

**IN THE SUPREME COURT
STATE OF ARIZONA**

BARRY GOLDWATER INSTITUTE
FOR PUBLIC POLICY RESEARCH,

Plaintiff / Appellant,

v.

CITY OF PHOENIX; JEFF BARTON;
DENISE ARCHIBALD, and SHEREE
RUCKER,

Defendants / Appellees.

Supreme Court
No. CV-25-0033-PR

Court of Appeals, Division One
No. 1 CA-CV 24-0176

Maricopa County Superior Court
No. CV 2023-003250

**PLAINTIFF/APPELLANT'S RESPONSE TO BRIEF OF AMICUS CURIAE
LEAGUE OF ARIZONA CITIES AND TOWNS**

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INTRODUCTION

In its effort to convince this Court to *lower* the burden of proof required to prevent public records disclosure, the League of Arizona Cities and Towns (“League”) creates a straw man of Plaintiff / Appellant Goldwater Institute’s (“Goldwater”) position. Goldwater is not, as the League claims, seeking to “*increase* the burden of proof” so as to require a showing of “concrete” harm resulting from disclosure. *See* League Br. at 3, 15 (emphasis added). Goldwater is simply asking the Court to reaffirm the longstanding requirement of [*Mitchell v. Superior Court*](#), 142 Ariz. 332 (1984): that withholding decisions be backed by evidence of a “*probability* that specific, material harm will result from disclosure,” [*id.*](#) at 335 (emphasis added)—as opposed to a mere speculative *possibility*. That’s all Goldwater has argued, and all it’s arguing here.

In addition, the League’s list of public records cases lacks important context that, when taken into account, undercuts its—and the City’s¹—arguments. And it conflates Arizona’s public records and open meetings laws—which this Court should not do.

¹ Although Goldwater consented to the filing of the League’s brief, it’s doubtful that the League is truly “independent of any party to the appeal.” [ARCAP 16\(a\)](#). The City is a dues-paying member of the League. *See* [Local Gov’t Directory](#), League of Arizona Cities & Towns. In fact, it’s undoubtedly the League’s largest member. No surprise, then, that the League would seek to “complement” and ultimately repeat many of the City’s arguments. League Br. at 1. And though the League calls itself a “voluntary association,” and implies that it “represent[s] approximately 79% of Arizona’s total population,” *id.*, both claims are misleading. Taxpayers residing in the League’s member jurisdictions—even those that disagree with the League—are nonetheless *compelled by their local governments* to fund the League with their tax dollars. And, of course, just because “approximately 79% of Arizona’s total population” resides in the League’s member jurisdictions does *not* mean the League speaks for nearly 8 out of 10 Arizonans, especially since the League is not directly accountable to voters.

ARGUMENT

I. The standard of proof required to justify nondisclosure is—and should remain—a *probability* of specific, material harm.

A. No one argues that the standard is, or should be, “concrete” or certain harm.

Goldwater’s position is that [Mitchell](#) is still good law and should be applied as written. *See, e.g.*, Pet. at 7–11; GI Supp. Br. at 1–6. The League’s brief misrepresents that position as somehow being “*contrary* to [Mitchell](#),” and claims that Goldwater is trying to “increase the burden of proof for showing the likelihood of harm” to a level that is “tantamount to concrete injury.” League Br. at 3 (emphasis added). In fact, the League uses the word “concrete” no less than eight times in its brief. *Id.* at 3, 7, 14–16, 21, 26. But that word does not appear even once in either of Goldwater’s briefs—and for good reason: that’s not our argument. Our position is that the [Mitchell](#) standard should apply—and that standard requires an entity that seeks to withhold documents subject to the public records laws to show a “probability”² of “specific, material harm” resulting from disclosure—not just the mere speculative possibility that the court below held to be sufficient. It’s not Goldwater’s position that’s “contrary to [Mitchell](#)”—it’s the League’s, and the City’s,³ and that of the court below.

