Exhibit 1

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JUN 13 2012

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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. CV2012 009247

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.

GROUNDS 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.

GROUNDS 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:

Clint Bolick (021684)
Nick Dranias (168528)
Carrie Ann Sitren (025760)
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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.

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.

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.

Carrie Ann Sitren

Exhibit 2

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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 **DECLARATION OF CARRIE ANN SITREN IN SUPPORT OF MOTION FOR CONTEMPT** *Hon. Arthur T. Anderson* *Special Master Hon. Robert D. Myers*

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

1. I represent Plaintiff/Petitioner Goldwater Institute in this action for public records maintained by Defendant/Respondent City of Glendale.

2. In 2009, I secured orders from the Court requiring the City to provide access to public records of its negotiations with the Coyotes hockey team on an ongoing basis. The orders expressly require the City to immediately email the Goldwater Institute a copy of the City's tentative deal and associated records, including drafts, correspondence, and other records of negotiations, "as soon as a decision is made to present a proposal to the

Council and not at a later time when a notice of a special Council meeting has been prepared and given."

3. On Monday, June 4, counsel for Defendant/Respondent City of Glendale emailed me a 100-page proposed deal. However, the disclosure did not include any of the exhibits to the deal, nor did it include any of the required associated records. I contacted counsel for the City to request immediate compliance with these orders. I had to make the same request before when the City failed to immediately produce the same documents with a previous proposed deal.

4. The next day, counsel began to send records in "installments." On Tuesday, he sent over 250 pages. On Wednesday, he sent some of the exhibits to the proposed deal.

5. On Thursday morning, the City posted notice on its website and an agenda for a Special Council Meeting Friday at 10:15 a.m. to take public comment and hold a Council vote on whether to approve the proposed deal. I did not find the notice or agenda in any disclosures sent to the Goldwater Institute.

6. The City posted on its website a proposed ordinance and resolution authorizing an arena lease and management agreement, and an incomplete version of the proposed agreement, with the meeting agenda. I did not find the ordinance or resolution in any disclosures sent to the Goldwater Institute.

7. On Thursday at around 12:40 p.m., counsel sent a letter that 2,005 pages of records were available for review "at City Hall during normal business hours," but that copies would not be emailed. At around 2:30 p.m., counsel emailed approximately 300 additional

pages of public records associated with the proposed deal. At around 2:45 p.m., counsel emailed a financial analysis of the deal dated May 31, 2012 by Elliott D. Pollack & Company for the City Manager.

8. On Thursday evening, the City posted a link on its homepage to a similar financial analysis dated January 18, 2012 by TLHocking & Associates for the City. I did not find this analysis in any disclosures sent to the Goldwater Institute, and it was not linked to the meeting notice or agenda.

9. After the vote, the City posted a link on its homepage to a "draft" legal analysis of the arena agreement for the City by Mariscal Weeks dated June 1, 2012. I did not find this document in any disclosures sent to the Goldwater Institute, and it was not linked to the meeting notice or agenda.

10. The records that the City's counsel emailed me on Tuesday, Wednesday, and Thursday, and the analyses on the City's website, were required by this Court's orders to be sent simultaneously with the proposed deal, which was released on Monday. Many of the records are dated weeks ago or longer.

11. Despite repeated inquiries, counsel for the City refused to tell me how many additional installments of records would be sent or when. Counsel also refused to state whether all existing records have been sent.

12. On Thursday afternoon, I advised the City that it violated Court orders and Public Records Laws, and I requested the City's response. Counsel did not respond to my email.

13. Several exhibits to the proposed deal were not released to Goldwater or the public before the Council voted on it. They include the Annual Budget for the City-owned arena (Exhibit G) and Management Performance Standards for the arena (Exhibit C). These exhibits were not released to the Councilmembers before they voted.

14. At 5:00 p.m. yesterday, the City released a copy of the Management Performance Standards. The City also released a "draft form" of the Annual Budget. Every item in the budget document is listed as $0.

15. All these records are necessary to review in order to analyze the proposed deal, both as a matter of policy and for compliance with the constitutional prohibition on subsidies (Gift Clause, Ariz. Const. Art. IX, § 7). They were – and still are – necessary to review to prepare comments to City officials before a vote, and they are necessary for the Councilmembers to consider before voting.

16. At the Council Special Meeting after the period for public comment closed, Mayor Scruggs announced that the resolution and ordinance had changed. The City Clerk read the new versions immediately before the Council voted on them.

17. The new versions were not released to the Goldwater Institute, or posted on the City's website, or provided in the Council packets distributed at the meeting.

18. The ordinance that was initially posted did not contain an emergency clause, while the ordinance that was voted on did. The resolution that was initially posted contained an emergency clause, while the resolution that was voted on did not. The ordinance and resolution that were initially posted did not contain a section finding that the lease and

management agreement provides a substantial public benefit, while the ordinance and resolution that were voted on did.

19. On the next business day following the Council vote, I asked counsel for the City for a copy of the ordinance and resolution that were voted on. Counsel provided only "draft" copies that "have not been finalized or signed." He stated that he did not know when they would be "fully signed and sealed."

Dated: June 13, 2012

Carrie Ann Sitren

Exhibit 3

LAW OFFICES

MARISCAL, WEEKS, McINTYRE & FRIEDLANDER, P.A.

