



MEMORANDUM

Date: April 4, 2016

To: The Honorable Chair and Members
Pima County Board of Supervisors

From: C.H. Huckelberry
County Administrator

A handwritten signature in black ink, appearing to read "C.H. Huckelberry", is written over the typed name and title.

Re: **March 28, 2016 Goldwater Institute Letter Regarding World View Enterprises**

The County Attorney has scheduled an April 5, 2016 Executive Session of the Board of Supervisors to discuss this matter. The County Attorney will seek direction from the Board as to how to respond to the letter, if any response is necessary.

After 1) reviewing the letter and its inconsistent, inaccurate statements; 2) receiving the financial results of our sale of Certificates of Participation (COPs) related to this project at sales on March 29 and 30, 2016; and 3) reviewing very similar, if not identical, economic development incentive packages in Maricopa County, I believe it is appropriate to provide the Board additional information that may be helpful in considering a response to the Goldwater letter, in addition to the advice the County Attorney will provide in the Executive Session.

Inconsistent and Inaccurate Statements Designed to Influence the Outcome of an Election

Citing of a few examples in the letter is in order. The first paragraph of the letter completely omits any of the requirements for payment of rent by World View Enterprises in exchange for its use of the facility, something that is critical to the definition of a gift in *Turken v. Gorden*.

Goldwater's claim in the second paragraph that issuing COPs for the project "...*extends repayment of existing COPs...*" demonstrates a complete misunderstanding of the County's financing. The financing does not extend the payment of any previously-issued COPs. Some outstanding previously-issued COPs, which were issued to finance the County's purchase of the Bank of America Building in 2007, are being refinanced at the same time the new COPs are being issued to lower the interest rates on those existing COPs. That refinancing has nothing to do with the financing of the County's construction of County-owned facilities on County-owned land to be leased to World View; and the repayment of those existing COPs is not being extended. The ultimate maturity of the existing COPs remains the same; the County will simply pay a lower interest rate for the remaining term.

In the third paragraph of the Goldwater Institute letter, they indicate "the government must receive fair compensation in return." Our fair compensation is that World View will make

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lease payments in the amount of \$23,625,000 over the term of the lease. The County will receive nearly \$4.2 million in excess of the principal and interest paid by the County to retire the debt issued by the County to build the facility *that it will continue to own* until such time as World View has made all required payments. Contrary to statements made by Goldwater and others, the County is not loaning money to World View, nor is it building a facility and "giving" it to World View. It is building a County-owned facility on County-owned land that will be leased to World View.

Page 2 of the Goldwater letter states, "*World View will charge \$75,000 for balloon rides of the stratosphere—three times the average per capita income in Pima County.*" They fail to state the project proposal will create over 400 jobs paying \$55,000 annually, which is 150 percent of the average annual wage in Pima County. That is the point of the project; not to create an amusement ride for Pima County residents.

While near-space tourism gets all the attention, World View has executed a number of successful scientific missions where sensitive instruments that could not survive a rocket launch and major impact landing are part of the payload. Additional tests and experiments include deployment of communications and optics technology usable by the military and FEMA for tactical and emergency communications and operations; the ability to observe weather and track large-scale storms; a study of water distribution and the impacts of climate change on agriculture and population patterns; and a study to increase our understanding of the value of the stratosphere in shielding our planet from radiation. All of these important initiatives are why World View has a number of contracts with major universities, NASA and Northrup and is currently working with Raytheon on strategic alliances.

Paragraph 2 on Page 2 states, "*Nor is the consideration fair to taxpayers.*" It appears the Institute neglected to consider the \$4.2 million profit to the County or to review the report by Phoenix-based Applied Economics that stated this economic development activity will create \$3.5 billion in benefits to Pima County over the next 20 years.

They also state, "*The County is using public credit to finance this project at taxpayer risk while a private corporation enjoys the benefits of the bargain risk-free.*" Also, "*...the speculative nature of World View's business – it has never given a ride to a single passenger – it is doubtful that World View will remain financially viable.*" As discussed above, future space tourism is only one component of World View's line of business. The company has executed a number of successful scientific missions with sensitive instruments as part of the payload. Goldwater's statement is an affront to the financial sophistication of World View, including their investors – national and international individuals and corporations – as well as potential investors who may withhold their investment based on the false and malicious statements of the Goldwater Institute.

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It is clear from viewing Supervisor Ally Miller's Facebook posts regarding World View and the Goldwater Institute, together with her efforts, that the Goldwater Institute has joined forces with Supervisor Miller in her effort to defeat incumbent County Supervisors. The March 28, 2016 Goldwater letter is filled with politically charged rhetoric that has no basis in fact, exaggerates certain points, and omits most facts. It appears designed to influence the outcome of an election.

