclear why it is citing to it as an alleged unconstitutional provision. 2 JA 188-253.

GLVSTRA also claims that CCC 7.100.230(f)(1) provides that a violation of this ordinance could result in a misdemeanor citation and that the criminal nature of the ordinance should inform this Court's analysis. Opening Brief, p. 23. However, this is clearly not the case after Clark County's amendment of the ordinance. CCC

7.100.230(f)(1) only provides that the ordinance does not limit the County's ability to exercise its rights under other laws, such as state laws which may make something a misdemeanor. Notably, when Clark County amended the ordinance, it removed the term "unlawful" from the ordinance in CCC 7.100.220(a) to make it clear that this was not a criminal ordinance. 5 JA 774.

Lastly, GLVSTRA claims that it is making an as-applied challenge. Opening Brief, p. 23. However, clearly from its arguments made against the ordinance, GLVSTRA has never made an as-applied argument against the ordinance. Just because Clark County is accepting applications, does not mean a facial challenge becomes an as-applied challenge. As-applied challenges require some factual basis for the court to examine and determine whether the law is unconstitutional as it was applied to a specific plaintiff in a specific situation. *Deja Vu Showgirls v. State, Dept. of Tax*, 130 Nev. 719, 726, 334 P.3d 392, 397 (2014) (as-applied constitutional challenges hinge on factual determinations). If GLVSTRA had raised a set of facts in which to make an as-applied challenge in District Court, Clark County could have moved to dismiss it for lack of subject matter jurisdiction because GLVSTRA never filed an administrative appeal with the state agency. *Id*. at 726. Thus, the record does not contain any facts for a court to apply and even if it did the as-applied challenge would be dismissed for failure to file an administrative appeal.

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3. Licensing Scheme

GLVSTRA claims that Clark County's licensing scheme violates due process and is arbitrary because whether an applicant gets a license depends on chance. Opening Brief, p. 25. However, GLVSTRA cites no law and does not address the due process legal standard. Opening Brief, p.25. Clark County cited the due process standard and showed that GLVSTRA's due process arguments lacked merit, which is why the District Court did not enjoin the licensing process. 3 JA 375-384.

"To state a substantive due process claim, the plaintiff must show as a threshold matter that a state actor deprived it of a constitutionally protected life, liberty or property interest." *Shanks v. Dressel*, 540 F.3d 1082, 1087 (9th Cir. 2008). "Substantive due process rights are created only by the Constitution." *Regents of Univ. of Mich. v. Ewing*, 474 U.S. 214, 229, 106 S.Ct. 507 (1985) (J. Powell, concurring). A substantive due process claim, then, cannot be predicated on a deprivation of a state-created property interest, but can be predicated on the deprivation of a protected interest provided by the Constitution. *See Id*.

GLVSTRA's first cause of action, which purports to set forth their due process claim, does not identify a viable interest protected by substantive due process. 2 JA 199-204. As such, the complaint itself fails to state a claim that the Ordinance effectuates a deprivation of such an interest without due process.

In addition to a substantive due process claim, GLVSTRA could have brought a facial *procedural* due process challenge to the Ordinance. To do so, GLVSTRA must have asserted that under no set of circumstances could short-term rental owners receive a fair process if deprived of some protected liberty or property interest by the County. *See Chicanos Por La Causa, Inc. v. Napolitano*, 558 F.3d 856, 868 (9th Cir. 2009), *aff'd sub nom. Chamber of Com. of U.S. v. Whiting*, 563 U.S. 582, 131 S. Ct. 1968, 179 L. Ed. 2d 1031 (2011); *see also Nelson v. Diversified Collection Servs. Inc.*, 961 F. Supp. 863, 868 (D. Md. 1997). Property interests "include anything to which a plaintiff has a 'legitimate claim of entitlement.'" *Nozzi v. Hous. Auth. Of City of L.A.*, 806 F.3d 1178, 1191 (9th Cir. 2015) (*quoting Bd. of Regents of State Colls. V. Roth*, 408 U.S. 564, 576-77, 92 S.Ct. 2701, 33 L.Ed.2d 548 (1972)). The deprivation of a "unilateral expectation" of a property or liberty interest, however, is insufficient to establish a claim. *Bd. of Regents v. Roth*, 408 U.S. 564, 577, 92 S.Ct. 2701, 33 L.Ed.2d 548 (1972).