B. The lower courts erred in failing to hold the City to the applicable standard.

The League claims that the City introduced, and the courts below accepted, “*proof of probable harm*.” League Br. at 4. *See also* City’s Response at 6. That

² The League argues that nondisclosure is allowed “based on *probability* of harm.” League Br. at 3. Though partially true, that position waters down [Mitchell](#) by omitting the specificity, materiality, and causation prongs. *See* GI Supp. Br. at 3–5.

³ Although cited twice in the City’s Response to the Petition, the City’s Supplemental Brief doesn’t cite [Mitchell](#) at all.

simply isn't true. The City only established—and the trial court only found—a *potential* for harm. APP.015.⁴ *See also* Pet. at 11; GI Supp. Br. at 5–6. And that speculated harm was not sufficiently specific, material, or causally tied to disclosure. *Id.* at 6.

The League pejoratively labels Goldwater's straightforward reading and application of [Mitchell](#) as "rigorous." League Br. at 3–4, 23. But this Court has repeatedly held that judicial scrutiny of withholding decisions *should* be rigorous, given the presumption favoring disclosure. *See, e.g., Mathews v. Pyle*, 75 Ariz. 76, 81(1952) ("[U]nder no circumstances should [a custodian's withholding] determination be final. It rests within the jurisdiction of the courts of the state to determine these questions." (emphasis added)); [Carlson v. Pima Cnty.](#), 141 Ariz. 487, 491 (1984) (withholding decisions are "subject to judicial *scrutiny*" (emphasis added)); [Cox Ariz. Publ's, Inc., v. Collins](#), 175 Ariz. 11, 14–15 (1993) (reiterating that "[w]hether the denial of access to public records is wrongful is an issue of law" reviewed *de novo*, emphasizing that the burden "to overcome the legal presumption favoring disclosure" falls "squarely" on the party seeking nondisclosure, and highlighting the need for *in camera* inspections).

Or, as the Court of Appeals has observed, the law "requires more than reliance on generalities" to justify withholding records. [Smith v. Town of Marana](#), 254 Ariz. 393, 399 ¶ 19 (App. 2022). What, after all, would a non-"rigorous" application of [Mitchell](#) mean? The answer, it seems, would be to let government entities withhold documents based *not* on a probability of specific harm, but on a general assertion of inconvenience or speculation about possible future difficulties—exactly what happened here, and exactly contrary to the presumption favoring disclosure.

⁴ All "APP." citations reference the Appendix to Plaintiff/Appellant's Opening Brief filed with the Court of Appeals. *See* Pet. at 3 & n.2.

The courts below not only failed to meaningfully scrutinize the City’s categorical withholding of the records at issue—they effectively substituted a *less rigorous* and more deferential “potential harm” standard. The result was to allow the City to escape its disclosure obligation based on “generalities.”

C. The League omits important context in its characterizations of prior caselaw.

To bolster its position that something less than the *Mitchell* standard is sufficient—meaning something less-than-probable, less-than-specific, less-than-material, and/or less-than-caused by disclosure—the League omits or glosses over important context from some of the public records cases it summarizes.

As an initial matter, the League makes much out of the fact that Arizona courts “rarely ... uphold non-disclosure.” League Br. at 6. That’s true, and it’s a function of the presumption favoring disclosure and other guardrails this Court has placed on the public records analysis. But the League is wrong that this case falls within the same category of cases where nondisclosure has been upheld. *Id.* This case has nothing to do with personal privacy, minors, or academic exams, as in several cases the League cites. *See id.* at 10, 14–21. And its connection to hiring, personnel matters, and security, is attenuated at best. *See id.* at 7–15. In other words, the cases the League cites are easily distinguishable from this case—particularly when one considers key information omitted by the League that’s essential to understanding them.

