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

GOLDWATER INSTITUTE, Plaintiff/Petitioner, vs. CITY OF GLENDALE, et al., Defendants/Respondents.	Case No. CV2009-020757 **MOTION TO CONSOLIDATE and MOTION TO INVALIDATE CITY ACTION BASED ON CONTEMPT OF COURT** **Request for Expedited Consideration** *Hon. Arthur T. Anderson* *Special Master Hon. Robert D. Myers*

On Friday, June 8, 2012, the Glendale City Council held a public meeting and approved a resolution and ordinance purporting to authorize a 20-year lease of the City's Jobing.com Arena for the Phoenix Coyotes hockey team. The action violates Public Records Laws and Court orders. The resolution and ordinance should be declared invalid, and Defendants should be enjoined from taking further action pursuant to them.

Motion to Consolidate

Counsel for Plaintiff/Petitioner Goldwater Institute filed a new action on behalf of Glendale residents in Maricopa County Superior Court against Defendant City of Glendale, Defendant City Manager and Defendant City Clerk, and against the City Councilmembers (Ex. 1). That case involves questions of law and fact common to the questions here. The Plaintiff Taxpayers in that case request a temporary restraining order and declaratory judgment to enjoin and invalidate the same resolution and ordinance that the Goldwater Institute seeks to invalidate in this action by this motion (*see id.*, p. 7). An order granting emergency relief in the Taxpayers' case would also determine and/or moot the relief requested here, and an order granting the requested relief here would determine and/or moot the emergency relief in that case. Therefore, it would serve justice and efficiency to consolidate the Taxpayers' claims with this motion, and for this Court to consider them simultaneously. Ariz. R. Civ. P. 42(a). Consideration should be expedited for the reasons demonstrated in the Taxpayers' verified complaint (Ex. 1, p. 4).

Motion for Contempt

The Goldwater Institute filed this action for public records related to the City's negotiations for use of the City's Jobing.com Arena for the Phoenix Coyotes hockey team. The purpose of Goldwater's public records request was to review and analyze a deal between the City of Glendale and the Coyotes because it could violate the Gift Clause of the Arizona Constitution (Art. IX, § 7), which prohibits cities from subsidizing businesses. Goldwater's public records action precisely serves the purpose of Arizona's Public Records Laws, to allow

the public to monitor the performance of their elected officials and scrutinize government activity. *Phoenix News., Inc. v. Keegan*, 201 Ariz. 344, 351, 35 P.3d 105, 112 (App. 2001). Especially when records "are of broad and intense interest," "a matter of legitimate public concern," and "the subject of significant public debate," such as a multimillion dollar deal to lease a city arena to a professional sports team, city records "should not be enshrouded in a cloak of secrecy, isolated from the scrutiny and oversight of the general public." *Id.*

Judge Burke agreed. One week after Goldwater filed its action, he ordered the City to release records and permitted Goldwater to recover attorneys' fees (Minute Entry 7/21/09). However, Goldwater and Judge Burke were concerned that the City Council might approve an arena deal without adequate time for public review and comment. Therefore, Judge Burke (Minute Entry 7/29/09) ordered the City to issue a press release and email or fax Goldwater the tentative agreement and associated records *before* Arizona's Open Meeting Laws otherwise required (*see* A.R.S. Title 38, Ch. 3, Art. 3.1). As Judge Burke explained (Minute Entry 7/29/09, p. 2), "[t]he Court is very concerned that because the City can convene a special City Council meeting on 24 hours notice neither Plaintiff nor the City's taxpayers will have sufficient time to digest, analyze and prepare to comment on any proposed agreement and/or concessions." Despite this order, Judge Burke's fear became reality on Friday, June 8. The City published notice of a special meeting on 24 hours' notice (Ex. 2, ¶ 5). Although it issued a press release and emailed Goldwater a proposed deal on Monday that week, the document was incomplete and the associated records were not simultaneously produced (Ex. 2, ¶ 3).

Most egregiously, the City failed to produce the complete lease and management agreement that the Council voted to authorize (Ex. 2, ¶¶ 6, 13). Two exhibits to the agreement, the Annual Budget for the City-owned arena (Exhibit G) and the arena Management Performance Standards (Exhibit C), were not released until exactly 5:00 p.m. yesterday – days after the Council vote (Ex. 2, ¶ 14). Certainly "neither Plaintiff nor the City's taxpayers [had] sufficient time to digest, analyze and prepare to comment" on them before the Council voted (*see* Minute Entry 7/29/09, p. 2). Even now, Goldwater cannot complete a post-hoc analysis: Every single item in the Annual Budget document produced last night, from gas and electric to postage and uniforms, is $0 (Ex. 2, ¶ 14). Yet somehow, a "draft" Gift Clause analysis for the City by Mariscal Weeks dated nearly two weeks ago (which has never been produced to us but which counsel for Goldwater discovered on the City's website after the Council Special Meeting) purports to rely on the Annual Budget and the Management Performance Standards (Ex. 3, p. 9; Ex. 2, ¶ 9). Thus, despite the Court orders Goldwater secured, the City has shattered the only opportunity for Goldwater – and the public at large – to review the documents necessary to conduct an independent Gift Clause analysis and comment before a vote.

