

IN THE SUPERIOR COURT OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA

GOLDWATER INSTITUTE,)	
)	
Plaintiff/Petitioner,)	
)	Case No. CV2009-0202757
vs.)	
)	
CITY OF GLENDALE, et al.,)	
)	
Defendants/Respondents.)	
)	

TRANSCRIPT OF VIDEO PROCEEDINGS

(Video provided by CBS 5 per Order of the Court)

Before the Honorable Katherine Cooper

June 8, 2012
Phoenix, Arizona

PREPARED FOR:

ATTORNEY AT LAW

(Copy)

Prepared by:
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1 ELECTRONIC RECORDING OF PROCEEDINGS,
2 taken through the Superior Court of Arizona, Maricopa
3 County, before the Honorable Katherine Cooper, at the
4 Arizona Superior Court, East Court Building, 101 West
5 Jefferson, Phoenix, Arizona, on June 8, 2012.

6

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1	I N D E X	
2		PAGE
3	Argument by Ms. Sitren	5
4	Argument by Mr. Birnbaum	12
5	Argument by Ms. Sitren	18
6	Argument by Mr. Birnbaum	21
7	Argument by Ms. Sitren	27
8		
9		
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

1 (Commencement of recorded proceedings.)

2 * * *

3 THE COURT: This is the time set for Oral
4 Argument on an Emergency Request for a Temporary
5 Restraining Order in CV2009-020757.

6 Counsel, can I get your appearances,
7 please?

8 MS. SITREN: Good morning. Carrie Ann
9 Sitren, for the Goldwater Institute. I'm here with my
10 co-counsel, Nick Dranias.

11 THE COURT: Good morning.

12 MR. BIRNBAUM: Good morning, Your Honor.
13 Gary Birnbaum, for the City of Glendale. My partner,
14 Barry Sanders, is in the back of the room. And with me
15 is Craig Tindall, who is the city attorney with the
16 City of Glendale; and Nick DiPiazza is with us, as
17 well. He's the assistant city attorney for Glendale.

18 Thank you.

19 THE COURT: Good morning.

20 Counsel, before we begin, there was a
21 request made yesterday by Channel 5 News to have
22 cameras present in the courtroom. I am inclined to
23 permit that, but I want to hear from you all and take
24 any objections and put them on the record, if you have
25 them.

1 Ms. Sitren?

2 MS. SITREN: We have no objections.

3 THE COURT: All right.

4 MR. BIRNBAUM: The City has no objection,
5 Your Honor, at all.

6 THE COURT: All right. That takes care
7 of that.

8 All right. I have read the request, and
9 I've also reviewed a couple of prior orders in this
10 case from July 21st, 2009, and July 29, 2009.

11 Ms. Sitren, would you like to present
12 your argument?

13 MS. SITREN: Thank you, Your Honor.

14 May it please the Court -- first, Your
15 Honor, thank you, so much for scheduling this, this
16 morning. Your assistant was very helpful yesterday
17 afternoon, and we appreciate the Court's attention,
18 especially in place of our judge, who is, of course,
19 out today.

20 So, of course, Your Honor, this is a
21 Public Record's Law Action. And the whole purpose of
22 this lawsuit is to prevent a backroom deal from
23 happening. But that's exactly what is going to happen
24 if the city council proceeds to vote at 10:15 this
25 morning, just a couple of hours from now.

1 The City has negotiated this deal
2 entirely under cover of darkness. We have an ongoing
3 Public Records Request dated -- originally dated from
4 2009, and that created the need to file this lawsuit
5 when the City failed to comply for these records,
6 including records of negotiations of the City's deal.

7 We have not received a single record of
8 the City's negotiations with the current bidder until
9 this week. On Monday is when we received a copy of the
10 deal that was proposed, but none of the exhibits to
11 that deal were attached. And I'm referring to a
12 100-page contract that the City is scheduled to vote on
13 in just a couple of hours.