For example, the League relies heavily on [*Arizona Board of Regents v. Phoenix Newspapers, Inc.*](#), 167 Ariz. 254 (1991), which it says upheld nondisclosure based on something less than the “rigorous” *Mitchell* standard. But the League ignores the fact that the concerns raised in [*Board of Regents*](#) were not

“speculative” (as the trial court erroneously stated, APP.015),⁵ but just the opposite. The withholding decision there was justified by *specific prior instances of material harm resulting from analogous disclosure*. This Court noted in the “Facts” section of the opinion that in one of ABOR’s own previous presidential searches, “two of six finalists withdrew their names from consideration after their names were leaked to the press and published.” Board of Regents, 167 Ariz. at 255. That concern was *insufficient* to block disclosure of finalists/candidates in that case, id. at 267—but it was enough to justify nondisclosure of mere prospects who might not have even known they’d been nominated. Id. at 258. Even those concerns, however, were largely rooted in *privacy*, a constitutionally protected right in Arizona—and a matter that simply is not at issue here.

The Court went on: “*In some [prior] cases the publicity attendant to the search has proven detrimental to the search process.*” Id. What were those prior cases, and what record evidence proffered to the trial court to show this? This Court appended the trial court’s findings of fact, which included the following:

- A specific prior instance where “a nationally prominent president of a private college who allowed his name to be considered in a presidential search ... was chastised” by his board of trustees and, after “the second time his name was revealed as a finalist, even though he attempted to withdraw from consideration, the chairman of his board told him to look for another job.” Id. at 265.

⁵ The City originally made this argument in its Response in Opposition to Plaintiff’s Request for Special Action and Injunctive Relief (I.R. 19), at 11–12. The trial court accepted the City’s interpretation of the case, opining that “speculative concerns may be sufficient to support the public interests exception [sic].” APP.015. This was subsequently referenced approvingly, though in paraphrased form, by the Court of Appeals. COA Op. at 8 ¶ 18. But, again, “speculative concerns” are simply not sufficient to justify withholding documents under the public records laws.

- A specific prior instance where, “in the 1971 search for the presidency of Ohio University, five sitting presidents were finalists, but when it became necessary to publish their names, all 5 of them withdrew and there had to be a second search.” [*Id.*](#)
- A specific prior instance where three out of four finalists for a university position in Oregon withdrew when advised they “would be subject to public interviews.” [*Id.*](#)
- A specific prior instance where “a midwestern president of a school ... was put on probation when his institution learned that his name was being considered for another position.” [*Id.*](#)
- Two additional specific prior instances, “one provost search and one vice chancellor search in which candidates who were very well qualified withdrew because the information concerning their interest was made public.” [*Id.*](#)

In other words, this Court upheld the withholding of information regarding these prospects based on a detailed factual record that showed specific, actual harms directly resulting from disclosure—which satisfies the (“rigorous”) [*Mitchell*](#) standard. Had the kind of speculation that the League argues for been sufficient, there would have been no need to provide such an exhaustive factual record.

Ignoring that detailed, specific, evidentiary record, the League hangs its analysis on the Court’s later statement that “[r]evealing the names of all prospects, those nominated without their permission, and even those nominated with the prospects’ tacit permission, *could* chill the attraction of the best possible candidates for the position.” [*Id.*](#) at 258 (emphasis added by the League); League Br. at 8.

But the Court’s mere use of the word “could” does *not* mean that [*Board of Regents*](#) stands for the proposition that “speculative concerns may be sufficient to

support the public interests exception [sic]” as stated by the trial court here. APP.015.⁶ The League italicizes the word “could” because it wants to reduce the standard from Mitchell’s requirement of “probability that specific, material harm will result from disclosure,” 142 Ariz. at 335, to a rule that would allow withholding based entirely on “global generalities of the possible harm that might result from the release of ... records”—exactly what this Court rejected in Cox, 175 Ariz. at 14.

