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8 *Residents Association & Joe McCarthy*

9 **IN THE SUPREME COURT OF THE STATE OF NEVADA**

10 COMSTOCK RESIDENTS
11 ASSOCIATION, JOE MCCARTHY,
12

13 Appellants,

CASE NO. 70738

14
15 vs.

16 LYON COUNTY BOARD OF
17 COMMISSIONERS,
18

19 Defendant-Respondent,
20 _____/

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1 **APPELLANT’S REPLY BRIEF**

2 COMES NOW the Appellant(s), COMSTOCK
3
4 RESIDENTS ASSOCIATION, JOE MCCARTHY by and
5
6 through the undersigned counsel, and hereby file the following
7
8 Appellant’s Reply Brief pursuant to Nevada Rule of Appellate
9 Procedure (“NRAP”) 28, seeking that the Court reverse the Order
10 (JA at 175) issued in Docket No. 14-CV-01304 by the Third
11
12 Judicial District Court June 14, 2016 in favor of Respondent
13
14 Lyon County Board of Commissioners, a political subdivision of
15 the State of Nevada.

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I. INTRODUCTION

We begin this Reply Brief with the central issue before the Court: when public employees and officials use personal electronic devices and accounts to conduct the public's business, are records created and stored on such devices subject to disclosure under the Nevada Public Records Act, Nevada Revised Statutes ("NRS") Chapter 239 (hereinafter "NPRA")? The question presently is not, as framed by Respondent: "are emails and cellular telephone communications to and from private electronic devices and email accounts public records under the [NPRA]?" Answering Brief at 5. Lyon County's statement of the issue is a red herring because CRA does not seek disclosure of purely private records or communications from Lyon County staff or officers. Instead, CRA seeks all public records relating to the conduct of Lyon County's official business with Comstock Mining Inc. (CMI) and its land use applications. Only by obfuscating the question before the Court may Respondent Lyon County argue that what are clearly public records suddenly lose

1 their status when taken home by a public employee, sent by a
2 Commissioner to a personal account, or created by the County
3 Manager on a personal device, despite it being a record of official
4 County business. Lyon County’s legal theories in support of a
5 blanket policy against disclosure where such records are created
6 or held on personal devices or accounts are inconsistent with both
7 the spirit and the letter of Nevada’s public records laws.
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11 **II. ARGUMENT**

12 **A. NRPA’s “Open to Inspection” Clause Does Not** 13 **Operate to Shield Disclosure of Public Records held** 14 **on Personal Accounts or Devices** 15

16 NRS 239.010(1) contains the NRPA’s fundamental legislative
17 commandment: public records shall be open to public inspection.
18 Lyon County seeks to twist the meaning of this commandment to
19 shield records that may not be readily available for instantaneous
20 inspection by the public. Answering Brief at 12-13. As discussed
21 in CRA’s Opening Brief (at 33-34), the Legislature has already
22 precluded this argument by modifying the immediate inspection
23 language in subsequent provisions to allow jurisdiction time to
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1 review written public requests for five days and thereafter produce
2 records if more time is needed for records not readily available.
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4 NRS 239.0107. Lyon County cites no case allowing a
5 governmental entity refuse disclosure because the records are not
6 immediately available. Moreover, no case holds that the
7 government must allow inspection of the records where they are
8 physically located. For state agencies, physical inspection occurs
9 in a “suitable space.” NAC 239.866.
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13 Thus, Lyon County’s unfounded fear, that the public will go
14 trooping through the homes and private offices of public
15 employees and officers, will not occur. The NPRA does not
16 permit this to occur in “public” spaces either. Instead, if
17 employees or officers that use their private devices and accounts
18 to conduct the public business, they are required to search for and
19 produce such public records in a timely fashion. This
20 straightforward reading of the NRS 239.010 harmonizes the
21 provisions of the act and “liberally construe[s the NRA] to
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1 maximize the public’s right of access” and narrowly construe any
2 limitation. NRS 239.001.
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4 **B. Lyon County Fails to Prove Employees and Officers**
5 **Lack Sufficient Control Over Their Own Devices**
6 **and Accounts**

