

**Scharf-Norton Center for Constitutional Litigation at the  
GOLDWATER INSTITUTE**

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*Attorneys for Plaintiffs*

**IN THE SUPERIOR COURT OF ARIZONA  
IN AND FOR THE COUNTY OF MARICOPA**

KEN JONES, and JOE COBB

Plaintiffs,

vs.

ELAINE SCRUGGS, STEVE FRATE,  
YVONNE KNAACK, MANNY  
MARTINEZ, PHIL LIEBERMAN,  
JOYCE CLARK and NORMA ALVAREZ  
in their official capacities as members of  
the Glendale City Council, HORATIO  
SKEETE in his official capacity as Acting  
Glendale City Manager, and PAM  
HANNA in her official capacity as  
Glendale City Clerk,

Defendants.

Case No.

**COMPLAINT AND APPLICATION  
TO CONSOLIATE WITH MARICOPA  
COUNTY SUPERIOR COURT CASE  
NO. CV2009-020757**

**INTRODUCTION**

1. This is an emergency action to invalidate the resolution and ordinance passed by the Glendale City Council on June 8, 2012 purporting to authorize a 20-year agreement to lease and manage the City's Jobing.com Arena for the Phoenix Coyotes hockey team.

### **PARTIES, JURISDICTION, AND VENUE**

2. Plaintiff Ken Jones is a resident and taxpayer in Glendale.
3. Plaintiff Joe Cobb is a resident and taxpayer in Glendale.
4. Defendant Elaine Scruggs is mayor of the City of Glendale and a member of the Glendale City Council. She is sued in her official capacity only.
5. Defendant Steve Frate is vice mayor of the City of Glendale and a member of the Glendale City Council. He is sued in his official capacity only.
6. Defendant Yvonne Knaack is a member of the Glendale City Council and is sued in her official capacity only.
7. Defendant Manny Martinez is a member of the Glendale City Council and is sued in his official capacity only.
8. Defendant Phil Lieberman is a member of the Glendale City Council and is sued in his official capacity only.
9. Defendant Joyce Clark is a member of the Glendale City Council and is sued in her official capacity only.
10. Defendant Norma Alvarez is a member of the Glendale City Council and is sued in her official capacity only.
11. Defendant Horatio Skeete is acting Glendale City Manager and is sued in his official capacity only.
12. Defendant Pam Hanna is Glendale City Clerk and is sued in her official capacity only.
13. Defendant City of Glendale is a municipal corporation in Maricopa County organized

under the laws of the State of Arizona.

14. Jurisdiction over this action and its claims is provided by A.R.S. §§ 12-123, 12-1831, and 12-1801; and Ariz. R. Civ. P. 65(d).

15. Venue is proper pursuant to A.R.S. § 12-401.

### **FACTS COMMON TO ALL CLAIMS**

16. On June 8, 2012, the Glendale City Council voted 4-2 to pass Ordinance No. 2804 and Resolution No. 4578 that purport to direct and authorize the City Manager and City Clerk to execute a 20-year agreement to lease and manage the City's Jobing.com Arena for the Phoenix Coyotes hockey team.

17. Ordinarily, measures are not effective or operative for 30 days. Glendale City Charter Art. VII, § 6. They may be referred to the voters if sufficient signatures are collected within 30 days. Glendale City Charter Art. X, § 1 & A.R.S. § 19-142(A).

18. However, measures that are passed by emergency take effect immediately, and they may not be referred to the ballot. Glendale City Charter Art. VII, § 7. *See also* Glendale City Charter Art. X, § 1; A.R.S. § 19-141(d); Ariz. Const. Art. IV, pt. 1, § 1(a).

19. The ordinance purports to declare an emergency requiring immediate operation because the arena lease and management agreement "will benefit the City of Glendale and its residents by protecting current public and private investment, encouraging incremental investment, and continuing to enhance the positive image of Glendale to residents and tourists."

20. If the City's resolution and/or ordinance are valid and referable, the Taxpayer Plaintiffs intend to immediately begin collecting signatures to refer the resolution and/or ordinance to the

ballot.

### **GROUND FOR EXPEDITED RELIEF**

21. It will cost Taxpayers substantial time and resources to collect signatures for a petition for referendum. The time in which signatures must be submitted is limited, and referendum efforts demand immediate and intensive efforts.

22. If the resolution is invalid, the Taxpayers' time and resources towards a petition for referendum are for nothing. Their injury is irreparable.

23. However, the Taxpayers' risk of injury is also irreparable if the resolution is valid and they do not immediately exercise their limited opportunity to pursue a petition for referendum.

24. The Taxpayers are unable to begin gathering signatures for a petition to refer the ordinance to the ballot unless the emergency clause is declared invalid.

25. It clearly appears from specific facts shown that immediate and irreparable injury will result to the Taxpayers before Defendants can be heard in opposition. Ariz. R. Civ. P. 65(d).

26. There is a strong likelihood of success on the merits, a possibility of irreparable harm if the requested relief is not granted, the balance of hardships weighs in favor of the requested relief, and public policy favors the requested relief. *Shoen v. Shoen*, 167 Ariz. 58, 63, 804 P.2d 787, 792 (App. 1990).

27. Therefore, the requested relief should be immediately granted.

### **COUNT I: Action to Lease Public Property**

28. Acts of the City Council to lease public property shall be by "ordinance." Glendale City Charter, Art. VII, § 5(d).

29. Therefore, the “resolution” purporting to authorize the execution of the lease of Jobing.com Arena is invalid.

### **COUNT II: Emergency Clause**

30. According to the City’s Charter, an emergency measure requires approval of five-sevenths (71%) of the members of the Council. Glendale City Charter, Art. VII, § 7. According to state law, an emergency measure requires approval of three-fourths (75%) of the members of a city council. A.R.S. § 19-142(B).