14 Importantly, some of the exhibits that
15 are not included in that contract, that we still today
16 don't have, are the management performance standards
17 and the arena annual budget. This is a City-owned
18 arena, and the City is proposing to contract it out for
19 20 years at a value, according to the City, of about
20 \$425 million in taxpayer funds. Again, we don't even
21 have the management performance standards that go along
22 with that contract or the arena annual budget.

23 We are only a few hours away now from the
24 hearing, and the public clearly does not have an
25 opportunity to review those documents, let alone

1 analyze them or prepare to make comments to their
2 elected officials.

3 Your Honor, also, yesterday at 3 o'clock,
4 which is, again, on less than 24 hours' notice, we
5 received a financial study from the City that was
6 disclosed as part of the City's ongoing duty to respond
7 to our Public Records Request, as ordered in this
8 case.

9 That study was dated May 31st, so it's at
10 least several days old now, and certainly was required
11 to be released on Monday, at the very latest, when the
12 City first released its proposed deal.

13 We received another financial study --
14 I'm sorry -- we did not receive the other financial
15 study referenced in the brief. I actually found it on
16 the City's website last night. That I do not believe
17 was posted before yesterday evening. That study is
18 dated January 18th, this year. And I was not able to
19 determine that the City had released it at any time
20 either this week or prior to this week.

21 Those are very significant studies, and
22 certainly take more than a couple of hours for somebody
23 to sit down and review. We're talking financial
24 estimates, arena budgets, things that are very relevant
25 and very significant to this proposed deal that the

1 city council is going to vote on in just a couple of
2 hours.

3 Your Honor, our interest in this case,
4 and the whole reason we were brought to file this
5 Public Records Action, is because we are concerned that
6 the City of Glendale is going to give an illegal
7 taxpayer subsidy to the team by way of this arena
8 agreement. That violates the Arizona Constitution Gift
9 Clause, which prohibits cities from giving subsidies to
10 private businesses -- again, another reason those
11 financial analyses are so important for us to review
12 and consider.

13 We also still don't know whether we have
14 other records of negotiations. We've asked the City,
15 and have continued to ask the City all week, Do we have
16 everything? Are there more documents that currently
17 exist that you're going to send us in installments?
18 The City's counsel has simply refused to answer the
19 questions.

20 We suspect there are more documents that
21 exist because of the pattern that the City has in
22 disclosing documents to us very late and because of the
23 City's refusal to state one way or the other whether
24 more installments are coming. At any rate, certainly
25 the installments that we got between Tuesday and

1 yesterday this week were all due on Monday, according
2 to the court orders in this case.

3 And specifically, Your Honor, that court
4 order I'm referring to requires that the City produce
5 all of the records of negotiations, along with the
6 release of the tentative deal.

7 The City released that tentative deal on
8 Monday. It did not have these old records, which are
9 dated weeks or maybe even months old, prepared to
10 release to us on Monday. We only got those after we
11 asked the City. On Monday, we began getting those in.

12 Your Honor, we now have over 2,000 pages
13 that the City has essentially dumped on us, just
14 yesterday, even, that we have not had a chance to
15 review. The council is looking to vote in a couple of
16 hours. This is our only opportunity and the public's
17 only opportunity to comment on it and advise elected
18 officials whether it's constitutional under the Gift
19 Clause or whether it's a good deal for the City and
20 whether the residents -- it's something that the
21 residents and the public actually want.

22 This is a right of citizens to
23 participate in the process. It's required that the
24 city council have this public meeting before it can
25 move forward and require that the city council members

1 vote.

2 This is a right of all citizens to review
3 open records of their city government and make comments
4 to their elected officials before their elected
5 officials act.

6 After the vote may be too late,
7 Your Honor. The public will no longer have an
8 opportunity to comment, and if the council approves the
9 deal, essentially the deal will be done.