GLVSTRA has not asserted a substantive or procedural due process claim in accordance with the foregoing case law. Instead, it has invented its own standard for determining when an Ordinance, on its face, generally violates due process. According to its standard, if the text of the Ordinance *could invite County officials to make arbitrary or capricious decisions in the future*, then the Ordinance is constitutionally infirm and may be facially attacked. 2 JA 276 ("the Ordinance is

arbitrary and capricious by the language in its own text. It is riddled with instances of unfettered and random discretion."). But as set forth above, a substantive or procedural due process claim cannot be asserted on the basis that the legislation may allow for "arbitrary and capricious enforcement" or because the standards for issuance of a license are "undeniably vague."

The government need only show that the challenged statute could conceivably further a state interest, while the plaintiff must bear the high burden to "negate 'every conceivable basis'" which might justify the challenged provisions in the Ordinance. See *Angelotti Chiropractic, Inc. v. Baker*, 791 F.3d 1075, 1086 (9th Cir. 2015) ("On rational basis review, the burden is on plaintiffs to negate every conceivable basis... [for the statute]"); *see also Armour v. City of Indianapolis, Ind.*, 566 U.S. 673, 132 S. Ct. 2073, 2080-81, 182 L.Ed.2d 998 (2012) ("Because the classification is presumed constitutional, the burden is on the one attacking the legislative arrangement to negative every conceivable basis which might support it.").

GLVSTRA specifically argues against CCC 7.100.100(g), which assigns a random number to each application received during an open application period. Clark County realized many people would want to apply for a short-term rental license as soon as possible because of the requirement set by the Nevada Legislature that short-term rentals not be allowed within a certain distance of another short-term rental. NRS 244.353545(2)(f)(1). Clark County wanted to avoid having hundreds or

thousands of people lining up outside its office on the first day it accepted applications. The random number generator gives everyone a fair shot at getting their application processed earlier in the application period without having to wait in a physical line. Just because someone gets their application processed first does not mean their application will be approved, the applicant still needs to meet the minimum requirements to obtain a license. Thus, the process is not unfair and does not violate due process.

GLVSTRA also questions the ability of Clark County to determine whether licenses are available under CCC 7.100.100(a). Opening Brief, p. 26. GLVSTRA argues the ability to determine something is a grant of discretion without objective criteria. Opening Brief, p. 26. However, this argument relies upon a hypothetical set of facts and totally ignores the part of the law that provides objective criteria. CCC 7.100.050 provides that the number of short-term rental licenses shall not exceed one percent of the total number of housing units located in unincorporated Clark County and the calculation is based on the most recent estimate of the total number of housing units located in unincorporated Clark County. Thus, Clark County has not violated anyone's due process rights.

GLVSTRA also attempts to raise new arguments regarding discretion for the first time in their appeal. Opening Brief, p. 27. GLVSTRA cites CCC 7.100.100(h), which was amended by Clark County after the District Court's injunction decision

which is on appeal. 5 JA 763. Thus, it is improper for GLVSTRA to ask this Court to decide an issue which is not properly on appeal and was never decided by the District Court.

4. Equal Protection

A plaintiff making a challenge to an equal protection challenge bears a heavy burden. *Hodel v. Indiana*, 452 U.S. 314, 332, 101 S. Ct. 2376, 2387, 69 L. Ed. 2d 40 (1981). To successfully prove that the Ordinance here violates equal protection on its face, GLVSTRA must prove that the Ordinance results in short-term rental owners being treated differently from other similarly situated persons and that the different treatment is unjustified. *See Doe v. State ex rel. Legislature of 77th Session*, 133 Nev. 763, 767, 406 P.3d 482, 486 (2017) (quotations omitted). Because the Ordinance does not target a suspect class or burden a fundamental right, the Ordinance is presumptively valid and subject to rational basis review. *Heller v. Doe by Doe*, 509 U.S. 312, 319, 113 S. Ct. 2637, 2642, 125 L. Ed. 2d 257 (1993). The Ordinance will only be invalidated under rational basis review if the disparate treatment of groups "is so unrelated to the achievement of any combination of legitimate purposes that we can only conclude that the legislature's actions were irrational." *Vance v. Bradley*, 440 U.S. 93, 97, 99 S. Ct. 939, 943, 59 L. Ed. 2d 171 (1979); *Flamingo Paradise Gaming, LLC v. Chanos*, 125 Nev. 502, 520, 217 P.3d 546, 559 (2009) ("the statute is constitutional if there is a rational basis related to a

legitimate government interest for treating businesses differently.") "[T]hose attacking the rationality of the legislative classification have the burden to negative every conceivable basis which might support it…" *F.C.C. v. Beach Commc'ns, Inc.*, 508 U.S. 307, 314–16, 113 S. Ct. 2096, 2101-02, 124 L. Ed. 2d 211 (1993) (citations omitted).