It’s true, of course, that the harm resulting from disclosure of the information at issue in Board of Regents had “not yet occurred,” COA Op. at 8 ¶ 18; the legitimacy of withholding must be determined based on forecasts of future consequences, which can never be perfect certainties. But in order to draw a line between actual, *likely* future consequences and mere speculation of the “global generalities” type, Arizona law requires evidence that rises above mere conjecture. Thus, nondisclosure was upheld in Board of Regents only after evidence was presented of prior *specific* instances of harm in closely analogous circumstances, which established a *probability* that similar specific, *material* harm would *causally result* from disclosure of prospects’ identities.

That’s not only Goldwater’s reading of the case—it’s this Court’s *own* framing. When this Court discussed Board of Regents in Cox, it highlighted that the “Board of Regents demonstrated *specific instances* where publicity *proved* detrimental to [the] university president search process,” and it faulted the public official in Cox for “not attempt[ing] to make such a showing,” and relying on “global generalities” instead. 175 Ariz. at 14 (emphasis added).

⁶ And even if the Court of Appeals’ slightly different statement that “given its very nature, even concerns about events that have not yet occurred may be sufficient to support the ‘best interests of the state’ exception” is correct in the abstract, its Board of Regents citation and parenthetical likewise present an incomplete picture of the evidence presented in that case. COA Op. at 8 ¶ 18 (emphasis added).

That’s not to say evidence of prior specific instances is *always* necessary, but whatever evidence *is* presented, including witness testimony, must rise to the level of a *probability* (not possibility) that specific (not general), material (not trivial) harm will result from disclosure (not something else).

But here, the City only offered testimony from self-interested parties to the negotiation process who have political and philosophical objections to disclosure of the records at issue (not unlike the League). *See, e.g.*, COA Op. Br. at 34–35. That evidence amounted to the speculation that disclosure “could create a chilling effect,” in future negotiations, APP.008—speculation that was not supported by even a single example where disclosure of similar records had actually caused such harm.⁷ On the other hand, Goldwater offered, *inter alia*, testimony from an experienced labor negotiator—and president of a public-sector union—named Joseph Shoplock, who testified that when Idaho opened up its labor negotiation process to the public, the speculative harms proffered by the City *did not occur*. *See* APP.013–14.⁸

The courts below should have held the City to the [Mitchell](#) standard—just as this Court did in [Board of Regents](#).

The League’s treatment of the other cases it cites is similarly skewed. Here are some additional important details:

⁷ APP.126-27 at 110:8-111:15; APP.142-43 at 126:5-127:22; APP.145-46 at 129:7-130:21; APP.149 at 133:4-15; APP.179 at 163:2-11; APP.184-85 at 168:18-169:3; APP.198-200 at 182:21-184:12; *see also* APP.240-41 at 224:12-225:5.

⁸ The trial court erroneously discounted that testimony, *see* COA Op. Br. at 36 & n.26, because “Mr. Shoplock has no experience with the *City of Phoenix* labor negotiations.” APP.014 (emphasis added). At least some of the witnesses in [Board of Regents](#) didn’t have experience with *Arizona State University*’s presidential search either, but did have experience in analogous search situations. Mr. Shoplock has similarly analogous experience here, as does Goldwater’s expert, Robert Brown. *See* APP.014–15.

- [*KPNX-TV v. Superior Court*](#) relied on this Court’s decision in [*Cox*](#) for its rules statements regarding the burden and standard of proof. 183 Ariz. 589, 593 (App. 1995). Both the trial court and the Court of Appeals in [*KPNX-TV*](#) actually examined the records at issue before allowing the withholding of two videotapes containing information that presented “legitimate security concerns.” League Br. at 8–9. In other words, the disputed records were themselves evidence presented to the courts that supported the withholding decisions and the government’s related arguments.⁹ Here, by contrast, *no in camera inspection occurred*.