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June 7, 2012

PRIVILEGED AND CONFIDENTIAL

Mayor and City Council
City of Glendale, Arizona
c/o Craig Tindall, Glendale City Attorney
Office Of The City Attorney
City Of Glendale
5850 West Glendale Ave., Suite 450
Glendale, AZ 85301

Re: Transactions (the "Transactions") between and among the City of Glendale, an Arizona municipal corporation (the "City"), Arizona Hockey Partners LLC, a Delaware limited liability company (the "Team"); and Arizona Hockey Arena Partners LLC, a Delaware limited liability company, (the "Arena Manager")

Ladies and Gentlemen:

We have acted as special counsel to the City in connection with a review of certain aspects of the Transactions evidenced by, or discussed in, the Documents (as defined below). Specifically, we have been engaged by the City to review certain draft agreements and to comment upon the effect, if any, upon those agreements (considered collectively) of the provisions of Article 9, Section 7 of the Arizona

Constitution (hereinafter, the "Gift Clause").

As used in this analysis, the phrase "to our knowledge," or words of similar import, mean, as to matters of fact, that, to the actual knowledge of the attorneys within our Firm principally responsible for analyzing the Transactions and after examination of the Documents, but without any independent factual investigation or verification of any kind other than inquiry of certain representatives of the City, such matters are factually correct.

For purposes of this analysis, we have examined such questions of law and fact as we have deemed necessary or appropriate. However, we have examined only the following documents received from the City (collectively, the "Documents"), and we have made no other investigation or inquiry:

I. DOCUMENTS EXAMINED

We have received and reviewed drafts of the following Documents. Each of the Documents is to be executed by each of the signatory parties thereto.

- An undated "Substantial Final Draft" of an Arena Lease and Management Agreement by and among the City of Glendale, an Arizona municipal corporation, Arizona Hockey Arena Partners LLC, a Delaware limited liability company (the "Arena Manager") and Arizona Hockey Partners LLC, a Delaware limited liability company (the "Team"); and

- An undated "Substantial Final Draft" of a Noncompetition and Non-Relocation Agreement by and between [sic] the City of Glendale, an Arizona municipal corporation, and Arizona Hockey Partners, LLC, a Delaware Limited Liability Company (the "Team") and Arizona Hockey Arena Partners LLC, a Delaware Limited Liability Company, (the "Arena Manager").

In addition, we have reviewed the following report which we understand has been prepared at the request of the City in connection with the Transactions.

- Report of Elliott D. Pollack & Company dated May 31, 2012 (the "Pollack Study").

II. ASSUMPTIONS

In preparing this analysis, we have made the following assumptions:

a. The Documents will be completed, executed and approved in form and content substantially identical to the draft versions provided to

us and the Transactions will be undertaken and performed consistent with the terms of the Documents until expiration, of the Documents. Each of the parties to the Documents has approved the execution and delivery of the Documents in accordance with all applicable laws; the person or persons executing the Documents on behalf of each party is authorized to execute the Documents; each party has all requisite entity power and authority to execute, deliver, and carry out the terms of the Documents and, except with respect to the Gift Clause addressed below, the Documents constitute the legal, valid, and binding obligations of the respective parties thereto, enforceable upon such parties in accordance with their respective terms;

b. The Gift Clause applies to the Transactions and there is no constitutional exemption from application of the Gift Clause to the Transactions (such as the exemptions found in Ariz. Const. art. 13, § 7);

c. The City of Glendale is a city of the state of Arizona within the meaning of the Gift Clause;

d. The recipient of benefits from the City under the Documents is an individual, association, or corporation (or more than one individual, association or corporation), within the meaning of the Gift Clause;

e. The City Council will expressly identify (by resolution, ordinance, or otherwise) the public purposes served by the Documents and the Transactions;

f. The Pollack Study is complete, accurate and not misleading, and properly projects the costs to be incurred and the benefits to be received (or expenses avoided) by the City, in connection with the Documents and the Transactions;

g. The requirements of all other relevant laws, rules, regulations, policies, and constitutional provisions (other than the Gift Clause) have been satisfied;

h. The avoidance of the need to use public funds to recoup losses that would otherwise be incurred in the absence of the Transactions is a benefit appropriate for consideration in evaluating, for purposes of Gift Clause analysis, the bargained-for contractual consideration to be received by the City, under the decision in Kromko v. Arizona Board of Regents, 149 Ariz. 319, 322, 718 P.2d 478, 481 (1986) or otherwise; and

i. The Pollack Study properly considers and accurately quantifies all direct benefits to be received or conferred by the City under the Documents. We have also assumed that various indirect and/or non-monetary benefits associated with operation of the Arena and/or the Team (e.g., with respect to the Arena Manager and the Team, anticipated ticket or parking revenues and the City's non-competition covenant; and with respect to the City, taxes to be generated by Westgate area businesses, from player salaries and from ticket sales) are either outside the scope of an appropriate Gift Clause analysis or that such benefits, when viewed together with the monetary benefits described in Section III of this analysis, do not alter the conclusions set forth in Section IV of this analysis.