Clark County's ordinance does not violate the Equal Protection Clause. GLVSTRA claims that short-term rental owners are similarly situated to resort hotels, which is clearly not the case. Opening Brief, p. 29. Resort hotels do not operate in residentially zoned areas like individuals who can receive a short-term rental license under Clark County's ordinance. "The threshold question in equal protection analysis is whether a statute effectuates dissimilar treatment of similarly situated persons." *Rico v. Rodriguez,* 121 Nev. 695, 703, 120 P.3d 812, 817 (2005). The first "heavy burden" that a plaintiff must bear in any equal protection claim, then, is to establish that they are similarly situated to another class of persons. *See id.* Clark County showed that GLVSTRA failed to do any analysis showing that it is similar to any other class of persons, and the District Court properly ruled in Clark County's favor on this issue. 5 JA 406-411. Thus, all of GLVSTRA's equal protection arguments necessarily fail as a threshold matter.

First, GLVSTRA challenges on equal protection grounds the provision found in Section 7.100.080(f)(1), which prohibits the issuance of a license for short-term

rental units located within 2,500 feet of a resort hotel. Opening Brief, p.30. The inclusion of this provision in the Ordinance was not irrational because state law *required* the County to include the 2,500 foot distance separation in the Ordinance. NRS 244.353545(2)(f)(2). The inclusion of the provision is therefore rationally related to Clark County's legitimate government interest in complying with a requirement of state law. *See United Jewish Organizations of Williamsburgh, Inc. v. Carey,* 430 U.S. 144, 163, 97 S. Ct. 996, 1009, 51 L. Ed. 2d 229 (1977) (state government's redistricting plan was "reasonably related to the constitutionally valid statutory mandate of maintaining nonwhite voting strength"); *see also Shaw v. Reno,* 509 U.S. 630, 654, 113 S. Ct. 2816, 2830, 125 L. Ed. 2d 511 (1993) (States "have a very strong interest in complying with" the requirements of federal laws).

Second, GLVSTA challenges CCC 7.100.080(f)(2) which says a homeowner is ineligible to obtain a short-term rental license if their home is within 1,000 feet of a licensed short-term rental. *See also* NRS 244.353545(2)(f)(1) (proving that the minimum distance between short-term rentals must be 660 feet). However, GLVSTRA never raised this specific argument in its motion for preliminary injunction, so the District Court never ruled on this specific issue. 2 JA 295-298. Thus, this Court should decline to rule on an issue that was never raised below.

Third, GLVSTA challenges CCC 7.100.080(d) which requires licensees to be connected to a municipal wastewater system. Opening Brief, p. 32. Again, this issue

was never preserved for appeal or even argued before the District Court. 2 JA 295-98. Thus, clearly the District Court was not in error when it declined to rule on the issue.

Fourth, GLVSTA challenges CCC 7.100.090(c)(5) which prohibits short-term rentals from obtaining a license if they are located within an HOA that does not allow short-term rentals. Opening Brief, 33. GLVSTRA did not raise or argue this issue before the District Court. 2 JA 295-98. Thus, this Court should not rule on this issue as it is not properly before this Court on appeal.

Fifth, GLVSTRA challenges CCC 7.100.170(d) which requires a licensee to have a local representative who is able to respond to the short-term renal within thirty minutes to deal with issues at the property. Opening Brief, p. 34. To successfully challenge an ordinance on equal protection grounds, a plaintiff must "negative every conceivable basis" supporting the legislative enactment. *F.C.C. v. Beach Commc'ns, Inc.*, 508 U.S. 307, 314–16, 113 S. Ct. 2096, 2101-02, 124 L. Ed. 2d 211 (1993). GLVSTRA, however, does not even argue that the provision is "irrational" in that it is "so unrelated to the achievement of any combination of legitimate purposes…" *Vance v. Bradley*, 440 U.S. 93, 97, 99 S. Ct. 939, 943, 59 L. Ed. 2d 171 (1979). Instead, it simply complains that compliance with this provision may be burdensome or unnecessary in some circumstances. Opening Brief, p. 34. This does not set forth

an equal protection challenge, but rather is merely an articulation that GLVSTRA would prefer a different policy.