10 We are asking for a Temporary Restraining
11 Order because the City is in clear violation of court
12 orders and Public Records Law, which requires prompt
13 access to public records on request, and Open Meetings
14 Law, which requires that the City release information
15 about public meetings at least 24 hours in advance.

16 And as we've shown and as is stated in my
17 declaration, at least up until yesterday, late
18 afternoon, we were continuing to get documents for this
19 morning's hearing. And again, Your Honor, we still
20 don't even have all of the documents. We still don't
21 even have these exhibits, which are very significant,
22 that the city council is going to vote on.

23 Your Honor, to be honest, we don't even
24 know whether the city council members have been shown
25 these exhibits or whether they know that they exist or

1 that they should be included with the deal, but they
2 certainly are identified in the contract and they are
3 missing from the documents.

4 Your Honor, we are requesting a Temporary
5 Restraining Order. There is no significant harm to the
6 City in waiting a couple of days so that it can produce
7 all of the remaining records to us and the public, as
8 it is required to do under court orders in this action,
9 and then schedule a vote on at least 24 hours' notice.
10 That will give the public, again, even a very short
11 period of time here, 24 hours, to review all of these
12 documents and prepare to comment to the city council
13 members, but that time, every hour, is significant.

14 So we are requesting that the Court issue
15 an order restraining the city council members from
16 voting today on this deal, and until the city
17 council -- the City has represented that it has
18 disclosed all of the documents that exist, that are
19 required to be disclosed under the orders in this
20 action and Public Records Law in connection with this
21 deal, before it notices a hearing for the city council
22 members to vote.

23 THE COURT: Okay. Thank you, Counsel,
24 very much.

25 MS. SITREN: Thank you, Your Honor.

1 THE COURT: Mr. Birnbaum?

2 MR. BIRNBAUM: Thank you.

3 Good morning, Your Honor. Again, Gary
4 Birnbaum for the City of Glendale.

5 Your Honor, I'm going to refrain, until
6 the Court tells me otherwise, from either addressing
7 the facts that Ms. Sitren has just presented to you, or
8 even whether Rule 65 allows you to do what she's just
9 suggested the Goldwater Institute would like you to
10 do.

11 I would like to refocus the argument for
12 a moment.

13 As Ms. Sitren just said, and as the
14 papers I was provided with ten minutes ago show, what
15 the Goldwater Institute is asking you to do is enjoin
16 the city council from taking a vote on a legislative
17 matter set for 10:15 this morning.

18 And with all due respect to Your Honor
19 and to the Court, you don't have the power to do that.

20 May I approach the bench, Your Honor?

21 THE COURT: You may.

22 MR. BIRNBAUM: I am providing the Court
23 and counsel with highlighted versions of three items.
24 The first one, I sincerely hope, will abbreviate this
25 hearing. It is a copy of Arizona Revised

1 Statute 12-1802 -- a statute that is conspicuously
2 absent from the Goldwater Institute's filing -- which
3 says, simply, in Subsection 7: An injunction shall not
4 be granted -- Section 7 -- to prevent a legislative act
5 by a municipal corporation.

6 It is difficult to believe, Your Honor,
7 that in all of the legislation we have in this state,
8 that there is a clearer, more succinct statement of the
9 law.

10 Again: An injunction shall not be
11 granted to prevent a legislative act by a municipal
12 corporation, period.

13 Now, the second piece of information --
14 the second document we provided to you, in case
15 somebody could try to create some ambiguity, is a 1975
16 Arizona Supreme Court case called Citizens for Orderly
17 Development & Environment versus the City of Phoenix.
18 I will avoid citations because the Court has been
19 provided with a copy.

20 If you will turn, just by way of example,
21 to the second page of that case. In the last column,
22 let me quote from the absolute last paragraph: The
23 public policy in this state prohibiting judicial
24 interference with the legislative process has found
25 expression in A.R.S. § 12-1802, Subsection 7, which

1 provides -- and then it quotes the very statute that I
2 gave you.