7 CRA only requests access to public records that are within the
8 custody and control of public agencies, their employees or officers
9 under NRS 239.010(4). Thus, CRA requests that employees or
10 officers who utilize their personal devices or accounts to make a
11 good faith search for the records in response to a valid public
12 records request. Lyon County contends, (without citation to any
13 evidence) “[t]he records are not within the Legal Custody or
14 Control of the Commissioners, Employees or County.” Answering
15 Brief at 13. Later, Lyon County softens this position, admitting
16 public officials and staff “may” have sufficient control over their
17 devices and accounts, but CRA has not proven it. Answering
18 Brief at 17.
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25 Lyon County errs by ignoring pertinent facts, and by shifting
26 the burden on CRA to prove the details of the Commissioners and
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1 staff's own accounts and personal devices, which the record
2 shows and Lyon County admits were used to conduct the public's
3 business. JA 155; see also Answering Brief at 8. As Lyon County
4 admits the devices and accounts were the personal accounts of the
5 Commissioners, it is imminently reasonable to conclude that they
6 have, or at the time CRA's public records request was made, had
7 sufficient access and control to access and produce the responsive
8 documents.
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13 The record contains clear examples for this straightforward
14 proposition. For example, Lyon County does provide cellular
15 phones to some of their staff. JA 155, Opening Brief at 8. When
16 Lyon County provided CRA with its responsive documents, it
17 provided some cellular records from those devices, establishing
18 that the that the account holder for those devices has and had
19 adequate control sufficient to respond to a public records request.
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21 Similarly, the Commissioners did produce some records from
22 their personal email in response to CRA's NPRA request account;
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24 proving the account holders have and had sufficient access and
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1 control. See Open Brief at 8, “Numerous emails received by the
2 County Commissioners on private email accounts were included
3 in the public records response provided by the County.”¹

4
5 Indeed, other courts have routinely ordered officials or
6 employees to produce or preserve public records stored on their
7 personal devices or accounts without apparent evidence of the
8 contractual specifics Lyon County claims are necessary. See e.g.,
9 *Competitive Enterprise Institute v. Office of Science and*
10 *Technology Policy*, 827 F.3d 145 (D.C. Cir. 2016); *O’Neill v. City*
11 *of Shoreline*, 170 Wn.2d 138, 150, 240 P.3d 1149 (2010); *Nissen*
12 *v. Pierce County*, 183 Wn.2d 863, 357 P.3d 45 (Wash. 2015); *City*
13 *of Champaign v. Lisa Madigan*, 992 N.E.2d 629 (Ill. App. Ct. 4th
14 Dist. 2013). On January 18, 2017, Judge Emmet G. Sullivan of
15 the U.S. District Court District of Columbia issued a Minute Order
16 in *Judicial Watch, Inc., v. U.S. Department of Justice*, Case# 1:17-
17 cv-00029-EGS, which instructed an Assistant US Attorney

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26 ¹ Lyon County’s Answering Brief never addresses that the County
27 produced public records from some Commissioners from their
28 private accounts or devices while at the same time arguing that
other similar records are either inaccessible or private.

1 General to preserve potential agency records in his Gmail account,
2 should any exist, that could be responsive to Freedom of
3 Information Act requests.
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5
6 Lyon County relies on the regulatory definition of “legal
7 custody” (NAC 239.041) to argue that only records under custody
8 of the County Clerk are subject to disclosure under a NPRA
9 request. Opening Brief at 14. This regulatory definition does not
10 address “control” and therefore offers Lyon County no
11 justification for withholding the requested public records.²
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13 Secondly, as noted in CRA’s Opening Brief, (at 33-34), the
14 authority of the State Library and Archives Administrator (“State
15 Archivist”) to adopt definitions for NRS Chapter 239 extends only
16 to a program to aid local governmental entities to adopt records
17 management programs, not a limit on the obligations to disclose
18 public records under NRS 239.010. Thirdly, the definition itself is
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25 ² This Court rejected a similar attempt to use NAC 239.866
26 definition of “Legal Custody” for state agencies to excuse a local
27 government’s disclosure obligation. *Las Vegas Police*
28 *Department v. Blackjack Bonding*, 131 Nev. ___, 343 P.3d 608,
n.4 (2015).