Additionally, it is worth noting that Clark County has a legitimate government purpose in requiring local representatives to respond to the short-term rental to resolve complaints. *See* CCC 7.100.190 (setting forth complaint resolution procedures). Clark County has an interest in maintaining peaceful residential neighborhoods free from disturbances and public nuisances caused by transient lodgers. CCC 7.100.010(b). This interest has been recognized by courts in other jurisdictions. *See Stone River Lodge, LLC v. Vill. of N. Utica*, No. 20-3590, 2020 WL 6717729, at *4 (N.D. Ill. Nov. 15, 2020) (finding ordinance regulating short term rentals was rationally related to the village's interests in protecting "life-safety concerns, quality of neighborhood and related life concerns, security concerns, fire safety concerns, and tax revenue concerns"); *Calvey v. Town Bd. of N. Elba*, No. 20-711, 2021 WL 1146283, at *12 (N.D.N.Y. Mar. 25, 2021) (dismissing substantive due process claim because a short-term rental ordinance was "rationally related to the Defendants' interest in planning how to use land in a way that balances the interests of homeowners, renters, and short-term visitors"). The quick resolution of complaints lodged against short-term rental owners or tenants is reasonably related to those purposes.

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5. First Amendment

First, GLVSTRA contends that the subject ordinance constitutes a prior restraint on speech because it "requires short-term rental license applicants to provide Clark County with the names of all 'rental sites that will be used to advertise the short-term rental unit' as a condition of licensing." Opening brief, p. 37 (citing Clark County Code § 7.100.090(b)(4)). It alleges that it constitutes a prior restraint on speech because it "unfairly limits the ability of short-term rental licensees to conduct business activity and to change sites at a future date when market conditions change, or more preferable sites become available." Opening Brief, p. 38. GLVSTRA's arguments in this regard are a misrepresentation of the subject ordinance as the ordinance does not prospectively lock licensees into a fixed list of advertisers and provides for continuous updates of such information.

While section 7.100.090(b)(4) does require that an applicant provide "the name(s) of all Accommodation Facilitators and rental sites that will be used to advertise the Short-Term Rental Unit", subsequent sections of the ordinance provide that updates to this list are possible and that, after being granted a license, a licensee must update the list whenever new rental sites are engaged. Accordingly, the "prior restraint" alleged by Plaintiffs isn't even a restraint at all.

Clark County Code § 7.100.170 provides in relevant part:

> Every licensee must comply with all duties. obligations, and requirements imposed by this Chapter. Such duties, obligations. and requirements include:

> (a) Duty to Update Information. Each licensee must provide the Department with any new or changed information as the Department may deem necessary within seven (7) days, including without limitation any changes to the contact information for the licensee and local representative, and the name(s) of all Accommodation Facilitators and rental sites that will be used to advertise the Short-Term Rental Unit.

Clark County Code § 7.100.170.

When a First Amendment challenge to an ordinance is raised, the initial inquiry requires a determination of whether the ordinance "primarily targets speech or speakers, or is better construed as an economic regulation." *Airbnb, Inc. v. City & Cnty. of San Francisco*, 217 F. Supp. 3d 1066, 1076 (N.D. Cal. 2016); *see also Int'l Franchise Ass'n, Inc. v. City of Seattle*, 803 F.3d 389, 408 (9th Cir. 2015); *Arcara v. Cloud Books, Inc.*, 478 U.S. 697, 706–07, 106 S.Ct. 3172, 92 L.Ed.2d 568 (1986). "[R]estrictions on protected expression are distinct from restrictions on economic activity or, more generally, on nonexpressive conduct," and "the First Amendment does not prevent restrictions directed at commerce or conduct from imposing incidental burdens on speech." *Sorrell v. IMS Health Inc.*, 564 U.S. 552, 567, 131 S.Ct. 2653, 180 L.Ed.2d 544 (2011).

Placing a short-term rental for rent through an Accommodation Facilitator or rental site is not speech with a "significant expressive element" as the primary purpose of the listing is to secure a commercial transaction in the form of a rental.