3 The court goes on and says, This
4 legislative prohibition has received judicial
5 recognition -- quote, A municipal council, when acting
6 or proposing to act in a legislative capacity, upon a
7 subject within the scope of its powers, is entitled to
8 the same immunity from judicial interference as is the
9 state legislature or any other law-making body. A
10 court of equity, being vested with judicial, not
11 legislative powers, cannot properly impose any obstacle
12 through the exercise of the legislative discretion
13 vested in such municipal bodies, citing a prior Supreme
14 Court case, City of Phoenix versus Superior Court.

15 The Court then goes on and says, The only
16 proper method for testing the legality or
17 constitutionality of a legislative enactment, be it
18 municipal, county, or state, is by judicial review
19 after the enactment and passage of the offending
20 ordinance, resolution, or statute.

21 Again, Your Honor, trying to figure out
22 how could anybody argue against the clarity of this
23 legislative directive, we went back and looked to see
24 what was the law before the statute was adopted?
25 Perhaps there is some argument about the lack of

1 clarity of the statute, which is hard to conceive.

2 So we presented you as a third item, the
3 Arizona Supreme Court's decision in Adams versus
4 Boland, a case decided in July of 1952. If the court
5 would go to page 10 of that case in the highlighted
6 section, you will see the Supreme Court directive.
7 Unless specifically authorized by law, an injunction
8 will not lie to restrain the exercise of legislative
9 functions nor in any manner to interfere with the
10 legislative process.

11 On the next page, headnote 13, quote, In
12 the absence of express statutory power, the courts are
13 without jurisdiction to interfere, whether by
14 injunction or otherwise, with the exercise of the
15 legislative function or with the enactment of the
16 legislation. This court has spoken, quotes, Courts
17 have no power to enjoin legislative functions, closed
18 quote.

19 And then finally at headnote 14, the
20 Supreme Court observed, the theory of the cited cases
21 is, of course, closely akin to the well-established
22 rule that the courts will not consider political
23 matters. And the refusal of the courts to interfere in
24 the exercise of the legislative function is by no means
25 a minority rule, but appears to be well-nigh universal.

1 Your Honor, we are prepared, if in this
2 emergency hearing, occurring just before the council
3 meets, we are prepared to go on and discuss, at your
4 direction, the requirements for an injunction, if there
5 were jurisdiction. Those requirements, of course,
6 include no adequate remedy of law. And there is an
7 adequate remedy here; the Supreme Court tells you.
8 After the enactment, you can go seek to invalidate, on
9 constitutional grounds or otherwise, the legislative
10 enactment.

11 Also, of course, there's a balance of
12 hardships. The economic study that -- (blank audio) --
13 of the council yesterday where it was described and
14 discussed on television, in addition to before the open
15 public, that economic study show that is the risk to
16 the city, the loss that the city will have from
17 operating the jobbing.com arena, in the absence of the
18 transaction that's now being considered, that may or
19 may not be adopted, but the economic study shows that
20 in present value, the loss from operations is
21 approximately \$177 million over the next 20 years.

22 So if you reached a balance of hardships
23 argument, there's the argument. If you reached an
24 adequate remedy at law argument, there's the synopsis
25 of the argument. And, of course, the likelihood of

1 success on the merits of an injunction claim is simply
2 disposed of by A.R.S. 12-1802. There isn't going to
3 be, if the law is properly applied, an injunction
4 against the council actions.

5 The balance of my presentation, if this
6 were a proceeding in which the Court had jurisdiction
7 and you wanted to hear more, would be about the factual
8 inaccuracies of Ms. Sitren's presentation, But let me
9 just point out one.

10 On Friday of last week, Ms. Sitren asked
11 for an emergency telephonic conference with the Special
12 Master assigned to this case, retired Judge Robert
13 Myers. We had that conference. She presented whatever
14 the arguments were -- I won't try to characterize
15 them -- about how the Goldwater Institute thought they
16 weren't getting enough notice and didn't have enough
17 documents, and Judge Myers determined that there was no
18 action to be taken at that time. So we had a hearing.