Further, the letter contains many false, misleading and libelous statements regarding the fiscal stability of World View, a privately held corporation that has previously been enormously successful in its operations, as well as financial transactions.

Financial Liability

It would appear the Goldwater letter was specifically designed to derail or adversely affect the financial transactions of the County with the issuance of Series 2016B COPs. The release of Goldwater's March 28 letter was one day before the sale of COPs to finance this project and required the County to issue a revised offering statement to potential investors. Clearly, the release of the letter was timed to adversely affect the County's credit standing, interest rates and repayment schedule for the issue of this debt; and the release had its intended adverse consequence.

Because the County received the Goldwater Institute's letter right before the pricing of the COPs in the municipal markets began, the County had to immediately make a supplemental disclosure of the letter's allegations. When a supplemental disclosure like this is made, the allegations become highly disruptive to the pricing and can be very costly. When such is presented to investors in the middle of the sale, the investors have the right to withdraw any orders they have already submitted to purchase the debt obligations. When the County disclosed the Goldwater Institute's letter, more than 20 percent of the orders already made were withdrawn by the investors. Of the roughly \$15 million of orders obtained, \$3.36 million were withdrawn. The underwriter was able to retain the remaining \$12 million of orders and, in the days following the pricing, was able to resell \$2.38 million of the obligations. The underwriter will continue to market the remaining \$980,000. In order to resell the orders that were cancelled, the net interest cost for the new investors had to be increased above what the interest on the original orders had been. Without the quick action on the part of the County and its financial team, the sale may have collapsed with much greater long-term cost to the County to issue these COPs and any future financings. The action of the Goldwater Institute also required additional legal work, underwriting costs to re-sell the issue, and additional costs to print and distribute the supplemental disclosure to investors.

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I believe these adverse fiscal expenses are direct damages related to the issuance of the false, misleading, and politically motivated letter by the Goldwater Institute. It appears the Goldwater Institute is joining with Supervisor Miller to “damage the brand” of Pima County in the municipal markets.

Economic Development is a Competitive Business

Pima County and Arizona were in direct competition with Florida and New Mexico for the World View Headquarters. Economic development and the financial benefits of job expansion cause states and regions to compete using incentives. The simple reality is that no incentives will yield no jobs. If the Arizona Legislature and Governor believe incentives are bad for the economy, they should repeal the laws that authorize economic development incentives. The economic development incentives offered to World View causing them to locate their headquarters in Arizona are well within the law providing for same. A few examples of economic incentives providing new jobs and economic expansion in Arizona follow.

The City of Chandler provided \$10 million in economic incentives to PayPal and General Motors. The City of Mesa partnered with a private developer to provide 218,000 square feet of development for commercial tenants such as a bike shop, coffee shop, and restaurant, and residential tenants who would have a pool, fitness center and other amenities. Mesa and the State offered \$10 million to lure an Apple facility to Mesa.

Finally, the City of Peoria, through their industrial development authority, provided bonds issued by the Industrial Development Authority, the proceeds of which are used to construct facilities for private business enterprise. Lease payments made by the business enterprise are used to service the bonds. Such sounds similar the County/World View lease agreement.

Whether we like it or not, incentives are a fundamental element of economic development, job attraction, and increased community wealth.

CHH/mjk

Attachment

c: John Bernal, Deputy County Administrator for Public Works
Tom Burke, Deputy County Administrator for Administration
Jan Leshner, Deputy County Administrator for Community and Health Services
Thomas Weaver, Chief Civil Deputy County Attorney
Regina Nassen, Deputy County Attorney

GOLDWATER
I N S T I T U T E
Where freedom wins.

March 28, 2016

Sharon Bronson, Chair, Supervisor District 3
Pima County Board of Supervisors
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Tucson, AZ 85701
Fax: (520) 884-1152

VIA U.S. MAIL & FAX

Re: Pima County's Subsidy to World View Enterprises

Dear Chairperson Bronson:

The Goldwater Institute has learned that the Pima County Board of Supervisors approved an agreement with World View Enterprises, Inc. on January 19, 2016, in which the County obligated at least \$15 million in public funds to construct a high-altitude balloon facility for World View's use and benefit.

To pay for this project, the County has approved new Certificates of Participation (COPs)—debt that the County expects to repay over the course of 15 years. The COPs are essentially second mortgages on several public buildings, including the Public Works Building and parking garage, the Legal Services Building, the Public Service Center and parking garage, and the Adult Detention Center. This financing scheme adds \$15 million in long-term debt to the County's existing liabilities, extends repayment of existing COPs, and risks Pima County's critical infrastructure on a speculative and untested business. In addition to constructing a 135,000 square-foot headquarters for World View, the County has also agreed to build a balloon pad that World View will control and use rent free.