III. DISCUSSION

Subject to the foregoing, we have evaluated the Documents and the Pollack Study and analyzed the application of the Gift Clause to the Documents and the Transactions contemplated by the Documents. The following analysis consists first of a discussion of the Gift Clause, and the most significant cases that have interpreted the Gift Clause and that have established standards for evaluating compliance with the Gift Clause. Next, we comment briefly upon the presence (or absence) of legal, bargained-for, contractual consideration. Finally, we analyze the principal elements required for Gift Clause compliance ("public purpose" and "adequacy of consideration") and the potential application of those requirements to the Transactions.

A. The Gift Clause in Arizona

The Gift Clause provides:

> Neither the state, nor any county, city, town, municipality, or other subdivision of the state shall ever give or loan its credit in the aid of, or make any donation or grant, by subsidy or otherwise, to any individual, association, or corporation, or become a subscriber to, or a shareholder in, any company or corporation, or become a joint owner with any person, company, or corporation, except as to such ownerships as may accrue to the state by operation or provision of law or as authorized by law solely for investment of the monies in the various funds of the state.

Ariz. Const. art. 9, § 7.

As the Arizona Supreme Court has recognized, the Gift Clause, as written, does not offer specific guidance as to what constitutes an impermissible "subsidy." Furthermore, the records of Arizona's constitutional convention offer no substantial guidance in interpreting the Gift Clause. See John S. Goff, The Records of the Arizona Constitutional Convention of 1910, at 483 (1990) (only mention of Gift Clause reflects a

minor grammatical correction). The Gift Clause was taken nearly verbatim from Montana's Constitution, and early Arizona decisions looked to Montana decisions for guidance:

> [The Gift Clause] represents the reaction of public opinion to the orgies of extravagant dissipation of public funds by counties, townships, cities, and towns in aid of the construction of railways, canals, and other like undertakings during the half century preceding 1880, and it was designed primarily to prevent the use of public funds raised by general taxation in aid of enterprises apparently devoted to quasi-public purposes, but actually engaged in private business.

Day v. Buckeye Water Conservation & Drainage Dist., 28 Ariz. 466, 473, 237 P. 636, 638 (1925) (quoting Thaanum v. Bynum Irrigation Dist., 72 Mont. 221, 232 P. 528, 530 (1925)).[1]

Historically, early Gift Clause challenges were often coupled with an attack on public expenditures under art. 9, § 1 of the Arizona Constitution (the "Tax Clause"). That constitutional provision requires that "all taxes . . . shall be levied and collected for public purposes only." Eventually, the case law evolved to recognize that an expenditure must serve a public purpose to withstand scrutiny under the Gift Clause as well. While the Gift Clause does not itself expressly mention a "public purpose requirement," such a requirement has long been a fixture of Gift Clause jurisprudence.

The cases interpreting the Gift Clause and the Tax Clause have nevertheless struggled to define "public purpose." See, e.g., Turken v. Gordon, 223 Ariz. 342, 346, 224 P.3d 158, 162 (2010). The courts have noted that "public purpose" is a phrase perhaps incapable of precise definition, and better elucidated by examples. See City of Tombstone v. Macia, 30 Ariz. 218, 222, 245 P.2d 677, 679 (1926); City of Glendale v. White, 67 Ariz. 231, 236, 194 P.2d 435, 438-39 (1948); Maricopa County v. State, 187 Ariz. 275, 280, 928 P.2d 699, 704 (App. 1996). Generally, an expansive view of what constitutes a public purpose has been adopted. See, e.g., Humphrey v. City of Phoenix, 55 Ariz. 374, 102 P.2d 82 (1940) (slum clearance program found to serve interest of the general public even though effect is felt by a given class more than the community at large); Industrial Dev. Auth. of Pinal County v. Nelson, 109 Ariz. 368, 509 P.2d 705 (1973) (issuance of industrial development bonds by public agency served public purpose); Town of Gila Bend v. Walled Lake Door Co., 107 Ariz. 545, 490 P.2d 551 (1971) (construction of water line serving only one factory served public purpose).

In addition to "public purpose," the case law has also examined the consideration received by the municipality or other subdivision of the state in a contract with a private party to assess whether "the consideration received by the city . . . is so inequitable and

[1] Montana subsequently removed its gift clause from the State Constitution as unnecessary in light of the other constitutional provisions. Montana Constitutional Convention, 1971-1972, at 583 (1979), available at *http://archive/org/details/montanaconstitut02mont*.

unreasonable that it amounts to an abuse of discretion," thus constituting a forbidden "gift or donation by way of a subsidy." City of Tempe v. Pilot Properties, Inc., 222 Ariz. App. 356, 363, 527 P.2d 515, 522 (1974).

In 1984, in Wistuber v. Paradise Valley Unified School Dist., 141 Ariz. 346, 687 P.2d 354 (1984) ("Wistuber"), the Arizona Supreme Court synthesized the Gift Clause jurisprudence. The Court adopted a two-prong test for determination of compliance with the Gift Clause. Wistuber provided that a governmental expenditure does not violate the Gift Clause if: (1) it has a public purpose; and (2) in return for its expenditure, the governmental entity receives consideration that "is not so inequitable and unreasonable that it amounts to an abuse of discretion, thus providing a subsidy to the private entity." Id. at 349, 687 P.2d at 357 (internal quotations and citations omitted). Wistuber did not clearly resolve what constitutes "inequitable and unreasonable consideration" or whether "indirect" benefits can be considered in evaluating the existence or adequacy of consideration. Subsequent case law has provided some, albeit limited, guidance with respect to these questions.