31. An emergency measure must be for the immediate preservation of the public peace, health or safety, as set forth in the measure. Glendale City Charter, Art. VII, § 7; A.R.S. § 19-142(B).

32. The ordinance purporting to authorize execution of the lease and management of the City’s arena only passed with approval of only four-sixths (67%) of the members of the Glendale City Council.

33. In addition, the ordinance is not for the immediate preservation of the public peace, health or safety.

34. Therefore, the emergency clause is invalid.

### **COUNT III: Competitive Bidding Requirements**

35. Procurement of services in Glendale, including arena management services, are subject to competitive bidding requirements the City’s Purchasing Ordinance. Glendale Code, Ch. 2, Art. V, Div. 2.

36. Procurement of services in Glendale over \$50,000 must be made using a formal written

request for proposal or invitation for bid. Glendale City Code, § 2-145. However, formal purchase procedures may be waived with the City Manager's approval when there has been a written determination that the formal purchase procedures would not likely result in a lower price to the City or would cause unnecessary expense or delay. Glendale City Code, § 2-145(1)(g).

37. The Taxpayers are among the intended beneficiaries of the City's competitive bidding requirements.

38. On information and belief, professional management companies would competitively bid for arena management services at Jobing.com, which would likely result in a lower price to the City without unnecessary expense or delay.

39. At a recent Council workshop, Art Jimenez, Managing Partner at Phoenix Monarch Group, LLC, offered arena booking services to the City at a lower price, and for greater City revenues, than the arena management agreement provides.

40. The City has never requested a proposal or invitation for bid for any or all services in the arena management agreement, but it has also not waived the formal purchase procedures.

41. By authorizing the execution of the arena management agreement without complying with or waiving the City's competitive bidding requirements, the Council violated the City's Purchasing Ordinance. Therefore, the arena management agreement may not be approved, and the City may not be bound by it. Glendale City Code § 2-144.

### **GROUND'S FOR CONSOLIDATION**

42. There is a pending action for the public records associated with the City's negotiations

and related records for the lease and management of the arena in Maricopa County Superior Court before Hon. Arthur T. Anderson. *Goldwater v. Glendale*, CV2009-020757.

43. A motion filed in that case simultaneously with this action involves common questions of law and fact as this one.

44. In that case, the Plaintiff/Petitioner Goldwater Institute is the same organization that represents counsel for the Taxpayers here.

45. In that case, the Defendant/Respondents City of Glendale and Glendale City Clerk, are the same Defendants here.

46. The Goldwater Institute requests relief in that case that overlaps the relief requested here, on grounds in that case that overlaps the grounds presented here.

47. An order granting the requested relief in this case would also determine and/or moot the requested relief in that case, and vice versa.

48. Therefore, it would serve justice and efficiency to consolidate the Taxpayers' claims here with the Goldwater Institute's motion. Ariz. R. Civ. P. 42(a).

### **REQUEST FOR RELIEF**

Plaintiffs request that this honorable Court award the following relief:

A. Declare the resolution and ordinance invalid for violating the Glendale City Charter and Arizona's laws and constitution;

B. Enter a temporary restraining order against Defendants, and preliminarily and permanently enjoin them, from taking any actions in furtherance of the resolution or ordinance;

C. Award damages and costs according to proof at trial;

E. Award costs and attorney fees pursuant to A.R.S. §§ 12-341, 12-341.01, and 12-348 and the private attorney general doctrine; and

E. Order such additional relief as may be just and proper.

**RESPECTFULLY SUBMITTED** this 13th day of June, 2012 by:

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*Attorneys for Plaintiffs*



### **Verification**

Pursuant to Arizona Rule of Civil Procedure 80(i), Ken Jones declares and verifies as follows:

1. I have read the foregoing and know the contents thereof.
2. The statements and matters alleged are true of my own personal knowledge, except as to those matters stated upon information and belief, and as to such matters, I reasonably believe them to be true.

I declare under penalty of perjury that to the best of my knowledge the foregoing is true and correct.

Dated: June 12, 2012.

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Ken Jones

### **Verification**

Pursuant to Arizona Rule of Civil Procedure 80(i), Joe Cobb declares and verifies as follows:

1. I have read the foregoing and know the contents thereof.
2. The statements and matters alleged are true of my own personal knowledge, except as to those matters stated upon information and belief, and as to such matters, I reasonably believe them to be true.

I declare under penalty of perjury that to the best of my knowledge the foregoing is true and correct.

Dated: June 12, 2012.

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Joe Cobb

### **Verification**

Pursuant to Arizona Rule of Civil Procedure 80(i), Carrie Ann Sitren declares and verifies as follows:

1. I am counsel for Plaintiffs.
2. I have notified Defendants of the foregoing by arranging for each Defendant to be served, and by emailing and mailing a copy to Craig Tindall, Nicholas DiPiazza, and Christina Parry (in-house counsel for the City of Glendale and counsel for the City in *Goldwater v. Glendale* (Maricopa County Superior Court CV2009-020757)), and by faxing, emailing and mailing a copy to Gary Birnbaum, Larry Pringle, and Scot Claus (outside counsel for the City in that case).

I declare under penalty of perjury that to the best of my knowledge the foregoing is true and correct.

Dated: June 13, 2012.

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Carrie Ann Sitren