

**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

**APPLICATION FOR ORDER TO
SHOW CAUSE**

Hon. Edward O. Burke

On July 21, 2009, the Court ordered Defendant/Respondent City to (1) submit records for in camera review on a continuing basis, and (2) disclose public records to Plaintiff/Petitioner Goldwater Institute on a continuing basis. Although the City has made some in camera submissions to the Court, the most recent submission of new documents¹ was over four months ago (September 16, 2009). (Decl., ¶ 2.) The City's most recent disclosure to the Goldwater Institute was in August 2009. (Decl., ¶ 4.) The Court already permitted Petitioner to apply for

¹ Although the City filed a motion for in camera review on December 3, 2009, that motion included only one page, GLEN0531, which the City previously submitted (in redacted form) in its September 4, 2009 motion for in camera review. (Decl., ¶ 2.)

attorneys' fees (Minute Entry Order dated July 21, 2009, p. 4) and has repeatedly entered orders requiring the City to comply (Minute Entry Orders dated August 28, 2009, September 16, 2009, and December 7, 2009). Such repeated motions for compliance and rulings ordering compliance with previous orders not only waste the time of the Goldwater Institute, the City, and this Court, but they demonstrate a blatant and continual disobedience of judicial commands on the part of the City. Remedial action by the Court is necessary to force the City to comply and act in good faith. The Institute's application is accompanied by a declaration in support of an order for the City to show cause why it should not be adjudged in contempt pursuant to Rule 65(j), Ariz. R. Civ. P., for disobeying this Court's orders.²

"Any act which is calculated to hinder, obstruct or embarrass a court in the administration of justice, or which lessens the dignity or authority of a court may be defined as contempt." *Ong Hing v. Thurston*, 101 Ariz. 92, 98, 416 P.2d 416, 422 (1966). Failure to obey a lawful court order is a perfect example. A.R.S. § 12-864; *see also Pace v. Pace*, 128 Ariz. 455, 456, 626 P.2d 619, 620 (App. 1981) (appellant sentenced to 30 days in jail for contempt for failing to pay court-ordered child support in divorce proceeding). December 7, 2009 was at least the *third*

² Rule 65(j) describes contempt for disobeying a court-ordered injunction. Although the Court here did not expressly use the term "injunction," it clearly "compels positive action" by the City, which is the definition of a mandatory injunction. Daniel McAuliffe, Ariz. Civ. R. Handbook § 65(1), p. 770 (2009 ed.); *State ex rel. Corbin v. Portland Cement Ass'n*, 142 Ariz. 421, 425, 690 P.2d 140, 144 (App. 1984). The Court had jurisdiction to issue an injunction under A.R.S. §§ 12-123 and 12-1801 and the Court's inherent powers. *See Tn. of Chino Valley v. State Land Dep't*, 119 Ariz. 243, 248, 580 P.2d 704, 709 (1978); *see also* Ariz. R. Civ. P. 54(d) ("every final judgment shall grant the relief to which the party in whose favor it is rendered is entitled, even if the party has not demanded such relief in the party's pleadings"); *Champie v. Castle Hot Springs Co.*, 27 Ariz. 463, 466, 233 P. 1107, 1108 (1925) ("injunctive relief is a proper remedy against a continued series of trespasses, past and prospective").

time the Court ordered the City to produce records in compliance with the original order, but still, no new submissions have occurred since September of last year. (Decl., ¶¶ 2-4.)

“Yesterday was the day to bite that apple once. Today is the day to bite the bullet. I don’t give you another bite of the apple.” *Korman v. Strick*, 133 Ariz. 471, 473, 652 P.2d 544, 546 (1982).

