

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

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*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, et al.,

Defendants/Respondents.

) Case No. CV2009-020757

) **EMERGENCY REQUEST FOR**  
) **TEMPORARY RESTRAINING**  
) **ORDER TO STOP ACTION**  
) **SCHEDULED TO OCCUR AT 10:15**  
) **AM**

) *Hon. Katherine Cooper (hearing*  
) *emergency matters for Hon. Arthur T.*  
) *Anderson)*

) *Special Master Hon. Robert D. Myers*

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Today at 10:15 am, the Glendale City Council is scheduled to hold a public hearing to vote on a resolution and contract committing public facilities exclusively for 20 years, committing \$325 in public funds, and relinquishing parking rights the City recently valued at over \$100 million. The Council vote, if it proceeds, will violate court orders in this action and Arizona's public records and open meetings laws. Plaintiff/Petitioner Goldwater Institute requests emergency relief from Hon. Katherine Cooper (currently hearing emergency matters for Hon. Arthur T. Anderson). A temporary restraining order may be granted without notice for up

to 10 days when it clearly appears from facts shown by declaration that immediate and irreparable injury will result before the adverse party can be heard. Ariz. R. Civ. P. 65(d). This motion is supported by the accompanying declaration and should be granted for the reasons stated in the Memorandum of Points and Authorities below.

### **Memorandum of Points and Authorities**

This is an action under Arizona's Public Records Laws (A.R.S. Title 39). Goldwater filed it in June 2009 because Defendant/Respondent City of Glendale categorically denied a public records request for drafts, correspondence, notes, emails, memoranda, proposals, and other records of negotiations with potential new owners of the Phoenix Coyotes hockey team. The purpose of Goldwater's public records request was to review and analyze a deal between the City of Glendale and owners of the Phoenix Coyotes hockey team for lease of the City's Jobing.com Arena where the team plays. Goldwater was particularly concerned that the deal may violate the Gift Clause of the Arizona Constitution (Art. IX, § 7), which prohibits cities from giving gifts "by subsidy or otherwise" to any business.

One week after filing the action, the Court (Minute Entry 7/21/09) ordered the City to release records and permitted Goldwater to recover attorneys' fees. The Court (*id.*) also ordered the City to release certain records on an ongoing basis, and to submit other records for *in camera* review on an ongoing basis. Goldwater and the Court soon became concerned that the City Council might approve a deal without adequate time for public review and comment. Therefore, the Court (Minute Entry 7/29/09) ordered the City to issue a press release and email or fax Goldwater a tentative agreement and records associated with it *before* Arizona's Open Meeting

Laws (A.R.S. Title 38, Art. 3.1) otherwise required. As it explained (Minute Entry 7/29/09, p. 2), “[t]he Court is very concerned that because the City can convene a special City Council meeting on 24 hours notice neither Plaintiff nor the City’s taxpayers will have sufficient time to digest, analyze and prepare to comment on any proposed agreement and/or concessions.”

Despite the order to prohibit it, the Court’s precise fear materialized yesterday. The City published notice of a special meeting on 24 hours’ notice. Although it issued a press release and emailed Goldwater a 100-page proposed contract on Monday this week, the associated public records were not simultaneously produced as required (Decl. ¶¶ 1-3). In fact, the complete exhibits to the contract – on which the Council is scheduled to vote at 10:15 a.m. today – *still* have not been released as of the time of this filing, including the Annual Budget for the City-owned arena (Exhibit G) and Management Performance Standards for the Arena (Exhibit C) (Decl. ¶ 11). One significant document, a financial analysis dated May 31, 2012 by Elliott D. Pollack & Company for the City Manager, was withheld from Goldwater until almost 3:00 p.m. yesterday (Decl. ¶ 6). A similar financial analysis, dated January 18, 2012 by TLHocking & Associates for the City, could not be found in any disclosures to Goldwater but was found on the City’s homepage yesterday evening (Decl. ¶ 7). Over 300 more pages, which this Court (Minute Entry 7/29/09) required the City to email simultaneously with the proposed contract (released on Monday), were withheld until 2:30 p.m. yesterday (Decl. ¶ 6). And at around 12:40

p.m. yesterday, counsel for the City informed Goldwater that 2,005 additional pages were available for review “at City Hall during normal business hours” (Decl. ¶ 6)<sup>1</sup>