19 One of the reasons he took no action was
20 because there was no agreement. The agreement was
21 negotiated all weekend, and on Monday, when a tentative
22 agreement was reached that the staff was going to
23 provide to the council, it was immediately faxed and
24 e-mailed to the Goldwater Institute, and a press
25 release was issued, and it was posted on the City's

1 website.

2 As far as the notice of the meetings this
3 week, on Wednesday of this week, the Thursday study
4 session was properly noticed and the Friday council
5 meeting was properly noticed.

6 It's hard to figure out how that doesn't
7 fall within the 24-hour notice requirement of the open
8 meeting laws or otherwise.

9 And finally, Your Honor, if it doesn't,
10 then after the council acts, then I am sure there will
11 be an action filed claiming that the council's action
12 was invalid and void when taken. But the only issue
13 before you, today, is can you enjoin the council from
14 having its meeting at 10:15 and taking a vote? And
15 with all due respect, the Supreme Court and the
16 legislature have clearly told you that that's beyond
17 the power of this court.

18 Thank you, Your Honor. If you have any
19 questions, I'd be happy to answer them. Thank you.

20 THE COURT: Thank you. That will be
21 fine.

22 How does the Court have jurisdiction?

23 MS. SITREN: Your Honor, the courts have
24 interpreted the statute the defendants have relied on
25 and cited to you here today very clearly. The court

1 clearly has jurisdiction when a city council proposes
2 to legislate on matters that it doesn't have the
3 authority to do, including where the city council is
4 going beyond its powers, which is exactly what we have
5 here. I will cite in support the Gulf Leisure case.

6 The Town of Paradise Valley versus Gulf
7 Leisure Corporation. The cite is 27 Arizona Appellate
8 Reporter 600, Pacific Reporter is 557 P.2d, 532. This
9 is a Court of Appeals case from 1976. And at the
10 pinpoint cites, page 611 in the Arizona Reporter and
11 543 in the Pacific Reporter, the court concludes, Thus,
12 if the actions of a municipality are arbitrary,
13 capricious, and in error with the prevailing law,
14 mandamus and/or special action injunctive relief will
15 lie.

16 Your Honor, there are several other cases
17 in Arizona that hold just the same. Berger versus
18 Myers, the cite there is 108 Arizona Reporter 248 at
19 the pinpoint cite 250, 495 P.2d 844, pinpoint cite 846,
20 a 1972 case, where public officials are acting
21 illegally or in excess of their powers they may be
22 enjoined.

23 Your Honor, City of Tucson versus
24 Garrett, 77 Arizona 73, pinpoint cite 75, 267 P.2d 717,
25 pinpoint cite 718, petitions filed are insufficient as

1 a matter of law to give the city council jurisdiction
2 to enact an ordinance. The Superior Court has
3 jurisdiction and power to enjoin its passage.

4 Your Honor, there are several other cases
5 again holding the same thing, and clearly the court has
6 jurisdiction to stop a city council from doing
7 something that it simply does not have the authority to
8 do. And here the city council is proposing to proceed
9 in violation of Public Records Laws and Open Meetings
10 Laws. And in addition, Your Honor, the Court very
11 clearly has power to enforce its own orders.

12 Here, the Court under Judge Burke and
13 Judge Anderson had issued orders ordering the City to
14 release public records on a certain schedule, and not
15 to take certain action before that. The City has
16 simply failed to comply. They are in violation of
17 these court orders and should be found in contempt of
18 court. The Court very clearly has the power to stop
19 the city council from proceeding in violation of its
20 own court orders.