The law applicable to Gift Clause compliance was most recently clarified by the Arizona Supreme Court in Turken v. Gordon, 223 Ariz. 342, 224 P.3d 158 (2010) ("Turken"), decided twenty-six years after Wistuber. Turken dealt with the development of the CityNorth project, the proposed commercial core of Desert Ridge, a master-planned community in Phoenix, Arizona. The City of Phoenix ("Phoenix") was apparently approached by the developer which indicated that it could not complete the project as planned without financial assistance. Phoenix was apparently concerned that, without aid, the development might not incorporate the full purposed retail component and that potential sales tax revenues would be lost, perhaps to the City of Scottsdale.

Phoenix subsequently entered into a Parking Space Development and Use Agreement with the developer (the "CityNorth Agreement"). The CityNorth Agreement required the developer to set aside, for 45 years, 2,980 parking garage spaces for the non-exclusive use of the general public and 200 spaces for the exclusive use of drivers participating in commuting programs. The payments by Phoenix to the developer were conditioned on the construction of both the garage spaces and at least 1.02 million square feet of retail space. Upon compliance with these requirements by the developer, Phoenix would be obligated to make annual payments to the developer equal to one-half of certain transaction privilege taxes projected to be generated by the development, for a period of up to eleven years and three months, and not to exceed $97.4 million in the aggregate.

The CityNorth Agreement withstood a Gift Clause challenge in the Superior Court. The trial court (Hon. Robert Miles) found that the payments to the developer would serve a public purpose and counted the anticipated increase in tax revenues from the CityNorth development as part of the relevant consideration.

The Court of Appeals reversed and found that the CityNorth Agreement violated

the Gift Clause. Turken v. Gordon, 220 Ariz. 456, 207 P.3d 709 (App. 2008), vacated, 223 Ariz. 342, 224 P.3d 158 (2010). In finding the CityNorth Agreement to be violative of the Gift Clause, the Court of Appeals engrafted a third requirement onto the Wistuber test for Gift Clause compliance. Specifically, the Court of Appeals found that under "the realities of the transaction" the challenged governmental expenditure must not "unduly promot[e] private interests." Turken, 220 Ariz. at 467, 207 P.3d at 720. The Court identified various questions pertinent to that inquiry and concluded that the payments associated with the 2,980 parking spaces not reserved for commuters violated the Gift Clause. 220 Ariz. at 467-472, 207 P.3d at 720-725. The Court of Appeals introduced this third requirement based on its reading of the Arizona Supreme Court's decision in Kromko v. Arizona Board of Regents, 149 Ariz. 319, 718 P.2d 478 (1986).

On review, the Arizona Supreme Court vacated the opinion of the Court of Appeals, rejected the "third" Gift Clause compliance requirement adopted by the Court of Appeals, and effectively reaffirmed the two-prong test of Wistuber. In applying the "public purpose" prong of the Wistuber test, the Court noted that substantial deference is to be given to the judgment of elected officials in the determination of public purpose:

> In taking a broad view of permissible public purposes under the Gift Clause, we have repeatedly emphasized that the primary determination of whether a specific purpose constitutes a "public purpose" is assigned to the political branches of government, which are directly accountable to the public. We find a public purpose absent only in those rare cases in which the governmental bodies' discretion has been "unquestionably abused."

223 Ariz. at 349, 224 P.3d at 165 (internal citations omitted).

In evaluating compliance with the second prong of the Wistuber test, the Court considered the existence and adequacy of consideration. With respect to the existence of legal, bargained-for, contractual consideration, the Turken Court adopted the commonplace meaning of consideration in the law of contracts:

> The term "consideration" has a settled meaning in contract law. It is a "performance or return promise" that is "bargained for . . . in exchange for the promise of the other party." Schade v. Diethrich, 158 Ariz. 1, 8, 760 P.2d 1050, 1057 (1988) (citing Restatement (Second) of Contracts § 71 (1981)). In other words, consideration is what one party to a contract obligates itself to do (or to forbear from doing) in return for the promise of the other contracting party. Id.

Turken, 223 Ariz. at 349, 224 P.3d at 165. With respect to the value of the benefits to be received by the government, the Court observed:

> When a public entity purchases something from a private entity, the

> most objective and reliable way to determine whether the private party has received a forbidden subsidy is to compare the public expenditure to what the government receives under the contract. When government payment is grossly disproportionate to what is received in return, the payment violates the Gift Clause.

Turken, 223 Ariz. at 348, 224 P.3d at 164 (emphasis added).

In Turken, the Supreme Court found that the trial court had erred in considering "indirect benefits" -- such as the projected increase in transaction privilege (sales) tax revenues -- as part of the required, bargained-for consideration. The Court recognized that such anticipated indirect benefits may well be relevant in evaluating whether a government expenditure serves a "public purpose," but when the indirect benefits are not bargained-for as part of the contracting parties' promised performance, such benefits are not consideration under contract law. 223 Ariz. at 350, 224 P.3d at 166. Rather, the Court determined that "analysis of adequacy of consideration for Gift Clause purposes focuses on the objective fair market value of what the private party has promised to provide in return for the public entity's payment." Id.