The Goldwater Institute filed the present action under Arizona Public Records Law, which requires not optional, leisurely or even reasonably timely disclosures, but rather mandatory “prompt” production. A.R.S. § 39-121.01. This Court (Minute Entry Order dated July 29, 2009, p. 2) has previously recognized the particular need for haste here because of the facts and issues at stake. The City clearly has records to produce. (Decl., ¶ 5.) In fact, it promised in an email initiated by the Goldwater Institute over two months ago that it would complete its next in camera submission “soon.” (Decl., ¶ 3.) What is not clear is why the City has not done so, and apparently believes it need not do so on a continuing basis as this Court has repeatedly ordered.³ The City’s now four-month long inaction cannot be the result of mere

³ In addition to the clear failure to obey continual Court-ordered production, telephone conferences initiated by the Court (which occurred in the absence of a court reporter) and the Court’s minute entry orders reveal that the records the City *did* submit in the summer and early fall of 2009 were in disorder, redacted in violation of the Court’s instructions, expanded beyond the scope of the relevant time period, and often duplicated at the great inconvenience to the Court. See Minute Entry Orders dated September 16, 2009 (“Discussion is held regarding . . . the fact that many of those documents were submitted with redactions making it impossible for the Court to properly conduct its in camera inspection. . . . IT IS ORDERED Defendant, the City of Glendale shall have a knowledgeable representative from their office contact this division’s bailiff, Adeline Garcia to ensure the Court has unredacted versions of all documentation for the Court’s review”), September 17, 2009 (“Exhibit 2 was not identified by Bate stamp numbers, making the search through a thousand pages of documents produced under seal difficult. . . . The Court was not able to find an unredacted copy of GLEN0531 of Exhibit 3 and cannot make a ruling on this because the copy submitted to the Court was redacted”), and December 7, 2009 (“The Court has again, conducted an entire ‘in-camera’ review of the documents produced by

oversight. It demonstrates defiance and is appropriately punishable as a contempt of Court. Glendale has had multiple bites at the apple, and decisive action is now required to achieve compliance with the Court's orders.

RESPECTFULLY SUBMITTED this 20th day of January, 2010 by:

/s Carrie Ann Sitren
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Carrie Ann Sitren (025760)
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ORIGINAL of the foregoing E-FILED this 20th day of January, 2010 with:

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

COPY of the foregoing MAILED this 20th day of January, 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

the City of Glendale and found that the copy of GLEN0531 produced by the City was redacted contrary to the [City's] statement").

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**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** declares as follows:

1. I am the primary attorney representing Plaintiff/Petitioner Goldwater Institute in this matter, and I maintain the pleadings and public records associated with it.
2. As of the time of this filing, I have not received notice from the City that it has submitted new records for in camera review since September 16, 2009, and the Maricopa County Civil Clerk's Office confirmed that none have been filed. The City did file a motion for in camera inspection on December 3, 2009, but it contained no new records. That motion contained a single page, GLEN0531, which the City previously submitted in redacted form on September 4, 2009.

3. On November 13, 2009, I emailed the City to ask when to expect the next submission.

On November 16, 2009, Christina Parry responded that the City was “preparing another motion for in camera inspection and will file it soon.” (Exh. 1.)
4. The City disclosed records to the Goldwater Institute for the first time on July 16, 2009 (despite stating two weeks prior, and in the presence of the Court, that counsel had records for the Institute “right now”). The City has not disclosed any records to the Institute since August 20, 2009. The later disclosures revealed that prior ones were incomplete (for example, the August 20, 2009 disclosures contained records (GLEN0493 – GLEN0523) dating back to May and June 2009).
5. Public statements of City officials, those involved in the ownership of the hockey team, news accounts, and the City’s email (Exh. 1) indicate that the City has new records subject to the Court’s order for continual disclosure. *See, e.g.,* Mike Sunnucks, “New Phoenix Coyotes owners commit to long-term lease,” *Phoenix Business Journal* (Jan. 18, 2010); Carrie Waters, “Officials: Glendale, NHL ‘on same page’ on Phoenix Coyotes,” *Arizona Republic* (Nov. 18, 2009).

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



Carrie Ann Sitren

Dated: January 20, 2010