- The League cites [*Bolm v. Custodian of Records*](#), 193 Ariz. 35 (App. 1998), for the proposition that “at least some non-disclosure” can be justified based on the best-interests determination. League Br. at 6. But that’s not in dispute. The question here is whether withholding can be justified based on mere speculation, or whether it can be justified only by evidence that demonstrates a probability of specific, material harm. And as the League admits, there was extensive evidence in [*Bolm*](#), including several days of testimony that justified some—but not all—of the withholding there. “[T]he trial court made extensive, detailed findings to support its conclusion that the City properly withheld those materials.” 193 Ariz. at 41 ¶ 19. And the Court of Appeals rejected the government’s effort “to fashion a blanket rule protecting” the disputed records from public disclosure “because the balancing test must be applied on a case-by-case basis,” preferably by *in camera* inspection. [*Id.*](#) at 40 ¶¶ 13–14.

- Again, in [*Phoenix Newspapers, Inc. v. Keegan*](#), 201 Ariz. 344, 349 ¶ 19 (App. 2001), the court upheld withholding based on clear evidence of obviously

⁹ Disputed records themselves are probably rarely sufficient to establish a probability that specific, material harm will result from disclosure. But judicial notice might be appropriate where there’s no “reasonable dispute” as to risks that are “generally known,” such as security risks to law enforcement facilities and undercover officers. See [*Ariz. R. Evid. 201*](#). No such notice was taken in this case.

detrimental consequences from disclosure: the newspaper sought a copy of a test administered to the state’s students—and because the questions might be used again, it was obvious that public release of the test would compromise its validity. There was extensive *and* “*unchallenged*” evidence—including by expert witnesses—regarding the likelihood of harm. *Id.* at 350 ¶ 25 (emphasis added). And the newspaper seeking the documents “did not dispute” the state’s interest in withholding. *Id.* Notably, the trial court did *not* uphold withholding of *all* the test questions but only those which the evidence showed would likely result in harm if disclosed. *Id.* ¶ 28. Here, by contrast, only Goldwater offered expert testimony, and the evidence presented below undermines the seriousness and strength of the City’s asserted interests. Yet rather than finding a genuine likelihood of specific harm, the court below allowed the documents to be withheld based on mere speculation.

- Once again, in *Judicial Watch, Inc., v. City of Phoenix*, 228 Ariz. 393 (App. 2011), the court required a high degree of specificity and proof of real likelihood of harm, rather than mere speculation. In fact, the City had provided testimony from multiple officers detailing “the dangers posed by imparting information about the Mayor’s patterns of movement, his favorite places to frequent, and the number, identities, and strategies of his detail at any particular event.” *Id.* at 397–98 ¶ 19. Nothing approaches that level of specificity in the City’s witnesses’ testimony here. The court also rejected the City’s broad, vague, and contradictory assertions that redactions were not feasible. *Id.* at 398 ¶ 21. Here, by contrast, the withholding was based entirely on conclusory assertions about how disclosure might somehow harm the City’s negotiations in the future—despite expert testimony to the contrary.

- Specificity was also central in *Hodai v. City of Tucson*, 239 Ariz. 34, 41–42 ¶ 21 (App. 2016). Indeed, the court used the word “specific” to summarize the extensive evidence showing the genuine likelihood of harm—and distinguished that record from a situation like this case, where the government’s withholding

decision is predicated on “merely a possible harm based on a hypothetical situation.” *Id.* at 39–40 ¶ 12. The evidence in question was testimony from experienced FBI agents regarding the likely consequences of releasing certain surveillance technology—affidavits that were rooted in specific experience and technical expertise regarding that technology. *Id.* The court went out of its way to reiterate that “vague assertions of possible harm [are] insufficient to overcome [the] legal presumption favoring disclosure.” *Id.* at 967 ¶ 21 (citation omitted). That could not be more different from a case like this, where the City justified its withholding decision based on contested testimony by inexperienced witnesses, which supported a purely speculative conclusion about what “could” happen if the records were released—testimony, moreover, which was refuted by Goldwater’s expert testimony. The point is, *Hodai* expressly rejects the pro-speculation position the League advances.

- As for *Abraham v. Board of Regents*, 259 Ariz. 158 (App. 2025), Goldwater has addressed that case in its amicus brief in the companion case now pending before this Court.