Airbnb, Inc. v. City & Cnty. of San Francisco, 217 F. Supp. 3d 1066, 1076–77 (N.D. Cal. 2016); *Int'l Franchise Ass'n*, 803 F.3d at 408. The requirement that a list of facilitators or rental sites be provided to the County does not result in disparate or unfavorable treatment to speakers and Plaintiffs have not established that requiring licensees to provide a list was motivated by a desire to suppress speech. *Id*; *Int'l Franchise Ass'n*, 803 F.3d at 409. Accordingly, the Court can only find that the subject ordinance is directed at specific commercial transactions and not to any expressive speech on the part of the business. *Id.*

As GLVSTRA cannot demonstrate that the subject ordinance restrains speech, as licensees are free to update or change the rental sites they use at their own discretion, nor can they demonstrate that the ordinance requiring disclosure of postings for commercial transactions on rental sites targets expressive speech or speakers, GLVSTRA cannot demonstrate a likelihood of succeeding on the merits of their First Amendment claims and the Court should deny any injunction.

Second, GLVSTRA contends that CCC 7.100.180(a) and CCC 7.100.180(c)(1) are unconstitutional restrictions on personal speech and expressive activity. Opening Brief, p. 39. However, neither of these arguments were raised in District Court. 2 JA 283-286. Again, it is inappropriate to appeal the District Court's order and argue issues which were never raised before the District Court. This Court should decline to rule on these issues.

Third, GLVSTRA argues that multiple provisions of the ordinance prohibit individuals right to assemble and associate. Opening Brief, p. 40. Relying heavily on a an 80-page opinion from the Texas Court of Appeals in *Zaatari v. City of Austin*, GLVSTRA contends that restrictions on the total number of individuals who can be on a short-term rental unit and restrictions on gatherings between 10:00 p.m. to 7:00 a.m. are "a blanket prohibition against individuals from associating or assembling on private property without regard to the content or purpose of the gathering." Opening Brief, p. 42; *Zaatari v. City of Austin*, 613 S.W.3d 172, 199-200 (Tex. App. 2019). Both the Texas Court of Appeals in *Zaatari* and GLVSTRA's analysis fail to accurately articulate what constitutes an unconstitutional restriction on the right to assemble or associate and why the subject Clark County ordinance should be construed as such a restriction.

GLVSTRA, while loudly banging the drum of purported constitutional violations, largely glosses over the fact that the subject ordinance only applies to homeowners who willingly and voluntarily apply for licenses to operate short-term rentals for their own pecuniary benefit or who violate local ordinances to do the same. The operating restrictions for licensees do not apply to homeowners generally and, if a homeowner wishes to avoid the restrictions attendant to the ordinance, they may simply not apply for a license. Short-term rental operators seek to operate business in residential neighborhoods, placing their own pecuniary interests above

the rights and interests of their fellow neighbors and homeowners. The County, as an entity charged with safeguarding the public health and safety, has a duty to regulate these businesses, now compelled by statute, in neighborhoods where no businesses were ever intended to operate.

In *Vill. of Belle Terre v. Boraas*, the United States Supreme Court acknowledged that maintaining "[a] quiet place where yards are wide, people few, and motor vehicles restricted are legitimate" government zoning interests. *Vill. of Belle Terre v. Boraas* 416 U.S. 1, 9, 94 S. Ct. 1536, 1541, 39 L. Ed. 2d 797 (1974). "The police power is not confined to elimination of filth, stench, and unhealthy places. It is ample to lay out zones where family values, youth values, and the blessings of quiet seclusion and clean air make the area a sanctuary for people." *Id*.

Government action that unconstitutionally infringes on the Freedom of Association protected under the First Amendment is conduct which compels an organization to associate with members it has intentionally excluded or penalizes members or organizations association with each other. *See*, *e.g.*, *Roberts v. U.S. Jaycees*, 468 U.S. 609, 622–23, 104 S. Ct. 3244, 3252, 82 L. Ed. 2d 462 (1984) (recognizing a freedom not to associate); *Healy v. James*, 408 U.S. 169, 180–184, 92 S.Ct. 2338, 2345–2347, 33 L.Ed.2d 266 (1972) (imposition of penalties or withholding benefits from individuals because of their membership in a disfavored group); *Brown v. Socialist Workers '74 Campaign Committee*, 459 U.S. 87, 91–92,

103 S.Ct. 416, 419–421, 74 L.Ed.2d 250 (1982) (requiring disclosure of the fact of membership in a group seeking anonymity); *Cousins v. Wigoda*, 419 U.S. 477, 487–488, 95 S.Ct. 541, 547, 42 L.Ed.2d 595 (1975) (interfering with the internal organization or affairs of a private group); *Pac. Gas & Elec. Co. v. Pub. Utilities Comm'n of California*, 475 U.S. 1, 12, 106 S. Ct. 903, 910, 89 L. Ed. 2d 1 (1986) ("forced associations that burden protected speech are impermissible").

