Arizona Supreme Court

Civil Transfer Appeal

CV-15-0180-T/AP — HON. HALL et al v EORP/STATE

Appellate Case Information

Case Filed: 11-Jun-2015

Case Closed:

Dept/Composition

En Banc

Hon. Clint Bolick
Hon. Randall M Howe
Hon. Kent E Cattani
Hon. Michael J Butler
Hon. Patricia A Trebesch

Side 1. THE HONORABLE PHILIP HALL et al.,, Appellee/Cross-Appellant

(Litigant Group) HON. HALL/HON. THOMPSON

- **Hon. Philip Hall, Plaintiff**
- **Hon. Jon W Thompson, Plaintiff**

Attorneys for: Appellees/Cross-Appellants

Ron Kilgard, Esq. (AZ Bar No. 5902)

Alison E Chase, Esq. (AZ Bar No. 28987)

Side 2. ELECTED OFFICIALS' RETIREMENT PLAN et al.,, Appellant/Cross-Appellee

(Litigant Group) ELECTED OFFICIALS' RETIREMENT PLAN et al.,

- **Elected Officials Retirement Plan, Defendant**

Attorneys for: Appellant/Cross-Appellee

Bennett Evan Cooper, Esq. (AZ Bar No. 10819)

Shannon E Trebbe, Esq. (AZ Bar No. 28533)

Side 3. THE STATE OF ARIZONA, Appellant/Cross-Appellee

(Litigant Group) THE STATE OF ARIZONA

- **State of Arizona, Defendant**

Attorneys for: Appellant/Cross-Appellee

Mark Brnovich, Esq. (AZ Bar No. 14134)

Charles A Grube, Esq. (AZ Bar No. 11511)

Side 4. NATIONAL CONFERENCE ON PUBLIC EMPLOYEE RETIREMENT SYSTEMS, Amicus Curiae

(Litigant Group) NATIONAL CONFERENCE ON PUBLIC EMPLOYEE RETIREMENT SYSTEMS

- **National Conference on Public Employee Retirement Systems**

Attorneys for: Amicus Curiae

Colin F Campbell, Esq. (AZ Bar No. 4955)

Robert D Klausner, Esq. (FL Bar No. ROBERTKLAUSNER)

Adam P Levinson, Esq. (FL Bar No. ADAMLEVINSON)

CASE STATUS

Nov 10, 2016....Decision Rendered | Jun 11, 2015.....**Pending**

PREDECESSOR CASE(S)		Cause/Charge/Class	Judgment/Sentence	Judge, Role <Comments>	Trial	Dispo
1 CA	1 CA-CV 15-0149					
↳ MAR	CV2011-021234	Breach of Contract for Vested Pension Benefits Equitable and Monetary Relief Against the Plan [see file]		Randall H Warner, Authoring Judge of Order Comments: (none)		

CASE DECISION

10-Nov-2016 OPINION

We affirm the trial court's judgment with respect to the unconstitutionality of the two provisions of the Bill at issue, but reverse with respect to the court's denial of attorneys' fees, prejudgment interest, and relief agai

Filed: **10-Nov-2016** Mandate:

Decision Disposition

Affirmed in Part
Reversed in Part

Randall Howe.....Author
Michael Butler.....Concur
Kent Cattani.....Special Concurrence
Clint Bolick.....Dissent in part
Patricia Trebesch.....Dissent in part