The bottom line is that none of the cases the League cites support its attack on the “rigorous” standard of *Mitchell*. Arizona law requires evidence of *probable*, not merely possible, harms—and those harms must be specific, material, and caused by the release of information—not mere general assertions that the public will be harmed by disclosure. The body of public records caselaw in Arizona supports Goldwater’s position.

II. Though related, the Public Records Law and the Open Meetings Law should not be conflated.

The League improperly invites this Court to import Open Meetings Law exemptions into the Public Records Law and, conversely, to export judicially created balancing tests or exceptions from the Public Records Law to the Open Meetings Law. The Court should do neither.

A. Executive sessions are not at issue here.

The League mistakenly relies on [A.R.S. § 38-431.03](#), which primarily concerns public *meetings*, or more precisely, executive sessions, for its position regarding public *records* disclosure. *See* League Br. at 23. But these are different things, and because executive sessions are not at issue in this case, it's improper for an amicus to raise that issue. [Town of Chino Valley v. City of Prescott](#), 131 Ariz. 78, 84 (1981).

Even if the Court were to examine the executive session statute or other portions of the Open Meetings Law for purposes of interpreting the Public Records Law, that statute supports Goldwater's position—not the League's. *See generally* [A.R.S. § 38-431.09\(A\)](#) (open meetings laws, like public records laws, are to be construed in favor of transparency). That's primarily because [Section 38-431.03\(B\)](#) *expressly* makes executive session minutes and discussions confidential (with some inapplicable exceptions), and therefore not publicly disclosable. **No similar statute exists for labor negotiations.**

Relatedly, the League's brief fails to mention [Subsection \(A\)\(2\)](#) of [Section 38-431.03](#), which allows for executive sessions to discuss or consider “records exempt by law from public inspection, including ... information or testimony that is specifically required to be maintained as confidential by state or federal law.” *Id.* Labor negotiation records such as are at issue here are *not* “exempt by law from

public inspection” or “specifically required to be maintained as confidential by state or federal law.” *Id.* That’s why Goldwater requested them in the first place.

B. The proper place for policy discussions about what information should be publicly disclosable is the legislature—not the judiciary.

[Section 38-431.03](#) shows that the Legislature knows how to shield information from disclosure when it needs to. That it has *not* done so for labor negotiation records speaks volumes. *Cf. Roubos v. Miller*, 214 Ariz. 416, 420 ¶ 20 (2007) (that Legislature chose not to take a step it could have taken implies that such choice was intentional).

The League ironically fails to see this point. It claims that a purported “negotiating disadvantage” is “so obvious” that the legislature “broadly shielded” certain discussions from open meetings “without any prior determination of harm.” League Br. at 23. But if such a supposed disadvantage were as obvious in the public-sector labor negotiation context as in the executive session context, surely the Legislature would have adopted a statute to that effect exempting labor negotiation meetings and associated records from the public records laws. It has not.

The League might consider it “obvious” that government documents should be withheld from public inspection in order to promote certain alleged efficiencies, but it’s easy to see where such an argument would lead. *Cox*, for example, concerned newspapers’ request for access to police reports supporting the indictment of certain prominent Arizonans in a drugs-and-gambling investigation. 175 Ariz. at 12. Surely it is “obvious” that disclosure of such information “could”—to use the word the League relies on so heavily—be “disadvantage[ous]” to the police in future investigations. *Cf.* League Br. at 23. Certainly, the defendant in that case thought so. Yet the court disagreed. *Cox*, 175 Ariz. at 15.

Likewise, in [Smith](#), 254 Ariz. 393, which also involved police investigative records, the court found it *obvious* that the public has an interest in transparency protected by Arizona law—and held that the government cannot withhold documents based on “speculation as to the generalized potential harms that might befall [the public from] ... disclos[ure].” [Id.](#) at 399 ¶ 19.

Simply put, the public records laws exist to serve goals more important than efficiency: namely, transparency and the “principles of Democratic Government.” [Mathews](#), 75 Ariz. at 80–81. These goals may seem “obviously” inefficient to the League, but they must take priority.