1 meaningless in the public records disclosure context, as it simply
2 defines “legal custody” as the “rights and responsibilities” for
3 each local government department head “charged with the care,
4 custody and control” of a record. NAC 239.041. It does not limit
5 the obligations under NRS 239.001 to produce records but only
6 sets up the records management responsibilities set forth
7 subsequently in NAC 239.143 *et seq.* Finally, this Court should
8 interpret NAC 239.041 – if it finds it relevant to NRS 239.001
9 obligations – broadly to allow public access. Lyon County’s
10 attempt to limit disclosure responsibilities to only those records in
11 the custody of the County Clerk is inconsistent with the public
12 policy of broad access to public records provided in the NPRA.
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19 In the end, Lyon County concedes it may be that
20 Commissioners and employees have sufficient control over their
21 devices and accounts to respond. Answering Brief at 17. Indeed
22 the County never seriously contends the Commissioners and
23 employees lack the authority or ability to pull records from their
24 personal devices and accounts. Instead, Lyon argues CRA has not
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1 proven that Lyon County has custody and control over these
2 records. *Id.* However, in order to avoid producing these
3 otherwise clearly public records, Lyon County bears the burden to
4 prove that its Commissioners or employees lack adequate control
5 over the requested records. *PERS v. Reno Newspapers, Inc.*, 313
6 P.3d 221, 223-224 (2013); NRS 239.0107. Even if the burden
7 were to lay with CRA, as demonstrated above, sufficient evidence
8 exists to show that the Commissioners have adequate custody and
9 control of their own devices and accounts to respond to CRA's
10 NPRA request.

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16 **C. NPRA Is Not Limited to Records Of “Official**
17 **Actions”**

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19 Lyon County argues that a series of regulatory definitions –
20 promulgated by the State Archivist for records management
21 purposes – limits the reach of the NPRA to only those records that
22 reflect an official government action. Answering Brief at 19-20.
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24 Lyon County asserts that all records of communication between
25 Commissioners, staff and third parties are not records subject to
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1 the NRPA because they are not reflective of any final official
2 action. *Id.* CRA addressed this argument in its Opening Brief (at
3 31-32). Lyon County's position is directly at odds with numerous
4 opinions of this Court that find the NRPA applies to exactly the
5 type of records sought by NRPA: See e.g. *Blackjack Bonding*,
6 *supra* (phone records), *Reno Newspapers, Inc. v. Gibbons*, 127
7 Nev. 873, 266 P.3d 623 (2011) (emails); *DR Partners v. Board of*
8 *County Commissioners*, 116 Nev. 616, 6 P.3d 465 (2000) (phone
9 records). Lyon County does not explain why it produced exactly
10 these kinds of records in response to CRA's request while
11 contending that they are not subject to disclosure. Lyon County
12 stretches the State Archivist's regulations past their point of
13 applicability and common sense.³

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23 ³ Lyon County dramatically asserts that all communication
24 between elected officials and their constituents will cease if the
25 NRPA applies to public records stored on personal devices or
26 accounts. Answering Brief at 20. However, the rule will remain
27 the same: produce a record of communication and it becomes
28 public absent privilege or confidentiality; communicate without a
record and the NRPA does not apply.