Ultimately, the Supreme Court expressed skepticism that the $97.4 million that the City promised to pay was in any sense proportionate to the value of the parking spaces promised in return: "We find it difficult to believe that the 3,180 parking spaces have a value anywhere near the payment potentially required under the Agreement." 223 Ariz. at 351, 224 P.3d at 167.[2] In finding that the CityNorth Agreement "quite likely violates the Gift Clause," the Court noted that it was not a finder of fact and normally would remand the case to the Superior Court for further proceedings with respect to the "consideration" issue. However, because the Court determined that its opinion would apply only on a prospective basis, it found remand for this purpose to be unnecessary. Id.

Thus, the required "consideration" inquiry appears to involve both: (i) an initial determination of whether the consideration provided to the City is legal, bargained-for, contractual consideration; and (ii) a subsequent or related analysis of whether the value of the consideration to be received by the City is "grossly disproportionate" to the value of the benefits/incentives to be provided by the City. This framework (public purpose, bargained-for consideration, adequacy of consideration) may be applied to evaluate the Transactions.

B. Application of the Gift Clause to the Transactions

The Documents state that the Transactions will achieve the following public purposes, among others: they will provide a multi-purpose sports and entertainment

[2]It appears that the Court was considering the provision in the CityNorth Agreement that provided for non-exclusive use of the majority of the parking spaces, as it noted that the parties asserting the Gift Clause challenge had conceded that "$97.4 million might well be a fair payment for exclusive use of 3,180 spaces over the next 45 years." 223 Ariz. at 351, 224 P.2d at 167 (emphasis added).

facility to be used by the general public; they will provide additional employment opportunities within the City; they will increase the City's tax base and stimulate additional development on properties in the vicinity of the Arena; and they will mitigate the more than $500 million in future damages (costs) to the City caused by the prior owner's termination of the prior Arena management agreement. Those objectives will, in turn, be accomplished, in part, by eliminating or substantially limiting, the Team's right/ability to relocate to a facility outside the City.

Assuming that the City Council confirms (by ordinance, resolution, or otherwise) the public purposes that underlie the Documents and the Transactions, a valid public purpose (or purposes) will have properly been identified and adopted to the satisfaction of the relevant legislative body; and it may reasonably be anticipated that a reviewing court will grant substantial deference to this determination. The stated purposes are, the City can assert, within the expansive view of "public purpose" recognized in the relevant case law, and this case would not appear to represent one of the "rare cases" where the governmental body's discretion in determining public purpose has been unquestionably abused.

With respect to the existence of legal, bargained-for, contractual consideration, the consideration provided to the City should reasonably be viewed by a reviewing court as direct, legal, bargained-for consideration of a type traditionally recognized as valid, contractual consideration. Here, the City is paying money (e.g., management fees) to one or more private parties. In return, the Documents provide that those parties are going to provide valuable services to the City including, but not limited to: managing the Arena in compliance with certain Management Performance Standards; collection of operating revenues and payment of operating expenses; payment and training of personnel; maintenance and operation of the Arena; scheduling of Arena events (including professional hockey games); management and operation of the Arena parking areas; management of Arena advertising; preparation of proposed annual budgets, etc. In addition, subject to the terms of the Noncompetition and Non-Relocation Agreement, to our knowledge, the Team is effectively relinquishing its legal right to relocate elsewhere, and is agreeing to utilize the City-owned Arena as a venue for professional hockey for approximately 20 years.

For the purposes of determining whether or not the consideration to be paid by the City is grossly disproportionate to the aggregate consideration to be received by the City, we have accepted and relied upon the analysis and conclusions of the Pollack Study which include, among other observations, that:

a. The aggregate payments to be made directly by the City to the private parties (Arena management fee, capital repairs/enhancements) are projected to be approximately $324,000,000 over twenty (20) years. Utilizing a discount rate of 6.5%, the present value of such payments as computed in the Pollack Study, is estimated to be

$203,708,341.[3]

b. In contrast, the City anticipates receiving direct benefits (fees, rents, ticket surcharges, naming rights revenues) totaling $79,452,352 during the twenty (20) year term. The present value of the City's anticipated revenues (utilizing the same 6.5% discount rate), as computed in the Pollack Study, is $44,911,739.[4]

c. In addition, the City projects that the Transactions will protect the City against $315,171,271 ($176,561,515 present value) in aggregate projected operating losses (net negative expenditures, without consideration of debt service payments, but after consideration of revenues anticipated from non-hockey events) projected to be incurred during the next 20 years in the absence of the Transactions.[5]

Except as noted, the foregoing summary of anticipated revenues/benefits does not include fiscal benefits (e.g., transaction privilege taxes, state-shared revenues) or general economic benefits (e.g., job creation, revenue growth of area businesses) projected as a result of the Transactions.[6] The City believes that the value of all such general economic and fiscal benefits (plus benefits described above) is likely to substantially exceed the City's payments to the private parties (¶(a), above).

IV. CONCLUSION

Based upon the foregoing (including the assumptions derived from the Pollack Study), a court of last resort, with the issues fully briefed and argued and faced with the question of Gift Clause compliance of the Documents, should reasonably conclude that: (i) the Transactions serve a public purpose; and (ii) the Documents provide for the receipt of legal, bargained-for, contractual consideration by the City. With respect to the adequacy of the consideration to be received by the City, and in reliance upon the Pollack Study, a court of last resort, with the issues fully briefed and argued and faced with the question, should reasonably conclude that the aggregate benefits (consideration) to be received by the City from the Transactions ($394,623,623; present value $221,473,254) are not grossly disproportionate to (and, in fact, exceed) the payments to be made by the City ($324,000,000; present value $203,708,341). This is

[3] The figures do not reflect any naming rights revenues, ticket revenues, or other revenue streams retained by the private parties and derived from operation and/or management of the Arena or the Coyotes Hockey Team.

