



**ARIZONA SUPREME COURT  
ORAL ARGUMENT CASE SUMMARY**



**PHILIP HALL, JON W. THOMPSON et al. v. ELECTED OFFICIALS'  
RETIREMENT PLAN et al; STATE OF ARIZONA  
CV-15-0180-T/AP**

**PARTIES:**

*Appellants/Cross-Appellees:* The Elected Officials' Retirement Plan ("EORP"), the members of the Board of Trustees of the Public Safety Personnel Retirement System ("PSPRS") (collectively, "EORP Defendants") and the State of Arizona

*Appellees/Cross-Appellants:* Judges Philip Hall (ret.) and Jon W. Thompson and others similarly situated ("Judges" or "Plaintiffs")

*Amicus Curiae:* National Conference on Public Employee Retirement Systems ("NCPERS")

**FACTS:**

In November 2011 Judges Hall and Thompson, then both sitting judges and active Elected Officials' Retirement Plan (EORP) members, brought this case as a class action challenging as unconstitutional the 2011 statutory amendments in Senate Bill ("SB") 1609. The amendments increased the employee contribution rate during active employment and the pension benefit increase ("PBI") mechanism and formula after retirement. The Judges claimed the amendments violated the Pension Clause of the Arizona Constitution, article 29, § (section) 1(C); the Contracts Clauses, Ariz. Const. art. 2, § 25 and U.S. Const. art. I, § 10, cl. 1; and Arizona's Judicial Salary Clause, Ariz. Const. art. 6, § 33. Judge Hall has since retired.

The Judges are a class of active judge EORP members who became judges before 2011. Their claims implicate the two statutes that do not affect retired members: the vesting statute and the contribution rate statute, A.R.S. § 38-810(F).

*Background:* The legislature created EORP in 1985 for elected officials, judges, and EORP administrators. Arizona Revised Statutes ("A.R.S.") §§ 38-801(15), 38-802, 38-805. In the years since, there have been many amendments to the statutes governing the retirement system.

In 1985 the legislature set the employee contribution at 6% of gross salary. A.R.S. § 38-810(A) (1985). In 1987 it increased the rate to 7%. A.R.S. § 38-810(A) (1987). The 2011 amendments in SB 1609 would increase contributions each year, eventually to 13%. Employer contributions to the pension plan are set actuarially, meaning adjusted to ensure the fund has enough money in reserve to pay its obligations if other sources, including court filing fees, employee

contributions, and return on investments, fall short.

In 2000 the legislature enacted a statute that specifies when elected officials' pensions vest, A.R.S. § 38-810.02 ("vesting statute"). It provides, in part, that an active judge's pension benefits do not vest, or become entitlements at a specific amount, until the time at which the judge applies for retirement benefits or leaves employment.

Through 2002 EORP was well-funded. After investment failures and the 2007 recession, the legislature concluded EORP and other state retirement funds were not sustainable if left as is. The legislature enacted SB 1609 with the stated aim of restoring financial stability to the plans.

*Superior court decision:* The court declared that SB 1069 violated the Pension Clause, to the extent that it "changed the formula and mechanism for granting permanent increases in base benefits under A.R.S. § 38-818[.]" After concluding the ruling under the Pension Clause disposed of the entire case, the court did not address the Contracts Clause or the Judicial Salary Clause claims. The court struck down the 2011 amendments as to all class members and enjoined their application to set employee contribution rates and calculate permanent increases in base benefits. It also denied the Judges attorneys' fees and prejudgment interest.

*Appeals:* The Defendants appealed and the Plaintiffs cross-appealed. On a joint motion from the parties, this Court transferred the case from the Court of Appeals, Division One to the Arizona Supreme Court. All members of the sitting Arizona Supreme Court recused themselves from deciding this case and the chief justice appointed judges of the court of appeals and superior court who became judges after the 2011 amendments were enacted to hear and decide the case.

## **ISSUES:**

### **Appeal**

**EORP:** 1. Are SB 1609's amendments to the employee contribution rate valid under the Pension Clause of the Arizona Constitution because the employee contribution rate is not a "benefit" protected under that clause?

2. Does the EORP vesting statute, A.R.S. § 38-810.02, preserve the constitutionality of the 2011 amendments regarding the employee contribution rate and PBI provisions as applied to any class members who joined EORP after the statute became effective because it was always part of their contractual relationship?

**State:** 1. Did the superior court err in holding that the vesting statute, A.R.S. § 38-810.02(B), has no practical force and effect, rather than adhering to its initial conclusion that the vesting statute authorizes the Legislature to make prospective changes in the EORP statutes for all active members whose rights have not yet vested?

2. Did the superior court err in holding that the prior contribution rate for active EORP participants is a "benefit" that is constitutionally protected against prospective

legislative amendment for active EORP members?

### **Cross-Appeal**

1. Does this action arise out of a contract for purposes of the contract fee statute, A.R.S. § 12-341.01(A)?
2. Did the Superior Court err in refusing to award prejudgment interest?
3. Should the relief awarded by the Superior Court run against the State?

### **DEFINITIONS:**

**Actuarial:** Method of calculating the risks and probabilities of uncertain future events using predictive mathematical models

**Class action:** Case brought by named plaintiffs for themselves and for unnamed numerous others who are “similarly situated,” with the same legal relationship to the rights being litigated.

**Vesting:** The legal process of becoming entitled to receive a specific benefit, especially a pension.

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