1 **D. No Case Provides Lyon County Refuge**

2 Lyon County fails to distinguish authoritative cases cited in
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4 CRA’s Opening Brief. For example, Lyon County argues that
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6 because the State of Washington’s public records act contains a
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8 definition of public records and the NPRA does not, cases
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10 applying the prior statute to personal devices and accounts are
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12 inapplicable. Answering Brief at 16-17. Lyon County does not
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14 explain why this is the case or why the definition of “public
15
16 record” provided the by Washington Supreme Court with
17
18 authority is absent here. Indeed, the Washington statutory
19
20 definition of “public record” does not facially apply to records of
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22 individuals. Nonetheless, the *Nissen* Court construed the
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24 Washington statute to apply to all records produced in the conduct
25
26 of government business: “If the PRA did not capture records
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28 individual employees prepare, own, use, or retain in the course of
their jobs, the public would be without information about much of
the daily operation of government.” *Nissen v. Pierce County*, 183

1 Wn.2d 863 at 876, 357 P.3d 45 (Wash. 2015). This same standard
2 and rationale should apply here.
3

4 Lyon County next tries to distinguish the facts the federal
5 Freedom of Information Act (FOIA) case of *Competitive*
6 *Enterprise Institute v. Office of Science and Technology Policy*,
7 *supra* from the facts in this case. While Lyon County argues that
8 because FOIA does not require all records to be open to inspection
9 upon demand, the rationale of the cited case is inapposite.
10 Answering Brief at 15-16. This distinction is without difference
11 as CRA explained above, that the Nevada Legislature does not
12 demand instantaneous production or public access to places where
13 or records are maintained.
14

15 Lyon County also cites *Reno Newspapers, Inc. v. Gibbons*,
16 *supra*, stating that the case does not address personal email
17 accounts (CRA never contended that it did) and that not all emails
18 on state accounts sought in that case were held to be public (CRA
19 never argued that they were). Answering Brief at 20-21. While
20 CRA agrees with Lyon County's *Gibbons* case synopsis, CRA
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1 disagrees with its application to this case. This Court has already
2 found that email communications can be public records when such
3 communications address matters of official business, and that the
4 appropriate opportunity to make confidentiality/privacy objections
5 to disclosure is during an individual, record-by-record review, not
6 as a categorical excuse for non-disclosure of all records. *Reno*
7 *Newspapers, Inc. v. Gibbons*, supra. Lyon County fails to
8 address either of these points.

13 The only case cited by Lyon County as limiting the reach of a
14 public records law, is an opinion of the California intermediate
15 court of appeals in *City of San Jose v. Superior Court* and now
16 under review by the California Supreme Court. See Answering
17 Brief at 17, 18, 22, 24, 25. Aside from its lack of persuasive
18 value, the California Court of Appeals decision is readily
19 distinguishable from CRA's case because it turned on language
20 not including individuals (as opposed to local and state
21 "agencies") in disclosure requirements. See Cal. Gov. Code §
22 6252 Unlike the California law, the NPRA specifically applies to
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1 individuals (NRS 239.005(5) (broad definition of “governmental
2 entity”), as Lyon County concedes. Answering Brief at 20.
3
4 Hence, the California intermediate court’s opinion is neither
5
6 precedential nor relevant to this Court’s interpretation of the
7 NPRA.⁴

8 9 **E. Deleted Regulatory Definition Is Inapplicable**

10 Because the NRPA does not define a “record,” this Court has
11
12 occasionally used the State Archivist’s definition – promulgated
13 for records management purposes.⁵ See e.g., *Blackjack Bonding*,
14
15 *supra*; *Nevada Policy Research Inst., Inc. v. Clark County Sch.*
16 *Dist.*, No. 64040, 2015 WL 3489473 (Nev. May 29,
17 2015)(unpublished opinion). The State Archivist defines a
18
19 “record of a local governmental entity” or “record” as:
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22 ⁴The California Supreme Court’s oral argument in the *City of San*
23 *Jose* case can be viewed at
24 http://jcc.granicus.com/MediaPlayer.php?clip_id=338.

25 ⁵The State Archivist defines “records management” as “the
26 systematic control and management of a record throughout the life
27 cycle of the record, including, without limitation, the creation, use,
28 maintenance, retention and ultimate disposition of the record.”
NAC 239.106.