21 THE COURT: (Indiscernible.)

22 MS. SITREN: Your Honor, I do have a copy
23 of the Gulf Leisure case.

24 THE COURT: All right. That's fine.

25 MS. SITREN: May I approach?

1 THE COURT: Yes.

2 MALE SPEAKER: Your Honor, the Gulf
3 Leisure case is now in your possession.

4 (Indiscernible) Ms. Sitren has argued about the case.

5 THE COURT: Hang on one second. What is
6 (indiscernible)? Why after all of the months of
7 hearing about these issues involving the City and
8 (indiscernible) why is this on such a tight schedule?

9 MR. BIRNBAUM: Well, first, Your Honor,
10 it's not (indiscernible), and the City has gone through
11 one after the other after another of possible option,
12 as you probably know, just from (indiscernible). The
13 hockey team is in bankruptcy. The National Hockey
14 League owns the team.

15 We have everything from, we'll call them
16 political considerations, council members who are
17 leaving, the next council meeting devoted to budget
18 considerations, et cetera, which create pressure at the
19 City. But we have far greater concerns about the
20 National Hockey League and its sale of the team to the
21 new arena operator.

22 The commissioner of the National Hockey
23 League, Gary Bettman is in town today, I think to
24 address the council, or to at least make himself
25 available to discuss all the timing and urgency of

1 trying to get this deal completed, because the risk is
2 we lose the team to another city.

3 Now, having said that, let me go back to
4 Gulf Leisure for a moment. I just wanted to point out
5 to you, Your Honor, to --

6 THE COURT: Well, hang on, Mr. Birnbaum.
7 I'm still not clear on why -- I understand that council
8 members want to take their summer break. I understand
9 the agenda for the next meeting or the next meeting
10 after that is packed. Those things can be changed.
11 What is the emergency?

12 MR. BIRNBAUM: Well, Your Honor, the
13 council believes there's an emergency because of the
14 situation that involves the hockey team and its
15 possible move somewhere else. We have no ability to
16 prevent that from happening --

17 THE COURT: So this leads -- so --

18 MR. BIRNBAUM: -- other than the
19 conclusion of this deal.

20 THE COURT: So if this deal is not
21 approved immediately, the team might move?

22 MR. BIRNBAUM: The team -- yes, I can't
23 tell you the team will leave. I can tell you the team
24 might leave. The National Hockey League may give up in
25 frustration in dealing with Glendale. We don't know if

1 or when we would ever be available for consideration
2 again. And it may, in fact, be the only opportunity
3 the City has.

4 But that, Your Honor, is exactly the kind
5 of decision that the legislative body needs to make.
6 It weighs all the factors, things that are well beyond
7 my knowledge. I'm a litigator brought in to handle
8 some of the issues in the case. And that's why the
9 judgment -- the public policy of this state is that
10 courts don't try to figure out whether the legislature
11 is doing the right thing, timely or otherwise, in terms
12 of adopting rules, ordinances, regulations, or
13 approving contracts of this type. That is left to the
14 legislature. And if there is a claim after the fact
15 that the legislature has done something wrong, the
16 appropriate question is, Well, why can't you bring your
17 claim later? Because that's what the law says. That's
18 the reason why I keep trying to direct you back to Gulf
19 Leisure, and I apologize for doing that, Your Honor.

20 But if you go to the conclusion of the
21 Gulf Leisure decision, in -- in my copy, I have the
22 Pacific Reporter, it's page 542, foot -- headnote 19,
23 or it's the next-to-the-last section. It's right near
24 the end. It's entitled: Injunctive Relief Against
25 Municipalities.

1 And rather than talk about individual bad
2 acts of legislators, which is what most cases are
3 about, because they fall under different subsections of
4 1802 -- I think it's 4 and 6. Here the court properly
5 says, No, no. We're looking at 7. All right? And it
6 quotes, An injunction shall not be granted to prevent
7 the legislative act by a municipal corporation. It
8 then quotes the Supreme Court case of Hislop versus
9 Rodgers. It explains why that policy exists, and then
10 here is the part that you were not provided.