The Clark County "ordinance places no ban on other forms of association" because the homeowners may rent to, and the renters may share the short-term rental unit with whomever they like. *Vill. of Belle Terre v. Boraas*, 416 U.S. 1, 9, 94 S. Ct. 1536, 1541, 39 L. Ed. 2d 797 (1974). The subject ordinance does not "prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein." *West Virginia Bd. of Ed. v. Barnette*, 319 U.S. 624, 642, 63 S.Ct. 1178, 87 L.Ed. 1628 (1943); *Janus v. Am. Fed'n of State, Cnty., & Mun. Emps., Council 31*, 201 L. Ed. 2d 924, 138 S. Ct. 2448, 2463 (2018).

Under the Clark County short-term rental ordinance, homeowners may rent to whomever they like—regardless of those people's religion, creed, gender, sexual orientation, race, political ideology, or any other identifiable characteristic. People, regardless of their relationship with each other, may be part of a single booking to rent a short-term rental together. The Clark County ordinance does not compel

renters to associate with people against their will, nor does it restrict what types of renters may use a short-term rental or stay in a short-term rental together. The ordinance does not inquire after the characteristics of renters nor require disclosure of the same.

Other courts have found such ordinances and restrictions both constitutional and appropriate and have reviewed them under a rational basis standard. *See, e.g.*, *Murphy v. Walworth Cnty.*, 383 F. Supp. 3d 843, 851 (E.D. Wis. 2019) (holding a restriction on the number of short-term renters which tied maximum occupancy to septic tank size constitutional under a rational basis standard of review).

As the County's desire to ensure the quality and nature of its residential neighborhoods are a legitimate government interest and the maximum occupancy standards for short-term rentals are content neutral and rationally related to achieving this interest, the Court should find that the Plaintiffs are not likely to prevail on their freedom of association arguments and deny their motion for preliminary injunction.

Lastly, GLVSTRA raises arguments and issues that were never raised before the District Court and are based on language in the ordinance that was amended after the preliminary injunction was issued by the District Court. Opening Brief, p. 42-44. Clark County amended CCC 7.100.180(b). JA 770-771. Thus, any arguments regarding CCC 7.100.180(b) should be disregarded.

6. Fourth Amendment

GLVSTRA originally argued before the District Court that several provisions of the ordinance violated the Fourth Amendment, but it did so as part of its takings argument. 2 JA 286-289. Clark County fully briefed a response to these arguments and the District Court property ruled against GLVSTRA. 3 JA 399-401. However, in its Opening Brief, for the first time, GLVSTRA seemingly makes a new argument that the same provisions are different constitutional violations. Opening Brief, p. 44-48. Clark County believes this is improper new argument, especially where GLVSTRA cites sections of the ordinance that were amended after the District Court's injunction. Opening Brief, p. 45 (citing CCC 7.100.200(b) and CCC 7.100.170(i)(2)); 5 JA 767, 772. Thus, Clark County asks this Court to disregard GLVSTRA's new arguments.

7. Takings Claim

To bring a takings claim, the party must have "a legitimate interest in property that is affected by the government's activity" at the time of the alleged taking. *Sisolak,* at 658, 137 P.3d at 1119. Thus, a court must first determine whether the plaintiff possessed a "stick in the bundle of property rights," before proceeding to determine whether the governmental action at issue constitutes a taking. *Bd. of Regents of State Colls. v. Roth*, 408 U.S. 564, 577 (1972); *Sisolak*, at 658, 137 P.3d at 1119. *ASAP Storage, Inc.*, at 647, 173 P.3d at 740.