1 information that is created or received pursuant to a law
2 or ordinance, or in connection with the transaction of the
3 official business of any office or department of a local
4 governmental entity, including, without limitation, all
5 documents, papers, letters, bound ledger volumes, maps,
6 charts, blueprints, drawings, photographs, films,
7 newspapers received pursuant to NRS 247.070, recorded
8 media, financial statements, statistical tabulations and
other documentary materials or information, regardless
of physical form or characteristic.

9 NAC 239.101. The records of communication CRA seeks in this
10 case clearly fall within this definition and Lyon County does not
11 argue to the contrary.
12

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14 As anticipated in CRA's Opening Brief (at 29-31), Lyon
15 County requests that this Court apply a deleted State Archivist
16 definition of "public record" (also adopted for records
17 management purposes) to exclude all public records on personal
18 devices or accounts.⁶ Answering Brief at 22-24. In order to
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23 ⁶In the past, the State Archivist included a definition of "public
24 record" in NAC 239.091 as "a record of a local government entity
25 that is created, received or kept in the performance of a duty and
26 paid for with public money." In 2012, the State Archivist propose
27 to delete this definition and amend the existing definition of
"record of a local governmental agency" to be synonymous with
"record." See

28 <http://www.leg.state.nv.us/Register/2012Register/R118-12P.pdf>.

1 succeed in this argument, Respondent must convince this Court to
2 (a) ignore the definition of “record,” (b) adopt Lyon County’s
3 construction of the deleted definition, and (c) apply its “good
4 faith” defense to excuse compliance with the NPRA. Lyon
5 County fails on all three requirements.
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9 First, the State Archivist is not empowered to adopt
10 regulations addressing local government implementation of
11 NPRA’s public record production under NRS 239.010. The State
12 Archivist’s statutory authority to promulgate NRS Chapter 239
13 regulations regarding local governmental entities extends only to
14 local programs of records management, e.g., record maintenance
15 and deletion. CRA’s Opening Brief at 29-31; NRS 239.125 (“The
16 State Library, Archives and Public Records Administrator shall
17 adopt regulations to carry out a program to establish and approve
18 minimum periods of retention for records of local governments.”);
19 NRS 378.255; **compare** NRS 239.008 (Authorizing State
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26 The final rule, effective on October 10, 2014, mirrored the
27 proposed rule with minor edits. See
28 <http://www.leg.state.nv.us/Register/2012Register/R118-12A.pdf>.

1 Archivist to adopt regulations aiding state agencies – as opposed
2 to local governmental entities – to manage public records requests
3 (see NAC 239.860-869 (“Availability and Inspection of Public
4 Records”)).
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7 Therefore, the State Archivist has no authority to promulgate
8 regulations limiting what records may be considered “public”
9 under the NRS 239.010 disclosure requirement. In fact, the Court
10 has only used a NAC definition to confirm a document’s status as
11 a public record rather than limiting the reach of NRS 239.010 – as
12 Lyon County seeks to do here. For example, in *Blackjack*
13 *Bonding*, supra, the Court determined that a record was public
14 without resort to the NAC definition. In *Nevada Policy Research*
15 *Inst., Inc. v. Clark County Sch. Dist.*, No. 64040, 2015 WL
16 3489473 (Nev. May 29, 2015)(unpublished disposition), the Court
17 cited to NAC 239.091 as encompassing a requested public record.
18 An NAC definition cannot be relied upon to restrict application of
19 NRS 239.010, particularly where a subsequent version makes the
20 same document covered by the regulation public.
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1 Second, Lyon County’s construction of the deleted NAC
2 239.091 – to limit the reach of NPRA to records only located in
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4 central administrative files – does not comply with the NPRA’s
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6 public policy mandate to interpret applicable law as favoring
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8 disclosure. Lyon County construes the phrase “and paid for with
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10 public money” as requiring the devices used to produce or receive
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12 the record must be purchased or maintained with public money.
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14 Answering Brief at 24. That same phrase, however, can be easily
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16 read as qualifying the “performance of a duty” must be paid for
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18 with public money; i.e., that the individual was indeed acting
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20 within the scope of their public employment – not an issue here as
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22 Lyon County admits its staff and Commissioners use their
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24 personal devices and account to perform their public duties.
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26 CRA’s straightforward reading promotes disclosure consistent
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28 with, and re-emphasizes the basic NPRA public records
principles: the public has a right to view records of public
employees and officials created during the performance of their
public duties not otherwise confidential.