Because the County is lending its credit in aid of a private corporation in the one instance, and subsidizing construction and use of the balloon pad in the other, this agreement violates the Gift Clause of the Arizona Constitution (Art. IX, sec. 7), which makes it illegal for the County to "give or loan its credit in the aid of, or make any donation or grant, by subsidy or otherwise, to any . . . corporation." The Arizona Supreme Court has held that public expenditures must be for public purposes and if public expenditures create private benefits, the government must receive fair consideration in return. Moreover, indirect benefits—such as general economic

improvement—are not consideration under the Gift Clause. *See Turken v. Gorden*, 223 Ariz. 342, 224 P.3d 158 (2010).

This agreement serves no public purpose. World View will charge \$75,000 for balloon rides to the stratosphere—three times the average per capita income in Pima County. This is beyond the reach of most residents, and will only benefit extremely wealthy passengers and World View itself—if it ever begins operations—at the taxpayers’ expense. Moreover, the jobs that World View has said it might create provide no direct benefit to the County, or its residents. These factors are doubtless why the County’s voters overwhelmingly rejected public subsidies for economic development and tourism promotion in November.

Nor is the consideration fair to taxpayers. The County is using public credit to finance this project at taxpayer risk while a private corporation enjoys the benefits of the bargain risk-free. Although World View will lease the building with an option to buy, this is an unlawful lease because County taxpayers are left with a \$15 million bill should World View default. The County doesn’t even expect a return on its investment until the 18th year of its 20-year agreement, and given the speculative nature of World View’s business—it has never given a ride to a single passenger—it is doubtful that World View will remain financially viable.

But even if World View were to succeed and either fulfill the lease or purchase the building, the consideration the County will receive is inadequate. The County will, at best, recover its investment capital plus a profit that is less than other, safer investments would produce—all while subjecting taxpayers to enormous risks. Moreover, World View will have the exclusive right to control the balloon pad, including the ability to charge rent to other space balloon companies. At most, the County will receive the cost of maintenance for the balloon pad.

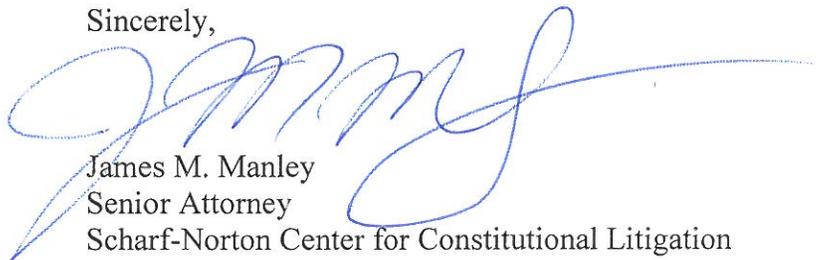
This agreement also violates Arizona law and the Pima County Procurement Code. The County consulted in secret with Swaim Associates, Ltd., and Barker Morrissey Contracting, Inc., for at least six months before seeking approval to contract with them for design and construction of the balloon pad and facilities. The County then awarded both contracts to these corporations without competitive bidding, by claiming that an “emergency” existed under A.R.S. § 34-606. There was no emergency. The County simply set an expedited timeline, and then used that deadline to claim that there was insufficient time for legally mandated competitive bidding. This is unlawful, and is an affront to taxpayers who will be forced to shoulder the financial burden for the County’s defiance of competitive bidding laws and the Arizona Constitution.

Because the County entered into illegal contracts with World View, Swaim Associates, and Barker Morrissey, the Goldwater Institute respectfully requests that the County terminate the agreements and cancel the related COPs. Should the County ignore this request, it will be liable to a constitutional and statutory challenge by County taxpayers to enjoin these illegal expenditures.

We appreciate your thoughtful consideration of these matters and look forward to receiving a response no later than **April 8, 2016**.

If you have any questions in the meantime, please do not hesitate to contact me directly at jmanley@goldwaterinstitute.org or (602) 462-5000.

Sincerely,



James M. Manley
Senior Attorney
Scharf-Norton Center for Constitutional Litigation
at the Goldwater Institute

cc. Ally Miller (Supervisor, District 1)
Ramón Valadez (Supervisor, District 2)
Ray Carroll (Supervisor, District 4)
Richard Elías (Supervisor, District 5)
Chuck Huckelberry (County Administrator)
Robin Brigode (Clerk of the Board)\
Barbara LaWall (Pima County Attorney)