GLVSTRA's claimed property interest consists of a forward-looking opportunity to operate short-term rental businesses in Clark County.[1] The issue then is whether GLVSTRA has a property interest in a business activity for which they are presently not licensed. Contrary to the GLVSTRA's assertion, the ability to engage in a future business does not constitute a protected property interest. While the *assets* of a business (of which GLVSTRA presently has none) are property, the *activity* of doing business, or the *activity* of making a profit is not property in the ordinary sense – and it is only *that*, and not any business asset." *College Savings Bank v. Florida Prepaid Postsecondary Education Expense Board*, 527 U.S. 666, 675 (1999); *See also Antietam Battlefield KOA v. Hogan*, 2020 WL 6777590 (D. Md. Nov. 18, 2020) (inability to conduct business is not a taking); *Talleywhacker, Inc. v. Cooper*, 465 F. Supp. 3d 523, 541 (E.D. N.C. 2020) ("the assertion of a 'general right to do business' has not been recognized as a constitutionally protected right"); *Tuchman v. Connecticut*, 185 F. Supp. 2d 169, 174–75 (D. Conn. 2002) (ability to engage in a business is not a protected property interest).

Additionally, GLVSTRA cannot legally claim a vested property right in a future business license that is subject to the discretionary approval of the Clark

[1]The Ordinance does not regulate an owner's ability to use a property as a residence or to lease residential property to tenants for periods of 30-days or longer.

County Board of County Commissioners. "To have a property interest in a benefit, a person clearly must have more than an abstract need or desire' and 'more than a unilateral expectation of it. He [or she] must, instead, have a legitimate claim of entitlement to it." *Town of Castle Rock v. Gonzales*, 545 U.S. 748, 756, 125 S.Ct. 2805 (2005). Where the government has any discretion to approve or deny, the right is not "mandatory" and there exists no property right. *Id*., at 750; *see also, Bowers v. Whitman*, 671 F.3d 905, 913 (9th Cir. 2012) (stating if the alleged interest is 'contingent and uncertain' or the receipt of the interest is 'speculative' or 'discretionary,' then the government's modification or removal of the interest will not constitute a constitutional taking"). Stated alternatively, there is no property right as a matter of law if "government officials may grant or deny it in their discretion." *Town of Castle Rock*, 545 U.S. at 760, 125 S.Ct. at 2805.

Under the Ordinance, GLVSTRA does not have a vested property right to a future short-term rental business license because the Board of County Commissioners have broad discretion to approve or deny an application. The Ordinance accords the Board broad authority to consider a wide range of factors in deciding whether to grant a short-term rental business license to an applicant. The factors an applicant must meet to the Board's satisfaction include the eligibility of the prospective licensee, suitable location of the property, whether a proposed residential property is in a "safe, habitable and hazard-free condition," whether the

applicant has multiple violations of the Clark County Code within the preceding thirty-six months that were not satisfactorily remediated; and whether the applicant has satisfied all application requirements, amongst other factors.

Since there is no deprivation of a property right at issue here, there is no need for the Court to consider GLVSTRA's takings claims further. Clark County provided a full analysis of the takings issues in this case, and the District Court properly found there was no taking. 3 JA 389-401.

8. Liability for Acts of Others

GLVSTRA claims that CCC 7.100.230(e)(2) violates their due process by punishing them for violations of others, including criminal punishment. Opening Brief, p. 54. However, CCC 7.100.230(e)(2) makes it clear that this provision only applies to administrative citations, which are not criminal and only impose fines. Further, property owners must be responsible for public nuisances and code violations on their property because they are the ones with the authority to control the use of the property. The section is not imposing liability for the acts of others, it is imposing a fine on a property owner for failing to control and maintain personal property in accordance with the code. Without being able to hold the owner responsible a government would never be able to compel an owner to abate a property that is hazardous to the community when an owner claims someone else caused the hazard on their property. In this case, short-term rental owners could

simply avoid all responsibility by turning a blind eye toward a third party operating a short-term rental on their property. This is also why a Notice of Violation, a warning without any civil penalties, is sent to the property owner before any fines are issued. CCC 7.100.230(c). If a property owner is on notice that their property is being used in violation of the code and continues to allow another individual to utilize their property for an unlawful purpose, they must be held responsible.

GLVSTRA cites *Ford v. State*, 127 Nev. 608, 618, 262 P.3d 1123, 1130 (2011) to stand for the assertion that the County ordinance violates due process because an individual must possess a level of *mens rea* before being held criminally responsible. Opening Brief, p.54. However, as stated before the County ordinance only holds property owners civilly responsible for their own failures to control and maintain their property. Thus, there is no due process violation.