1 Third, Lyon County seeks a “good faith” exception to the
2 NPRA by arguing that it is entitled to “rely on the law as it existed
3 at the time CRA made its request.” Answering Brief at 23.
4 However, Lyon County presents no case or precedent that states
5 what “the law” on this question was at that time. Instead, Lyon
6 County presents its legal opinion of what the law was at that time;
7 exactly what public entities do every time when denying public
8 records requests that are subsequently overturned. Accepting
9 Lyon County’s “state of law” as an excuse not to disclose, would
10 provide a “good faith” defense to disclosure that appears neither in
11 the NPRA nor in the Court’s decisions.
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18 **F. No “Practical Limitations” Exist**

19 Lyon County employees and Commissioners affirmatively
20 choose to use their personal devices and accounts to conduct the
21 public’s business. JA 155 (“County staff, including employees
22 and officials, in addition to County Commissioners, often uses
23 private cellular phones for county business.”). Lyon County
24 argues that “practical limitations” of obtaining copies of records
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1 created in the course of the conduct of these officials and
2 employees' public duties should entirely pre-empt application of
3 the NPRA. Answering Brief at 24-26. Numerous reasons exist to
4 reject Lyon County's bid for a free pass.
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7 First, it is tautological that the legislature, in imposing
8 stringent requirements for the preservation and disclosure of
9 public records, intended to impose the costs associated with duties
10 created by the NPRA on government entities. Here, Lyon County
11 purposefully avoided costs by not supplying mobile phones and
12 computers to its officials and employees. Lyon County also
13 imposed costs on these individuals by permitting the use of such
14 devices and accounts that it might otherwise have had to incur.
15 Further, Lyon County does not explain what these hypothetical
16 costs are. This cost problem can be simply cured: do not conduct
17 official business on personal devices or accounts if one does not
18 want to incur the costs associated with disclosing those records.
19 Nevada case law stresses that where a governmental entity argues
20 that its interest in nondisclosure clearly outweighs the public's
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1 interest in access, the state entity cannot meet this burden with a
2 non-particularized showing, or by expressing hypothetical
3 concerns. *Reno Newspapers, Inc. v. Gibbons*, 127 Nev. 873 at
4 880, 266 P.3d 623 (Nev. 2011), citing *DR Partners v. Board of*
5 *County Comm'rs*, 116 Nev. 616, 6 P.3d 465 (Nev. 2000) and *Reno*
6 *Newspapers, Inc. v. Haley*, 234 P.3d 922 (Nev. 2010).

10 Second, as Lyon County readily admits, state and local
11 jurisdictions have an array of mechanisms to address the use of
12 personal devices and accounts, from barring such use to providing
13 records should the use take place. Without citation to evidence,
14 Lyon County declares all disclosure methods “impracticable” and
15 that the Court should pitch the issue to the Legislature.⁷ The
16 record in this case belies Lyon County’s argument. As described
17 above, several Commissioners did in fact search their personal
18 devices and accounts in response to CRA’s request and forwarded
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24 ⁷Lyon County claims searching for various media and locations
25 for relevant records would be difficult. It is, however, a difficulty
26 of Lyon County and officials’ own making. The Court should not
27 reward Lyon County choice of conducting official business on
28 personal devices and accounts as a method to skirt compliance
with the NPRA.

