

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

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

Defendants/Respondents.

) Case No. CV2009-020757

)
)
) **MOTION FOR THE COURT TO**
) **TAKE JUDICIAL NOTICE OF THE**
) **CITY'S PUBLIC NOTICE**
) **REQUIREMENTS IN THE CONTEXT**
) **OF THE PUBLIC RECORDS**
) **REQUESTED IN THIS ACTION**

) *Hon. Edward O. Burke*

This Court previously ordered Defendant/Respondent City of Glendale to produce to Plaintiff/Petitioner Goldwater Institute by last Friday, July 24, 2009 certain limited public records. The City has failed to produce any substantive records to date and instead filed a motion for a protective order and *in camera* review. This Court heard the matter yesterday and noted that in limiting the production it ordered, the Court relied on the City providing documents with sufficient public notice before the Council takes any action approving potential subsidies or concessions to the City's lease agreement with the Coyotes hockey team. The

Goldwater Institute requests that the Court take judicial notice of the City's public notice requirements.

Under A.R.S. § 38-431.02, cities must provide public notice as is reasonable and practicable. In case of actual emergency, cities may decide matters with no public notice. A.R.S. § 38-431.02(J). The City of Glendale's charter may or may not elevate those requirements in this case. To lease public property, the City Council must act by ordinance (Glendale City Charter Art. VII, § 5(d)) (Exh. 1), which requires 72 hours public notice (*id.*, § 6(c)) (Exh. 1). It is unclear what kind of notice, if any, is required for the Council to approve a subsidy or other concession that does not lease property. Further, the Council may hold special meetings with no public notice (Glendale City Code Ch. 2, Art. II, § 2-17) (Exh. 2). Because the Goldwater Institute has not received any substantive records of negotiations, we do not know the form of potential subsidies or concessions and can only guess at the possible approval procedures and notice requirements.

Even if all negotiations center around a lease and the City provides 72 hours notice before approval, public input at that point may be meaningless. The City stated during the Court's most recent hearing in this case that the Coyotes hockey team lease is a very "complex" document amounting to hundreds of pages, and negotiations take a lot of "twists and turns." Yet the City is well aware of the pressure to develop and approve an agreement in an extremely limited amount of time. By the time such a complex and lengthy proposal finally reaches the Council for approval, it may be unlikely that the public can have any meaningful input (assuming, of course, they are given notice). Additionally, the City could approve an act by an

“emergency measure,” in which case it takes effect immediately (Glendale City Charter Art. VII, § 7) (Exh. 1). This would eliminate the other opportunity for public recourse, a referendum.

Filing a statement in Coyotes bankruptcy proceeding may be the only meaningful opportunity for public input before the Council potentially commits \$20 million annually in public funds. Objections in the bankruptcy court are due this Friday, July 31, and certainly must be made before August 5 when Judge Burke will decide the new owner of the Coyotes team, if the team is to remain in Glendale. Commenting before August 5 in the bankruptcy proceedings is particularly important to allow the question of the constitutionality of a City subsidy, concession, or agreement to be certified to the Arizona Supreme Court before the new owner is decided. *See* A.R.S. § 12-1861; *In re Krohn*, 203 Ariz. 205, 206, 52 P.3d 774, 775 (2002). Petitioner requests that the Court take judicial notice of the City’s public notice requirements in the context of the time constraints and public interest involved in accessing the requested public records.

RESPECTFULLY SUBMITTED this 30th day of July, 2009 by:

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ORIGINAL of the foregoing FILED this 30th day of July, 2009 with:

Clerk of Court
Maricopa County Superior Court
201 West Jefferson Street
Phoenix, AZ 85003

COPY of the foregoing HAND-DELIVERED this 30th day of July, 2009 to:

Hon. Edward O. Burke
Maricopa County Superior Court
125 West Washington Street
Phoenix, AZ 85003

COPY of the foregoing MAILED and E-MAILED and FAXED this 30th day of July, 2009 to:

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