[4] The Pollack Study reflects that the City will receive a share of naming rights revenues under the terms of the Documents. Note that transaction privilege (sales) tax revenues are not included in these figures.

[5] In the absence of Team operations at the Arena, no naming rights revenues are projected. Again, transaction privilege (sales) tax revenues have apparently also not been considered in projecting future losses in the absence of the Transactions.

[6] In other words, the summary reflects only those benefits that may be considered to flow directly from, and as a result of, the Documents and the Transactions.

the case if – but only if – both monetary benefits to be received and expenses/liabilities to be avoided through the Transactions are considered.[7] Support for inclusion of loss avoidance benefits may be found in Kromko v. Arizona Board of Regents, 149 Ariz. 319, 718 P.2d 478 (1986) (which did involve a special statute, A.R.S. § 15-1637(A), applicable to hospital transfers only), where the Court noted that the elimination of the need to use public funds for loss recoupment was a substantial monetary benefit to the Board of Regents and thus to the State of Arizona. Accordingly, in a properly presented and argued case, a court of last resort and of competent jurisdiction, with the issues fully briefed and argued, should find the Transactions to not be violative of the Gift Clause.

The conclusions and analysis set forth in this letter must be considered in light of the broad statutory and equitable powers of the relevant court to decide issues such as public purpose and adequacy of consideration. In this evolving area of constitutional and municipal law in Arizona, it is difficult to discern a consistent factual pattern upon which legal precedent of general applicability may be based. This letter, therefore, necessarily is based on a reasoned analysis of many cases. We note also that, notwithstanding our analysis and conclusions, a court's decision in determining issues such as public purpose and adequacy of consideration is necessarily based upon its own analysis and interpretation of the factual evidence before it and the applicable legal principles. Accordingly, a different conclusion might be reached by a reviewing court.

This letter is further expressly subject to: (A) there being no material change in the law subsequent to the date of this analysis; and (B) there being no additional (or different) facts of which we are currently unaware which would materially affect the validity of the assumptions upon which this analysis is based.

Without limiting the foregoing, this analysis is not a guaranty of what any particular court would hold in any particular circumstances, but rather only an informed judgment as to the specific question of law presented.

Finally, this analysis is being furnished to the City solely for its consideration. This correspondence and the analysis set forth herein may not be: (i) used or relied

---

[7] If consideration is also given to so-called "indirect benefits" (e.g., anticipated tax revenues, general economic benefits) then the value of all benefits received by the City (direct monetary benefits, covered potential expenses/liabilities, direct and indirect fiscal benefits, and general economic benefits) is likely to substantially exceed the total of all payments/costs to the City. We recognize, however, that language in Turken suggests that, at least in certain circumstances and for certain purposes, consideration of indirect benefits may not be appropriate. Specifically, in Turken, the indirect benefits were found to be inadequate to establish the existence of legal, bargained-for, contractual consideration. Here, the bargained-for consideration consists of contractual undertakings such as assumption of Arena operational responsibility (for a City-owned facility) and a commitment to use that facility for hockey operations for approximately 20 years. Once appropriate contractual consideration is found, how is the value of such consideration to be determined for evaluating whether it is "not grossly disproportionate to the benefits conferred by the government on private parties"? May indirect benefits be considered solely for the purpose of determining the value of otherwise valid, legal, bargained-for, contractual consideration? The Supreme Court has not yet answered these precise questions.

upon by, or quoted or delivered in whole or in part to, any other person or entity; or (ii) used, quoted, cited, or relied upon by any person, for any purpose, without, in each instance, our prior written consent.

This letter incorporates by reference, and is to be interpreted in accordance with, the First Amended and Restated Report of the State Bar of Arizona Business Law Section Committee on Rendering Legal Opinions in Business Transactions, dated October 20, 2004.

Yours truly,

Mariscal, Weeks, McIntyre & Friedlander, PA.

Mariscal, Weeks, McIntyre & Friedlander, P.A.

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Exhibit 4

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

GOLDWATER INSTITUTE,

Plaintiff/Petitioner,

vs.

CITY OF GLENDALE, a municipal corporation; and PAM HANNA, in her official capacity as City Clerk for the City of Glendale,

Defendants/Respondents.

CV 2009-020757

Phoenix, Arizona

February 12, 2010

BEFORE: The Honorable EDWARD O. BURKE, Judge

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Prepared for: Ms. Carrie Ann Sitren (Copy)
Attorney at Law

Reported by: Scott M. Coniam, RMR, CRR
Certified Court Reporter #50269

continuing, ongoing disclosure.

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.

02:00:40 Why are we here, Judge? And do we want to be here on another Friday afternoon, three or four or seven months from now so that I can say nothing new to report, Judge.

Thank you.

02:00:54 THE COURT: All right. Ms. Sitren.

MS. SITREN: Thank you, Your Honor.