1 to the results to the central county administration. See JA150.
2 Thus, contrary to Lyon County arguments, NPRA implementation
3 and compliance can easily be achieved under the *Nissen* good
4 faith search of private devices and accounts test.
5

6
7 **G. Disclosing Public Records Does Not Violate**
8 **Individual Rights to Privacy**

9 Lyon County asks this Court to implement a privacy screen
10 around public records of official business conducted on personal
11 devices and stored on personal accounts. As CRA is not seeking
12 access to any private records of public officials, and the Court has
13 already set forth proper procedure for balancing personal and
14 public interests, the Court should deny Lyon County's request for
15 a generic exception to the NPRA for personal devices and
16 accounts.
17

18 CRA seeks only those records that would undoubtedly be
19 public if they were stored on Lyon County's own servers.
20 Therefore, Lyon County's concern about the private information
21 of public officials on personal devices is not at issue and the
22 concern over its disclosure is exaggerated. The Respondents
23

1 made a choice, they conducted public business on their personal
2 devices, the records thereby created are no more private than
3 similar records created on publicly owned devices, or servers that
4 are inarguably subject to disclosure under the NPRA.
5
6

7 Rather than a blanket privacy rule suggested by Lyon County,
8 this Court interpreted the NPRA to require an individualized
9 determination for each record (or conceivably class of records)
10 that establishes that privacy concerns clearly outweigh the
11 public's primary right to disclosure. (See e.g. *Blackjack Bonding*,
12 343 P.3d at 614 in which the Court rejected blanket privacy claims
13 for all requested records). In this case, should the Court remand
14 CRA's NPRA request, then on remand the County may assert any
15 particularized privacy concern that might arise from the disclosure
16 of the public records at issue and not otherwise waived. Lyon
17 County's legitimate privacy concerns (if any) may thus be
18 addressed properly at the level of the District Court.⁸
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26 ⁸ No public records act case that CRA could locate has applied the
27 kind of broad privacy right Lyon County seeks here. Nor do the
28 cases cited by Lyon County stand for anything like that

III. CONCLUSION


A straightforward, common sense application of the NPRPA should not distinguish when public servants conduct their government duties either on publically funded or personal electronic devices or accounts. The Court should therefore reverse the District Court's denial of CRA's Petition for Writ of Mandate and order Lyon County, its officials and employees, to make a good faith inspection of personal electronic devices and personal accounts for records responsive to CRA's NRPA request.

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proposition. *City of Ontario v. Quon*, 560 U.S. 746, 130 S.Ct. 2619 (2010), for example holds that a public employee does not possess a right of privacy to reasonable inspections of a publically provided electronic device. Likewise, *Riley v. California*, 134 S.Ct. 2473 (2014) holds that the government may search private electronic devices upon receipt of a warrant. Neither Fourth Amendment case erects a right of privacy that facially thwarts application of public records laws. In fact, the U.S. Court of Appeals for the D.C. Circuit could not have ruled for disclosure in *Competitive Enterprises*, supra, if Lyon County's constitutional theory held water.

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CERTIFICATE OF COMPLIANCE

1
2
3 1. I hereby certify that this brief complies with the
4 formatting requirements of NRAP 32(a)(4), the typeface
5 requirements of NRAP 32(a)(5) and the type style requirements of
6 NRAP 32(a)(6) because this brief has been prepared in a
7 proportionally spaced typeface using Microsoft Word in Times,
8 font size 16.
9

10
11
12 2. I further certify that this brief complies with the page- or
13 type-volume limitations of NRAP 32(a)(7) because, excluding the
14 parts of the brief exempted by NRAP 32(a)(7)(C), it is
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16 contains 5046 words.
17

18
19
20 3. Finally, I hereby certify that I have read this appellate
21 brief, and to the best of my knowledge, information, and belief, it
22 is not frivolous or interposed for any improper purpose. I further
23 certify that this brief complies with all applicable Nevada Rules of
24 Appellate Procedure, in particular NRAP 28(e)(1), which requires
25 every assertion in the brief regarding matters in the record to be
26
27
28

1 supported by a reference to the page and volume number, if any,
2 of the transcript or appendix where the matter relied on is to be
3 found. I understand that I may be subject to sanctions in the event
4 that the accompanying brief is not in conformity with the
5 requirements of the Nevada Rules of Appellate Procedure.
6
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1 **CERTIFICATE OF SERVICE**

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3 document on the following parties via hand delivery and/or
4 Electronic Service and/or Mail postage prepaid to:
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