

Scharf-Norton Center for Constitutional Litigation at the
GOLDWATER INSTITUTE
Clint Bolick (021684)
Carrie Ann Sitren (025760)
500 E. Coronado Rd., Phoenix, AZ 85004
(602) 462-5000
litigation@goldwaterinstitute.org
Attorneys for Plaintiff/Petitioner

**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

**NOTICE OF SUPPLEMENTAL
EVIDENCE IN SUPPORT OF
PETITIONER'S APPLICATION FOR
ORDER TO SHOW CAUSE**

Hon. Edward O. Burke

On February 12, 2010, this Court heard Petitioner Goldwater Institute's Application for Order to Show Cause why Respondent City should not be held in contempt of Court for violating this Court's orders to submit records on a continuing basis. The City has never denied that it failed to submit new records in more than five months. The City asserted (for the first time at the Feb. 12, 2010 hearing) that it had no new records to submit (Decl., ¶¶ 7-17). This is despite multiple previous contradicting statements from the City to the Institute, statements which were not all presented to the Court at the hearing because they were not believed to be disputed at the time (*id.*). In denying the Institute's Application for Order to Show Cause, the

Court (Minute Entry Order dated Feb. 12, 2010) did not find sufficient evidence that the City withheld information. The Institute has noticed a Rule 30(b)(6) deposition of the City to obtain more evidence (Decl. ¶ 18). We submit the attached supplemental evidence here, which we only recently uncovered because we did not expect it to be disputed at the time of the hearing (Decl. ¶¶ 9 & 14). This supplemental evidence further substantiates our claim and demonstrates our good faith in seeking an Order to Show Cause, and we request that the Court consider it in connection with our Application and related pleadings, including future pleadings.

RESPECTFULLY SUBMITTED this 18th day of February, 2010 by:

/s Carrie Ann Sitren
Clint Bolick (021684)
Carrie Ann Sitren (025760)
Scharf-Norton Center for Constitutional Litigation
at the GOLDWATER INSTITUTE
500 E. Coronado Rd., Phoenix, AZ 85004
(602) 462-5000
litigation@goldwaterinstitute.org
Attorneys for Plaintiff/Petitioner

ORIGINAL of the foregoing E-FILED this 18th day of February, 2010 with:

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

COPY of the foregoing HAND-DELIVERED this 18th day of February, 2010 to:

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

COPY of the foregoing MAILED this 18th day of February, 2010 to:

Nicholas C. DiPiazza
City Attorney's Office
5850 W. Glendale Ave., Ste. 450
Glendale, AZ 85301
Attorney for Defendants/Respondents

/s Carrie Ann Sitren

**Scharf-Norton Center for Constitutional Litigation at the
GOLDWATER INSTITUTE**
Clint Bolick (021684)
Carrie Ann Sitren (025760)
500 E. Coronado Rd., Phoenix, AZ 85004
(602) 462-5000
litigation@goldwaterinstitute.org
Attorneys for Plaintiff/Petitioner

**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

**SUPPLEMENTAL DECLARATION
OF CARRIE ANN SITREN IN
SUPPORT OF APPLICATION FOR
ORDER TO SHOW CAUSE**

Hon. Edward O. Burke

Pursuant to Arizona Rule of Civil Procedure 80(i), Carrie Ann Sitren **supplements** her January 20, 2010 Declaration in Support of Application for Order to Show Cause as follows.¹

6. Following the City's most recent disclosures of new documents in August and September 2009, after more time had passed than it appeared this Court intended in its order for continuing disclosures, I made multiple inquiries to the City's legal department to ask the status of the City's next disclosures.
7. I recall receiving multiple responses from the City's legal department that the City intended to make a new submission after September 2009.

¹ The January 20, 2010 Declaration will be referred to as "Decl.," and the Exhibit attached to it will be referred to as "Exh. 1." The paragraphs in this Supplemental Declaration and the Exhibits attached here continue from the January 20th Declaration.

8. I do not maintain records of case status inquiries in the normal course of litigation, and I did not maintain exhaustive records of these inquiries with the City.
9. However, I recently discovered an email (Exh. 2) from Nicholas DiPiazza in response to one of my inquiries. In the email, dated December 16, 2009, Mr. DiPiazza stated that the City “is now preparing its next disclosure for release shortly.”
10. Mr. DiPiazza represented the City at the Order to Show Cause hearing and told this Court that the City had made no new disclosures since September 2009 because no new documents existed to be disclosed.
11. At no time did any representative for the City ever suggest to me that there were no new documents to disclose after September 2009.
12. In the City’s Response to our Application for Order to Show Cause, the City did not assert that there were no new documents to disclose after September 2009.
13. Upon inquiry, Mr. DiPiazza refused to help me understand why his statement to the Court appears to contradict the City’s previous statements (see Decl., ¶ 3) including his own. Mr. DiPiazza today responded, “I answered the questions posed by the court on Friday to the best of my knowledge and recollection and I stand on those answers. To further engage in speculation and argument is senseless” (Exh. 3).
14. I believed the email we submitted with our Application from Christina Parry, who has represented the City in this case (*see* Minute Entry Order dated August 28, 2009), clearly showed that the City had documents dating back to at least November 16, 2009. (Decl., ¶ 3) (Ms. Parry responding to my inquiry on November 16, 2009 that the City was