11 Here's the conclusion, quote: The design
12 of A.R.S. 12-1802, Subsection 7, is to prevent judicial
13 interference and the substitution of judgment during
14 the decision-making process of a municipality.
15 Nevertheless, it is not a bar to judicial review after
16 the enactment of resolutions and the entry of final
17 actions by the municipal council.

18 So we're right back, Gulf Leisure
19 doesn't -- oh, and by the way, Gulf Leisure is a Court
20 of Appeals decision. We're right back where we were
21 before. There is a statute directly on point that says
22 this Court lacks jurisdiction to enter a restraining
23 order, and there are at least two Arizona Supreme Court
24 cases that say precisely that.

25 Then there is this Court of Appeals

1 decision, which is absolutely not contrary, but says
2 no, after the council takes action. Of course the
3 courts have a role, a judicial review role, if this
4 plaintiff or any other plaintiff wants to seek some
5 type of relief against the performance of an agreement,
6 but not enjoining the council from proceeding with its
7 vote.

8 Fundamentally, Your Honor, even though
9 the courts don't seem to use this phrase, this is a
10 separation of powers issue. The legislature, any
11 legislature, including the state legislature, controls
12 its own calendar, effectively determines the scope of
13 its own actions initially, votes on legislation, enacts
14 legislation. And then judicial review permits the
15 court system, in appropriate circumstances, to review
16 the actions of the legislature -- not to prevent the
17 action, but to review it, and then determine its
18 legality or constitutionality.

19 And that's exactly what you have in here.
20 The Goldwater Institute wants to file any kind of
21 action, any kind of motion, following the council
22 action. We'll address that when and if they file it.
23 But as we sit here today, Your Honor, they cannot
24 enjoin the council from taking its action.

25 Thank you.

1 THE COURT: But you would agree that the
2 Goldwater Institute can file an injunction after the
3 vote is taken to stay the application of that decision?

4 MR. BIRNBAUM: Well, Your Honor,
5 candidly, I haven't done that research. But I do know
6 they can file an action seeking to declare the
7 council's action to be invalid. Whether they can get
8 injunctive relief is a question I'm afraid I just
9 haven't looked at yet. But they certainly can seek to
10 invalidate the council's action, and they have
11 threatened to do so in the past on other deals that the
12 city was negotiating.

13 In fact, I don't want to misstate
14 history, but I think it is fair to say that at least
15 one possible transaction, with another purchaser of a
16 hockey team, was eventually lost because bonds could
17 not be marketed -- this is what I've been led to
18 believe -- bonds could not be marketed because the
19 Goldwater Institute had threatened to file suit.

20 So they certainly know what their rights
21 are, and they certainly can try to pursue them, and
22 we'll respond to them accordingly when we see what it
23 is they file.

24 But today the issue is, Can you enjoin
25 the council from voting at 10:15, whatever that vote

1 may be? And with all due respect, Your Honor, I don't
2 think that's within the power of this Court or any
3 court in this state.

4 THE COURT: All right. Ms. Sitren, I'll
5 give you the last word.

6 MS. SITREN: Thank you, Your Honor.

7 On this Court's jurisdiction, if what the
8 City's counsel is saying is true, that this court has
9 no jurisdiction to prevent a vote from happening, then
10 essentially the City has free rein to do whatever kind
11 of legislative action it wants to, with all kinds of
12 notice and involving all sorts of things freely,
13 without any oversight at all. And we heard the City's
14 counsel here today even say he's not even sure that
15 anyone can do anything about it after the fact.

16 Your Honor, again, also this Court has
17 jurisdiction, just as a matter of its own inherent
18 authority, to enforce its own orders. And, Your Honor,
19 it very well may violate the separation of powers if
20 this Court does not have the ability to enforce its own
21 orders. And here the court has been very clear about
22 what it has ordered, as far as releasing public
23 records, and doing so a certain amount of time before
24 the city counsel can vote. The City has violated those
25 orders, and this Court must have a mechanism to be able

1 to enforce them.