All this, in the face of opposing counsel's previous assurances to Goldwater and the Court over the years of attempting to enforce Public Records Laws and orders in this action, that no arena agreement would be authorized until after it was released to the public. E.g., Ex. 4, p. 21:2-9 ("Judge, if and when we reach a point that the City Council has to take action on a potential deal, there's going to be a notice to the public of a public meeting. There's going to be an agenda that indicates what's on for consideration by the Council, and the document that's

going to be considered by the Council is going to be a public record available to the entire world, including Goldwater"); Ex. 5, p. 29:1-9 ("What happens, Judge, is a proposed deal is brought to Council for their review. . . . It's not the final deal until finally there's an agreement by both sides, and at that point it goes back and it gets signed by Council"); Ex. 6, p. 68:13-18 ("The process is, it goes into a book that's then delivered to council so they have the weekend and Monday to be prepared for a Tuesday meeting. And very rarely are there exceptions to that, and there certainly wouldn't be an exception to that for a large type of an agreement"). The City's failure to release the full 20-year, $425 million agreement to Goldwater and the public before Friday at 10:15 a.m. when the Council met to vote on it, is a contempt of Court. Ariz. R. Civ. P. 65(j).

The City is also in contempt by failing to "immediately" produce the negotiating records at the time it released the agreement, as required (ME 7/29/09, p. 2) (emphasis in original). Only after inquiry by counsel for Goldwater did the City begin to produce some of the records in "installments" (Ex. 2, ¶¶ 3-4). Many of the records are weeks old or older (Ex. 2, ¶ 10). The City's delay in producing them is contumacious. The City has known since July of 2009 that it would be required to immediately produce documents with the agreement, and counsel for Goldwater has reminded the City specifically of this obligation before (Ex. 2, ¶ 3).

When the City Council would consider a 100-page contract worth over $425 million in City funds over 20 years for a professional sports team after years of negotiations that have received international attention, each hour between Monday at 11:00 a.m. – when the contract was made public for the first time – and Friday at 10:15 a.m. – when the Council met to vote on

it – was paramount. Beyond that, each minute between Thursday around 10 a.m. – when the Council posted notice of the Special Meeting for the first time – and Friday at 10:15 a.m. – when the meeting began – was even more supreme. Yet a financial analysis of the arena agreement dated May 31, 2012 by Elliott D. Pollack & Company for the City Manager, was withheld from Goldwater until almost 3:00 p.m. the day before the meeting (Ex. 2, ¶ 7). That document was relied upon by Mariscal Weeks in its June 1, 2012 Gift Clause analysis before the Council vote (Ex. 3, pp. 9-10), but the City deprived Goldwater of the opportunity to do the same. This is a contempt of Court and a violation of Goldwater's right to *prompt* access to public records upon request. Ariz. R. Civ. P. 65(j); A.R.S. § 39-121.01(D)(1).

When Goldwater attempted to restrain the City from holding the Council Special Meeting in violation of Court orders, in an emergency proceeding before Judge Cooper, she declined jurisdiction to prevent the violations from occurring but concluded,

> I think there's been a clear violation of the closed doors, with respect to the disclosure of records. I think an in-contempt proceeding would be in order. I think there should be sanctions. I think that what the City is preparing to do without complying with the court's order may jeopardize . . . the ability to carry forward with that agreement. . . . I do think there's been a clear violation of the court's orders. The Court couldn't have been clearer back in July of 2009, with respect to when these documents were supposed to be disclosed. You've established, Ms. Sitren, that they were not.

(Ex. 7, pp. 29-30).[1] This Court should order relief consistent with those findings.

[1] In declining jurisdiction to restrain the City from violating "closed doors" at the emergency hearing, Judge Cooper did not consider A.R.S. § 38-431.07(A), which permits any person affected by a violation of Arizona's Open Meeting Laws to seek relief from superior court "for the purpose of . . . the prevention of violations of . . . this article." However, she did "leave it, obviously, with the Goldwater Institute to decide how they want to go forward with any further

Request for Relief

The harm done by the City's failure to follow Court orders and produce public records promptly as required under Public Records Laws is only redressible by one remedy: The measures approved by the City Council on Friday must be invalidated, and the City enjoined from acting in furtherance of them. The public's right to "scrutinize" these negotiations of its public officials outweighs all other considerations. *Keegan*, 201 Ariz. at 351, 35 P.3d at 112. The right to know what the Council will vote on before a vote, and the opportunity to comment with full knowledge of the deal, cannot be substituted. No rights of the City will be disturbed by this remedy; should the City seek to authorize the same or another agreement, it need only release the required documents by the required times, and hold a new public meeting before a vote. That action may occur as quickly as the City can comply, and the costs to hold a new public meeting are negligible as compared to the costs of allowing a $425 million, 20-year deal to stand in the face of failure to act with complete transparency.

Counsel for the City admitted that invalidating the actions afterwards is the appropriate remedy (Ex. 7, p. 16:6-10; *see also id.*, pp. 18:9-12, 26:1-10). Courts routinely void actions of public bodies that are taken without full disclosure to the public. *E.g.*, *Johnson v. Tempe Elementary School Dist. No. 3 Governing Bd.*, 199 Ariz. 567, 570, 20 P.3d 1148, 1151 (App. 2000); *see* A.R.S. § 38-431.05. This Court should declare the measures approved by the City Council to be void, and enjoin the City from acting in furtherance of them. It may commit

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action with respect to that, and then whatever they want to do after the vote is taken" (Ex. 7, p. 30:20-24).

individuals to jail until the contempt is purged. Ariz. R. Civ. P. 65(j). The Court should find Defendants and/or their counsel in contempt, order sanctions, and award fees and costs to Goldwater.

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

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