Your Honor, this court's July 21st original order orders the City to disclose copies of all drafts, correspondence, notes, e-mails, memoranda, proposals, and 02:01:12 other records of negotiation with the new potential owners of the Phoenix Coyotes hockey team on a continuing basis. This is on page 1 of the order. And specifically, number one, part one under that ruling, the City shall immediately produce all records requested by the Institute 02:01:30 which in the City's good faith opinion do not reflect its

I, SCOTT M. CONIAM, a Certified Court Reporter, Certificate No. 50269, do hereby certify that the foregoing pages constitute a true and correct transcript of my stenographic notes taken at said time and place, all done to the best of my skill and ability.

I FURTHER CERTIFY that I am in no way related to any of the parties hereto, nor am I in any way interested in the outcome hereof.

DATED at Phoenix, Arizona, on March 3, 2010.

/s/ Scott M. Coniam

SCOTT M. CONIAM, RMR, CRR
Certified Court Reporter
Certificate No. 50269

Exhibit 5

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

GOLDWATER INSTITUTE, Plaintiff, v. CITY OF GLENDALE, et al., Defendants.	No. CV-2009-020757

Phoenix, Arizona
June 21, 2011
2:29 p.m.

BEFORE THE HONORABLE EDWARD O. BURKE

TRANSCRIPT OF PROCEEDINGS

Status Conference

Proceedings recorded by electronic sound recording; transcript produced by AVTranz.

BONNIE FURLONG
Transcriptionist
AAERT CET**D-449

APPEARANCES

June 21, 2011

Judge: Edward O. Burke

For the Plaintiff:

Nicholas C. Dranias

Clint Bolick

Carrie Ann Sitren

Witnesses:

None

For the Defendant:

Craig D. Tindall

Nicholas C. DiPiazza

Witnesses:

None

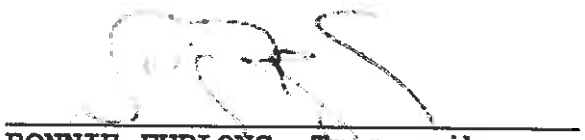
MR. DIPIAZZA: No. What happens, Judge, is a proposed deal is brought to Council for their review. It's explained to them, to get their guidance and approval to go forward. So when something is mature enough to bring to Council and say, "We may have something here, this is what it looks like, we're going to go forward, we have their approval," it's not the final deal. 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 with whatever changes are made and it gets signed by the purchaser, whoever that may be. But the deals are not --

THE COURT: Well, I've read a lot of documents, obviously not as many as you have. But let's say you pounded out in a workmanlike fashion a 45-page deal with Hulsizer, NHL, whoever's up next. You have this 45-page draft that you -- and you present to the Council and say, "Is it okay if we go on with this," isn't the public entitled to look at that then?

MR. DIPIAZZA: Yes. And we've provided -- we have our meetings generally on Tuesday. And more often than not, I find myself getting the documents on Friday. They're finally mature enough to go to two places. Of course, to Goldwater, and also on an agenda for the rest of the world to see. Okay. They fax through an agenda that's posted. Yes. When a deal gets to the point that it's mature enough to go to Council for their consideration -- still not final, but mature enough to go

STATE OF ARIZONA)
) SS:
COUNTY OF MARICOPA)

I, BONNIE FURLONG, Certified Transcriptionist, do hereby certify that the foregoing pages 1 - 51 constitutes a full, true and accurate transcript of proceedings had in the matter of GOLDWATER INSTITUTE v. CITY OF GLENDALE, et al., heard on June 21, 2011; as digitally recorded; before the Court of The Honorable Edward O. Burke.



BONNIE FURLONG, Transcriber

SIGNED and dated July 20, 2011.

Exhibit 6

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.	CV2009-020757

REPORTER'S TRANSCRIPT OF SPECIAL MASTER'S HEARING

December 19, 2011
Phoenix, Arizona
9:30 a.m.

PREPARED FOR:

ATTORNEY AT LAW

(COPY)

REPORTED BY:
Mary Davis, RPR
Arizona CCR No. 50271

larger deals, is the Tuesday before there's a workshop and we try and have a discussion with them. We come out of the workshop with instructions, pursuant to the open meeting law, on what we need to do then. And then the next two or three days are taken up trying to renegotiate whatever points need to be renegotiated. And we do set deadlines on other parties. We set very strict deadlines on third parties, but usually they're pretty beginnings and our deadlines aren't their deadlines and we can't get them necessarily to comply. But by Friday, we usually have at least some version of the document that goes into a book.

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. Council takes their role very seriously. They're not there just to vote on something we give them at the last minute. They have to read and understand everything that's in there as well.

MR. MYERS: Well, you agree with the principle that, in this particular case, this side of the table is not the City Council. This side of the

STATE OF ARIZONA)
) SS.
COUNTY OF MARICOPA)

BE IT KNOWN that the foregoing transcript was taken before me, MARY DAVIS, a Certified Court Reporter in the State of Arizona; that the foregoing proceedings were taken down by me in shorthand and thereafter reduced to print under my direction; that the foregoing pages are a true and correct transcript of all proceedings, all done to the best of my skill and ability.

I further certify that I am in no way related to any of the parties hereto nor am I in any way interested in the outcome hereof.

Dated at Phoenix, Arizona, this 5th day of January, 2011.