2 Your Honor, I will also note again that
3 the exhibits to this contract that the city is going to
4 vote on have not even been released yet. It's a whole
5 other matter, whether the City can even vote on this,
6 if those exhibits still have not been attached to the
7 contract, and certainly violates the special -- the
8 open meetings laws, and all of the orders and public
9 records involved in this action, because we simply
10 don't even know what the full deal is.

11 Your Honor, opposing counsel has also
12 cited years of negotiations. That cuts even more
13 against than in this situation, where we have them
14 trying to rush through a deal on less than a week's
15 notice, and not all the documents have been released
16 yet. If they've been negotiating for this long, this
17 many years, and with the potential buyer right now, for
18 many weeks or months or possibly years, we don't know
19 because we don't have all the documents yet, then
20 that's even more reason not to rush this to a council
21 vote. Opposing counsel has really failed to articulate
22 why the City needs to get this deal passed so quickly.

23 To be perfectly frank, Your Honor, we
24 have heard the City crying out that the Phoenix coyotes
25 might leave any day now, if they don't strike a deal,

1 and this has been going on, again, for three years. It
2 is more important, and it is the right of citizens, to
3 have an opportunity to comment, and it is certainly
4 their right to see what public officials are going to
5 vote on, including the exhibits, before they have an
6 opportunity to vote.

7 And, Your Honor, again, we are talking
8 about probably a couple of days, assuming that the City
9 can get their records together and release them as
10 required by court orders that if the City has had and
11 known about for years now. And that's certainly in the
12 balance of hardships, not a very significant risk that
13 the Coyotes might up and leave in a few days,
14 especially if this court articulates that in its order
15 today.

16 THE COURT: All right. Thank you --

17 MS. SITREN: Thank you.

18 THE COURT: -- Counsel.

19 All right. Here's my ruling. I'm going
20 to have to deny the request for the TRO, because I
21 don't think that the Court does have jurisdiction at
22 this stage of the game.

23 I hear you, Ms. Sitren. I think there's
24 been a clear violation of the closed doors, with
25 respect to the disclosure of records. I think an

1 in-contempt proceeding would be in order. I think
2 there should be sanctions. I think that what the City
3 is preparing to do without complying with the court's
4 order may jeopardize the ability of the city
5 council's -- may jeopardize the ability to carry
6 forward with that agreement, because it will be subject
7 to, I believe, attack legally for the reasons
8 Mr. Birnbaum suggested, that the action to be taken by
9 the Goldwater Institute will come after the vote.

10 I don't think that the Court has the
11 ability, based on the -- what the legislature said and
12 what the Supreme Court has said, to be able to stop the
13 legislative process on this side of it. But as I said,
14 I do think there's been a clear violation of the
15 court's orders.

16 The Court couldn't have been clearer back
17 in July of 2009, with respect to when these documents
18 were supposed to be disclosed.

19 You've established, Ms. Sitren, that they
20 were not. And I will leave it, obviously, with the
21 Goldwater Institute to decide how they want to go
22 forward with any further court action with respect to
23 that, and then whatever they want to do after the vote
24 is taken. But today I have to deny the request for the
25 Temporary Restraining Order.

1 So we're adjourned. Thank you very much.

2 MALE SPEAKER: Thank you, Your Honor.

3 (Conclusion of recorded proceedings.)

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C E R T I F I C A T E

I, Shannon D. Romero, Certified
Transcriptionist, do hereby certify that the foregoing
pages 1-31 constitute a full, true, and accurate
transcript, from electronic recording, of the
proceedings had in the foregoing matter, all done to
the best of my skill and ability.

SIGNED and dated this 12th day of June,
2012.

Shannon D. Romero
Certified Electronic Transcriber
CET**D-324