In fact, the League’s arguments about the “obvious” risks of disclosure counseling in favor of keeping information secret echo similar arguments that Arizona courts have repeatedly rejected, particularly in cases where government entities—including the City—claimed that certain records were covered by a “deliberative process privilege.” [Rigel Corp. v. State](#), 225 Ariz. 65, 73 ¶ 41 (App. 2010). After all, it’s “obvious” that disclosing government documents could “chill” the deliberative process. Yet courts have rejected this argument. See [Star Publ’g Co. v. Pima Cnty. Atty’s Off.](#), 181 Ariz. 432, 433–34 (App. 1994) (noting that Arizona had not “adopt[ed] a deliberative process privilege akin to that recognized in [California]”); [Arizona Indep. Redistricting Comm’n v. Fields](#), 206 Ariz. 130, 141 ¶¶ 33–34 (App. 2003) (noting that “[t]he deliberative process privilege is a federal common law privilege preserved in ... the Freedom of Information Act” and that “Arizona’s public records law ... does not contain a provision equivalent to ... [the] FOIA [exemption], and Arizona courts have not acknowledged a common law privilege” (citations omitted)); [Judicial Watch](#), 228 Ariz. at 395 ¶ 4 (City asserted the privilege in withholding records that the court ultimately ordered produced, with redactions).

In *Rigel*, the Department of Revenue (“ADOR”) challenged the tax court’s rejection of a deliberative process privilege for various internal agency documents. 225 Ariz. at 66–67 ¶¶ 2, 9. In analyzing whether such a privilege existed, or should exist, the court cited the “legal presumption in favor of disclosing public records,” *Id.* at 73 ¶ 41, and reiterated that “government agencies do not ordinarily have a privilege to refuse to produce evidence *unless a statute has specifically created an exemption.*” *Id.* (emphasis added). Importantly, the court declined to create the privilege after pointing out that “[t]o date, *our legislature has not codified any such privilege in the Arizona Public Records statutes.*” *Id.* (emphasis added).

The same is true here. Rather than create categorical exemptions from disclosure for deliberative processes—or negotiation processes—the Legislature articulated specific exemptions from the open meetings and public records laws in the executive session statute. And the Court should reject any invitation to bypass the Legislature and create its own privileges against or exemptions to public information access based on what the League thinks are “obvious” government needs. *See* GI Supp. Br. at 13 & n. 13.

In addition to the Legislature’s divergent treatment of executive sessions and public-sector labor negotiations,¹⁰ there may also be rational distinctions between oral and written negotiations (or deliberations). After all, the Legislature did not create one overarching transparency statute. It created two separate laws—one covering public records and one covering public meetings.

The League’s hyperbole about a potential “threat[] to narrow municipalities’ legal authority to withhold documents” when appropriate, *League Br.* at 1, or to

¹⁰ One key difference between executive sessions and labor negotiations is that unlike in many executive sessions, the public body is not discussing confidential legal advice in labor negotiations, contrary to the League’s suggestion. *See League Br.* at 22. Indeed, the presence of a third party (such as a labor union) would likely break any attorney-client privilege between the public employer and its counsel.

upend “all types of negotiations,” *id.* at 3, is misplaced. Even if Goldwater is ultimately awarded all the relief requested, and documents exchanged during labor negotiations are disclosed, it still would not open up closed negotiation meetings to the public. The City and the public-sector unions it negotiates with would remain free to negotiate orally outside of public view. Only when the parties decide to document a proposal in writing would that information be subject to disclosure.

CONCLUSION

The Court should reject the League’s arguments regarding the standard of proof in public records cases, its framing of prior caselaw, and its improper invitations for the Court to conflate the state’s public records and open meetings laws.

Respectfully submitted November 10, 2025, by:

/s/ Parker Jackson

Jonathan Riches (025712)

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**Scharf-Norton Center for Constitutional
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