9. Dormant Commerce Clause

An "ordinance may be struck down under the dormant aspect of the Commerce Clause if it discriminates "on its face[,] in practical effect," or through its purpose." *Douglas Disposal, Inc. v. Wee Haul, LLC*, 123 Nev. 552, 561, 170 P.3d 508, 515 (2007). First a court must consider whether the ordinances "facially discriminate against interstate commerce." *Id*. at 561. "If they do not facially discriminate against interstate commerce, the court must determine whether, in application, they unduly burden interstate commerce." *Id*. at 561. Ordinances

advancing a legitimate local interest and applying equally to in-state and out-of-state (interstate) commerce will be upheld "unless the burden imposed on [interstate] commerce is clearly excessive in relation to the putative local benefits.'" *Id*. at 561-62.

GLVSTRA claims that Clark County Codes 7.100.010(a), 7.100.050 and 7.100.170(d) violates the dormant commerce clause. Opening Brief, p. 54-58. GLVSTRA cites *Hignell-Stark v. City of New Orleans*, where a city banned all out of state residents from operating short-term rentals and only permitted individuals located within the state to operate a short-term rental business. *Hignell-Stark v. City of New Orleans* No. 21-30643, 2022 WL 3584037, *5-9 (5th Cir. August 22, 2022); Opening Brief, p. 56. GLVSTRA admits that Clark County's ordinance does not prohibit out of state residents from operating short-term rentals in Nevada. Opening Brief, p. 56. However, it claims that Clark County's ordinance discriminates against out of state residents by capping short term rentals to one percent of available housing and by requiring a local representative who can respond to the property within 30 minutes. Opening Brief, p.57. However, GLVSTRA does not explain how it is a de facto residency requirement or how the ordinance burdens the flow of interstate commerce.

First, one purpose listed in the ordinance states that it is to provide affordable housing for the residents of Clark County. CCC 7.100.010(a). This does not facially

or practically burden interstate commerce. In-state and out-of-state businesses can provide that housing, and anyone can buy that housing. This code is just pointing out that as residential houses are converted into short-term rentals, the supply of available long-term housing decreases and house prices go up if demand does not decrease.

Second, the one percent requirement applies equally to both Nevada residents and out of state residents and is intended to keep housing affordable. CCC 7.100.050. Nowhere in the code does Clark County differentiate between out of state residents and Nevada residents, it is not a distinction the ordinance makes. There is no way this provision could discriminate against out of state residents or burden the flow of interstate commerce.

Third, all licensees must have a local representative if they wish to obtain a business license. CCC 7.100.170(d). This requirement applies to all equally. A licensee need not be a Nevada resident to provide a local representative and local representatives are required to respond to the property within 30 minutes for the safety of the guests and to correct any public nuisances caused by the guests. Nothing in this requirement facially or practically burdens interstate commerce.

There simply is no distinction between in state and out of state residents in the short-term rental ordinance. Claiming that a code will discriminate against out of state residents and burden the flow of interstate commerce without reason or legal

support is not enough to obtain a preliminary injunction. Certainly, in general, the short-term rental business is being burdened by this ordinance, but the flow of short-term rental business between states is not burdened at all. Burdening the flow would require Clark County to make it harder for out of state businesses to operate when compared to in state business. Thus, the District Court properly declined to enjoin the challenged provisions of Clark County's ordinance.

CONCLUSION

For the reasons stated above, Clark County requests this Court overturn the preliminary injunction for lack of standing, lack of irreparable harm and lack of a likelihood of success on the merits.

DATED this 6th day of November, 2023.

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CERTIFICATE OF COMPLIANCE

1. I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5), and the type style requirements of NRAP 32(a)(6) because it has been prepared in a proportionally-spaced typeface using Microsoft Word in size 14 font in Times New Roman.

2. I further certify that this brief complies with the page or type-volume limitations of NRAP 28.1 because it is proportionally spaced, has a typeface of 14 points or more, and contains 18,500 words or less.

3. Finally, I hereby certify that I have read this brief, and to the best of my knowledge, information, and belief, it is not frivolous, interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by reference to the page of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to sanctions in the event that the accompanying brief is not in

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conformity with the requirements of the Nevada Rules of Appellate Procedure.

DATED this 6th day of November, 2023.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 6th day of November, 2023, I submitted the foregoing **RESPONDENT'S ANSWERING BRIEF AND OPENING BRIEF ON CROSS-APPEAL** for filing via the Court's eFlex electronic filing system. Electronic notification will be sent to the following:

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An Employee of the Clark County District Attorney's Office – Civil Division