Despite repeated inquiries from Goldwater yesterday and the day prior, counsel for the City refused to answer whether all existing records had been disclosed or, if not, when they would be disclosed. Counsel has expressly engaged in a pattern of intentionally disregarding and obfuscating Goldwater’s good faith attempts to litigate this case and access public records, as expressed most clearly in an email by the City Attorney for the City of Glendale instructing his Deputy City Attorney to “play with or ignore” counsel for Goldwater (Decl ¶ 10). There may be more records required to be disclosed that the City has failed to release with the proposed contract on Monday, or previously, as required by orders in this action and Arizona’s Public Records Laws. In addition, there are parts of the contract the Council is scheduled to vote on that have still not be released and were not published on 24 hours’ notice as required by Arizona’s Open Meetings Laws. The public is entitled to *prompt* access to these documents upon request (A.R.S. § 39-121.01(D)(1)), no later than 24 hours before the Council can vote on them (A.R.S. § 38-431.02). As this Court has acknowledged, enough time for review and analysis is necessary before the City Council votes. Because the City failed to comply with the Court’s orders, and has further violated Public Records and Open Meetings Laws, the City is in contempt of Court and the vote scheduled for 10:15 a.m. must be enjoined.

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<sup>1</sup> The Court may take judicial notice that it takes approximately 20 minutes to drive from Goldwater’s office in Phoenix to Glendale City Hall, and that City Hall closes at 5 p.m.

Unless it is stopped, the City Council will vote on a 20-year, \$425 million contract without giving Goldwater or the public “sufficient time to digest, analyze and prepare to comment” (*see* Minute Entry 7/29/09). That is exactly what the Court’s orders in this action were intended to prevent. It is also the reason for Arizona’s Public Records and Open Meetings Laws, which are to be liberally construed in favor of transparency. A.R.S. § 38-431.09(A) (Open Meetings Laws are to be liberally construed in favor of open and public meetings); *Carlson v. Pima County*, 141 Ariz. 487, 490-91, 687 P.2d 1242, 1245-46 (1984) (records are presumed open to the public). The potential harm if the City Council votes on the proposed deal as scheduled is imminent and irreparable. *See* Ariz. R. Civ. P. 65(d). Taxpayers will lose their only opportunity to review City documents and petition their Councilmembers, and the Councilmembers will avoid their duty to receive public comments, before voting on an intensely negotiated deal that may involve an unconstitutional taxpayer subsidy. The right to be informed and communicate with elected officials on matters of public importance is at stake. Therefore, Goldwater requests that the Court enter a temporary order restraining the Council’s vote until at least 24 hours after the City certifies that it has released the public records required under the Court’s orders in this action and Arizona’s Public Records Laws. *See Heggins v. City of Dallas*, 469 F.Supp. 739 (1979) (enjoining city council election until city complied with federal laws); *Fiesta Mall Venture v. Mecham Recall Cmte.*, 159 Ariz. 371, 767 P.2d 719 (App. 1988) (temporary restraining order enjoining committee from collecting signatures for election matter).<sup>2</sup>

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<sup>2</sup> To the extent required, each of the elements for a preliminary injunction are also met: 1)

The undersigned attorney certifies that on June 7, 2012, she gave written notice by email and/or fax to the six attorneys who have represented Defendants/Respondents in this matter, notifying them that emergency relief would be sought on June 8, 2012 at 8:30 a.m. from Hon. Katherine Cooper in East Court Building 514 (Decl. ¶ 13).

**RESPECTFULLY SUBMITTED** this 8th day of June, 2012 by:

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irreparable harm exists for reasons set forth above; 2) the balance of harms favors the relief because delaying the vote for a few days to allow adequate public consideration of this complex transaction will not substantially impede the performance of any eventual contract; 3) public policy favors the relief as the only meaningful way to enforce Public Records and Open Meeting Laws; and 4) a likelihood of success on the merits is demonstrated by the fact that the temporary relief sought by this motion is reasonably tailored to and falls within the scope of the Court's equitable authority and contempt powers to enforce compliance with its own prior orders.

E-FILED this 8th day of June, 2012 with:

Clerk of Court  
Maricopa County Superior Court  
201 W. Jefferson St., Phoenix, AZ 85003

HAND-DELIVERED this 8th day of June, 2012 to:

Hon. Katherine Cooper  
Maricopa County Superior Court  
201 W. Jefferson St., Phoenix, AZ 85003

MAILED and E-MAILED this 8th day of June, 2012 to:

Hon. Arthur T. Anderson  
Maricopa County Superior Court  
201 W. Jefferson St., Phoenix, AZ 85003

Hon. Robert Myers  
1516 W. Winter Dr.  
Phoenix, AZ 85021  
*Special Master*

Craig D. Tindall  
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Glendale, AZ 85301

MAILED, E-MAILED, and FAXED this 8th day of June, 2012 to:

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