MARY DAVIS, RPR - Digital Signature
AZ Certified Court Reporter No. 50271

Exhibit 7

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. CV2009-0202757

TRANSCRIPT OF VIDEO PROCEEDINGS

(Video provided by CBS 5 per Order of the Court)

Before the Honorable Katherine Cooper

June 8, 2012
Phoenix, Arizona

PREPARED FOR:

ATTORNEY AT LAW

(Copy)

Prepared by:
Shannon D. Romero, CET**D-324

ELECTRONIC RECORDING OF PROCEEDINGS,

taken through the Superior Court of Arizona, Maricopa County, before the Honorable Katherine Cooper, at the Arizona Superior Court, East Court Building, 101 West Jefferson, Phoenix, Arizona, on June 8, 2012.

COUNSEL APPEARING:

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CITY OF GLENDALE
CITY ATTORNEY'S OFFICE
BY: Mr. Nicholas C. DiPiazza
BY: Mr. Craig D. Tindall
5850 West Glendale Avenue, Suite 450
Glendale, Arizona 85301
Attorneys for Defendants/Respondents

Your Honor, we are prepared, if in this emergency hearing, occurring just before the council meets, we are prepared to go on and discuss, at your direction, the requirements for an injunction, if there were jurisdiction. Those requirements, of course, include no adequate remedy of law. And there is an adequate remedy here; the Supreme Court tells you. After the enactment, you can go seek to invalidate, on constitutional grounds or otherwise, the legislative enactment.

Also, of course, there's a balance of hardships. The economic study that -- (blank audio) -- of the council yesterday where it was described and discussed on television, in addition to before the open public, that economic study show that is the risk to the city, the loss that the city will have from operating the jobbing.com arena, in the absence of the transaction that's now being considered, that may or may not be adopted, but the economic study shows that in present value, the loss from operations is approximately $177 million over the next 20 years.

So if you reached a balance of hardships argument, there's the argument. If you reached an adequate remedy at law argument, there's the synopsis of the argument. And, of course, the likelihood of

website.

As far as the notice of the meetings this week, on Wednesday of this week, the Thursday study session was properly noticed and the Friday council meeting was properly noticed.

It's hard to figure out how that doesn't fall within the 24-hour notice requirement of the open meeting laws or otherwise.

And finally, Your Honor, if it doesn't, then after the council acts, then I am sure there will be an action filed claiming that the council's action was invalid and void when taken. But the only issue before you, today, is can you enjoin the council from having its meeting at 10:15 and taking a vote? And with all due respect, the Supreme Court and the legislature have clearly told you that that's beyond the power of this court.

Thank you, Your Honor. If you have any questions, I'd be happy to answer them. Thank you.

THE COURT: Thank you. That will be fine.

How does the Court have jurisdiction?

MS. SITREN: Your Honor, the courts have interpreted the statute the defendants have relied on and cited to you here today very clearly. The court

THE COURT: But you would agree that the Goldwater Institute can file an injunction after the vote is taken to stay the application of that decision?

MR. BIRNBAUM: Well, Your Honor, candidly, I haven't done that research. But I do know they can file an action seeking to declare the council's action to be invalid. Whether they can get injunctive relief is a question I'm afraid I just haven't looked at yet. But they certainly can seek to invalidate the council's action, and they have threatened to do so in the past on other deals that the city was negotiating.

In fact, I don't want to misstate history, but I think it is fair to say that at least one possible transaction, with another purchaser of a hockey team, was eventually lost because bonds could not be marketed -- this is what I've been led to believe -- bonds could not be marketed because the Goldwater Institute had threatened to file suit.

So they certainly know what their rights are, and they certainly can try to pursue them, and we'll respond to them accordingly when we see what it is they file.

But today the issue is, Can you enjoin the council from voting at 10:15, whatever that vote

and this has been going on, again, for three years. It is more important, and it is the right of citizens, to have an opportunity to comment, and it is certainly their right to see what public officials are going to vote on, including the exhibits, before they have an opportunity to vote.

And, Your Honor, again, we are talking about probably a couple of days, assuming that the City can get their records together and release them as required by court orders that if the City has had and known about for years now. And that's certainly in the balance of hardships, not a very significant risk that the Coyotes might up and leave in a few days, especially if this court articulates that in its order today.

THE COURT: All right. Thank you --

MS. SITREN: Thank you.

THE COURT: -- Counsel.

All right. Here's my ruling. I'm going to have to deny the request for the TRO, because I don't think that the Court does have jurisdiction at this stage of the game.

I hear you, Ms. Sitren. 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 of the city council's -- may jeopardize the ability to carry forward with that agreement, because it will be subject to, I believe, attack legally for the reasons Mr. Birnbaum suggested, that the action to be taken by the Goldwater Institute will come after the vote.

I don't think that the Court has the ability, based on the -- what the legislature said and what the Supreme Court has said, to be able to stop the legislative process on this side of it. But as I said, 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. And I will leave it, obviously, with the Goldwater Institute to decide how they want to go forward with any further court action with respect to that, and then whatever they want to do after the vote is taken. But today I have to deny the request for the Temporary Restraining Order.

C E R T I F I C A T E

I, Shannon D. Romero, Certified Transcriptionist, do hereby certify that the foregoing pages 1-31 constitute a full, true, and accurate transcript, from electronic recording, of the proceedings had in the foregoing matter, all done to the best of my skill and ability.

SIGNED and dated this 12th day of June, 2012.

_____

Shannon D. Romero
Certified Electronic Transcriber
CET**D-324