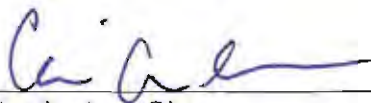
“preparing another motion for in camera inspection and will file it soon”). I believed that email, in the context of multiple similar statements from City representatives and no statements from anyone to contrary up to the day of the hearing, showed that the City did not and would not dispute that it had documents dating back to at least November 16, 2009, and I believed this clearly showed as of January 2010 when we filed the Application, that the City failed to comply with this Court’s orders for continuing disclosure.

15. At the hearing on our Application, Ms. Parry did not appear for the City. Instead, Mr. DiPiazza did. When the Court requested an explanation about the apparently contradictory email from his colleague, Mr. DiPiazza stated that he had no personal knowledge and indicated that any City statement suggesting that documents existed after September 2009 would be mistaken.
16. The Court may take judicial notice that Mr. DiPiazza was copied on the email from Ms. Parry (Exh. 1). However, Mr. DiPiazza never responded to me to correct or clarify his colleague’s statement.
17. Mr. DiPiazza’s December email attached here corroborates Ms. Parry’s earlier email and the other evidence previously offered to the Court that the City does in fact have documents. Upon inquiry, Mr. DiPiazza would not explain why he (and the City) apparently took a new position at the hearing. Mr. DiPiazza and other City representatives have had multiple opportunities—after multiple inquiries initiated by me—to inform the Goldwater Institute if there were no new documents. The City never

did so before the hearing, but rather, each time the City affirmatively confirmed the opposite was true.

18. Immediately after the hearing, the Goldwater Institute noticed a Rule 30(b)(6) deposition of the City for March 8, 2010 to substantiate beyond these multiple statements from multiple City attorneys that the City does in fact have records.

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



Carrie Ann Sitren

Dated: February 18, 2010

Exhibit 2

**(continued from Jan. 20, 2010 Declaration in Support of Application for Order to
Show Cause)**

Carrie Ann Sitren

From: DiPiazza, Nicholas [NDipiazza@GLENDALEAZ.com]
Sent: Wednesday, December 16, 2009 6:26 PM
To: Carrie Ann Sitren; Parry, Christina
Subject: Re: Public records lawsuit

Glendale is in compliance and is now preparing its next disclosure for release shortly.

Nicholas C. DiPiazza
Chief Deputy
City Attorney's Office
Glendale, Arizona

From: Carrie Ann Sitren <csitren@goldwaterinstitute.org>
To: DiPiazza, Nicholas; Parry, Christina
Sent: Wed Dec 16 16:32:06 2009
Subject: Public records lawsuit

When will the City comply with the court's recent Dec. 7, 2009 order to produce additional documents in compliance with the previous July 21, 2009 order?

Carrie Ann Sitren
Attorney, Scharf-Norton Center for Constitutional Litigation
Goldwater Institute | www.GoldwaterInstitute.org
500 East Coronado Road Phoenix, AZ 85004
(602) 462-5000 ext. 231 | fax (602) 256-7045

CONFIDENTIALITY NOTICE: The information contained in this message is privileged and confidential. It is intended only to be read by the individual or entity named above or their designee. Any distribution of this message by any person who is not the intended recipient is strictly prohibited. If you have received this message in error, do not read it. Please immediately notify the sender and delete it. Thank you.

This email and files transmitted within are intended solely for the use of the individual or entity to whom they are addressed, if you have received this email in error please delete it and notify the sender of the message. Any views expressed in this message are those of the individual sender, except where the sender specifies them to be the views of the City of Glendale Arizona.
Message scanning was performed by Websense e-mail security software and virus detection software.

Exhibit 3

**(continued from Jan. 20, 2010 Declaration in Support of Application for Order to
Show Cause)**

Carrie Ann Sitren

From: DiPiazza, Nicholas [NDipiazza@GLENDALEAZ.com]
Sent: Thursday, February 18, 2010 1:26 PM
To: Carrie Ann Sitren
Cc: Parry, Christina
Subject: RE: Public records lawsuit

Carrie Ann:

With respect to your email below – I answered the questions posed by the court on Friday to the best of my knowledge and recollection and I stand on those answers. To further engage in speculation and argument is senseless.

