



**ARIZONA SUPREME COURT  
ORAL ARGUMENT CASE SUMMARY**



**MARY WADE and MARLA PADDOCK v. ARIZONA STATE  
RETIREMENT SYS. et al.  
CV-16-0087-PR**

**PARTIES:**

*Petitioner:* The Arizona State Retirement System

*Respondents:* Mary Wade and Marla Paddock

**FACTS:**

The Arizona State Retirement System (“ASRS”) operates a governmental retirement plan for employees of the state and participating political subdivisions of the state. Both employers and employees contribute to ASRS. Retired employees receive benefits according to a statutory formula based on each employee’s compensation. The details are complex. The relevant factor here is that employee contributions, employer contributions, and retirement benefits all are based on the employee’s compensation.

The City of Chandler (“City”) is a participating ASRS employer. It also operates a deferred compensation plan for its employees under Internal Revenue Code § 457(b) (“§ 457 Plan”). Under the § 457 Plan, the City contributes deferred compensation for an employee. Historically the City included the deferred compensation payments it made to employees as “compensation” in its calculation of both employer and employee contribution to the ASRS.

In December 2010, the City asked ASRS whether employer contributions made to a deferred compensation plan in fact constitute ASRS compensation under Arizona Revised Statutes (“A.R.S.”) § 38-736. ASRS emailed back that employer contributions to a § 457 Plan are **not** ASRS compensation. The City then stopped including its payments to the § 457 Plan in calculating the employee’s annual compensation.

In late 2012 Wade and Paddock noticed that change and disputed it. In March 2013 the City requested a “more formal opinion.” ASRS sent the City a letter saying “an employer should not report employer contributions to supplemental defined contribution plans on behalf of its contract employees as compensation for ASRS purposes.” Wade and Paddock filed a class-action special action complaint seeking mandamus, declaratory, and injunctive relief against ASRS, the ASRS Board, and the City.

The trial court dismissed Wade’s claim for failure to exhaust administrative remedies and dismissed Paddock’s claim on summary judgment. The court found that A.R.S. § 38-711(7) is ambiguous, and while both sides had good arguments, the ASRS interpretation was more plausible. The court reasoned that “compensation” under § 38-711(7) includes “salary or wages from which

an employee might make deferred compensation payments, not deferred compensation payments made by the employer on top of salary or wages.”

The court of appeals reversed both the superior court’s dismissal of Wade’s case and its entry of summary judgment against Paddock and it remanded both cases. The court also granted the plaintiffs’ request for attorney’s fees under A.R.S. § 12-341.01.

**ISSUES:**

- 1) Are employer contributions to a deferred compensation plan ASRS compensation when the statutory definition of compensation in A.R.S. § 38-711(7) limits compensation to salary and wages?
  
- 2) Does the resolution of the first issue presented—an issue of statutory construction—arise out of contract within the meaning of A.R.S. § 12-341.01(A)?

**DEFINITIONS:**

**Deferred compensation:**

Money an employee does not receive immediately when earned, but puts off until after certain conditions are met, such as retirement.

**Defined contribution plans:**

Deferred compensation plan into which the employee or employer places a fixed amount at a regular interval (for example, each pay period or month). This contrasts with a defined benefit plan, in which the contributions made may vary, but the amount eventually received is fixed.

**Mandamus, declaratory, and injunctive relief:**

In a Mandamus action, the plaintiff asks the court to require a public official to do an act for which the official has no choice. Declaratory relief means the court states clearly to what the plaintiff is entitled (or not entitled). Injunctive relief means the plaintiff gets a court order stopping the defendant from doing something the court has declared to be wrongful or illegal.

**Special action:**

In Arizona, the kind of legal action a plaintiff must file to get mandamus, declaratory, and/or injunctive relief from a court.

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