On another issue - Glendale is in receipt of your 30.B.6. Notice. With all due respect, it's overbroad. You ask to examine on "all communications" between current and potential new owners and the City. Your Notice should be limited to: 1) public records only; not all communications and should be further limited to those public records that are not protected by the exceptions enumerated in the Court's Order.

I request that you re-Notice the deposition reflecting the two limitations above. If you decline to limit the scope of the deposition, we will be compelled to move for a Protective Order. We prefer not to burden the Court with unnecessary motion practice..

I will be out for the balance of today and tomorrow. I will be available for discussion next week.

Nick

Nicholas C. DiPiazza, Esq.
Chief Deputy City Attorney
City Of Glendale
5850 W. Glendale Avenue, Suite 450
Glendale, Arizona 85301
(623) 930-2930
(623) 915 -2391 (Fax)

This message is confidential and intended only for the named recipients. This message may contain information that is privileged, attorney work product or exempt from disclosure under applicable law. If you are not the intended recipients, you are notified that reading, disseminating, distributing or copying this message is strictly prohibited. If you have received this message in error or are not the named recipient, please notify the sender by telephone, facsimile or e-mail and delete this message from your computer. Receipt by anyone other than the named recipient(s) is not a waiver of any attorney-client, work product or other applicable privilege.

From: Carrie Ann Sitren [mailto:csitren@goldwaterinstitute.org]
Sent: Thursday, February 18, 2010 10:09 AM
To: DiPiazza, Nicholas
Subject: RE: Public records lawsuit

Nick, you asserted at the most recent hearing that there were no City records for disclosure either to us or to the Court. When asked about the November email from your colleague Christina Parry, indicating that the City would submit documents for in camera review "soon," you indicated that you had no personal knowledge and that the City did not in fact have any records. As you may recall, you were copied on Ms. Parry's email but did not correct or clarify her statement to us. The following month, when we asked your office again, you may recall that you responded (below) that the City was "preparing its next disclosure for release shortly." This appears to conflict with

2/18/2010

your assertion at the hearing that no documents ever existed. Will you please illuminate us? Thank you.

Carrie Ann Sitren

Attorney, Scharf-Norton Center for Constitutional Litigation
Goldwater Institute | www.GoldwaterInstitute.org
500 East Coronado Road, Phoenix, AZ 85004
(602) 462-5000 ext. 231

CONFIDENTIALITY NOTICE: The information contained in this message is privileged and confidential. It is intended only to be read by the individual or entity named above or their designee. Any distribution of this message by any person who is not the intended recipient is strictly prohibited. If you have received this message in error, do not read it. Please immediately notify the sender and delete it. Thank you.

From: DiPiazza, Nicholas [mailto:NDipiazza@GLENDALEAZ.com]

Sent: Wednesday, December 16, 2009 6:26 PM

To: Carrie Ann Sitren; Parry, Christina

Subject: Re: Public records lawsuit

Glendale is in compliance and is now preparing its next disclosure for release shortly.

Nicholas C. DiPiazza
Chief Deputy
City Attorney's Office
Glendale, Arizona

From: Carrie Ann Sitren <csitren@goldwaterinstitute.org>

To: DiPiazza, Nicholas; Parry, Christina

Sent: Wed Dec 16 16:32:06 2009

Subject: Public records lawsuit

When will the City comply with the court's recent Dec. 7, 2009 order to produce additional documents in compliance with the previous July 21, 2009 order?

Carrie Ann Sitren

Attorney, Scharf-Norton Center for Constitutional Litigation
Goldwater Institute | www.GoldwaterInstitute.org
500 East Coronado Road Phoenix, AZ 85004
(602) 462-5000 ext. 231 | fax (602) 256-7045

CONFIDENTIALITY NOTICE: The information contained in this message is privileged and confidential. It is intended only to be read by the individual or entity named above or their designee. Any distribution of this message by any person who is not the intended recipient is strictly prohibited. If you have received this message in error, do not read it. Please immediately notify the sender and delete it. Thank you.

This email and files transmitted within are intended solely for the use of the individual or entity to whom they are addressed, if you have received this email in error please delete it and notify the sender of the message. Any views expressed in this message are those of the individual sender, except where the sender specifies them to be the views of the City of Glendale Arizona.

Message scanning was performed by Websense e-mail security software and virus detection software.

2/18/2010

This email and files transmitted within are intended solely for the use of the individual or entity to whom they are addressed, if you have received this email in error please delete it and notify the sender of the message. Any views expressed in this message are those of the individual sender, except where the sender specifies them to be the views of the City of Glendale Arizona.
Message scanning was performed by Websense e-mail security software and virus detection software.