CITE Arizona Reports: 751 Ariz 18

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45 PROCEEDING ENTRIES

1.	11-Jun-2015	The Court has received and considered the Joint Petition to Transfer Appeal filed on May 18, 2015 in this matter. Accordingly, IT IS ORDERED granting the Joint Petition to Transfer Appeal. IT IS FURTHER ORDERED that the Supreme Court Case No. CV-15-0180-T/AP is assigned to this case. IT IS FURTHER ORDERED adopting the ORDER RE: EXTENSION OF TIME - OPENING BRIEFS/AMENDING CAPTION that Division One of the Arizona Court of Appeals filed May 28, 2015, with the sole exception of additionally extending the time for Elected Officials' Retirement Plan Defendants and the State of Arizona to file opening briefs to July 15, 2015. The Plaintiffs shall file an answering brief/cross-appeal opening brief within 40 days after service of the opening briefs. Responsive briefing shall also be according to Rule 15, Arizona Rules of Civil Appellate Procedure. Absent extraordinary, unforeseen circumstances, the Court will grant no further extension. (Hon. John Pelander)
2.	18-Jun-2015	FILED: Reporter's Transcript - 02/11/2013 - OA (Cindy Lineburg)
3.	18-Jun-2015	FILED: Reporter's Transcript - 07/12/2013 - OA (Cindy Lineburg)
4.	19-Jun-2015	FILED: FILED: Remaining Record from CofA - MCSC: MSCS Record is Electronic CofA: Instruments (1 part) (contains no record; Instruments Electronic)
5.	6-Jul-2015	Because of the recusal of Chief Justice Scott Bales, Vice Chief Justice John Pelander, and Justices Rebecca White Berch, Robert M. Brutinel, and Ann A. Scott Timmer, it is necessary to designate five judges to assist the Supreme Court in this case. Therefore, pursuant to Article 6, section 3 of the Arizona Constitution, IT IS ORDERED that the Honorables Randall M. Howe and Kent E. Cattani, Arizona Court of Appeals, Division One, Phoenix; the Honorable Michael J. Butler, Pima County Superior Court; the Honorable Karl C. Eppich, Pinal County Superior Court; and the Honorable Patricia A. Trebesch, Yavapai County Superior Court are designated to participate in this case until the matter is finally determined. Judge Howe is hereby designated as the presiding member of the Court in the disposition of this matter. (Hon. Scott Bales)
6.	10-Jul-2015	FILED: Stipulated Motion for Procedural Order to Extend Time to File Opening Brief; Certificate of Service of Stipulated Motion for Procedural Order to Extend Time to File Opening Brief (Appellant/Cross-Appellee State)
7.	13-Jul-2015	A "Stipulated Motion for Procedural Order to Extend Time to File Opening Brief" (Appellant/Cross-Appellee State) having been filed on July 10, 2015, IT IS ORDERED granting an extension of time to file the Opening Briefs on or before August 3, 2015. No further extensions of time shall be granted absent extraordinary circumstances. (Hon Randall M Howe)
8.	3-Aug-2015	FILED: State of Arizona's Opening Brief; State of Arizona's Certificate of Service; State of Arizona's Certificate of Compliance (Appellant/Cross-Appellee State)
9.	3-Aug-2015	FILED: Opening Brief of the Elected Officials' Retirement Plan et al.; Certificate of Service Re Opening Brief of the Elected Officials' Retirement Plan et al.; Certificate of Compliance Re Opening Brief of the Elected Officials' Retirement Plan et al. (Appellants/Cross-Appellees Elected Official Retirement Plan et al.)
10.	10-Aug-2015	FILED: Stipulated Motion for Procedural Order: Extension of Time to File Answering Brief/Cross-Appeal Opening Brief; Certificate of Service (Appellees/Cross-Appellants Hall et al)
11.	11-Aug-2015	A "Stipulated Motion for Procedural Order: Extension of Time to File Answering Brief/Cross-Appeal Opening Brief" (Appellees/Cross-Appellants Hall et al) having been filed on August 10, 2015, IT IS ORDERED granting an extension of time to file the answering brief/cross-appeal opening brief on or before October 14, 2015. No further extensions of time shall be granted absent extraordinary circumstances. (Hon Randall M Howe)
12.	1-Oct-2015	FILED: Motion for Procedural Order: Modifying Length of Answering Brief/Cross-Appeal Opening Brief; Certificate of Service (Appellees/Cross-Appellants Hall et al)
13.	7-Oct-2015	FILED: EORP Defendants' Response in Opposition to Motion for Procedural Order Modifying Length of Answering Brief/Cross-Appeal Opening Brief; Certificate of Service for EORP Defendants' Response in Opposition to Motion for Procedural Order Modifying Length of Answering Brief/Cross-Appeal Opening Brief (Appellant/Cross-Appellee Elected Official Retirement Plan et al)

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45 PROCEEDING ENTRIES

14.	7-Oct-2015	FILED: States' Joinder in EORP Defendants' Response in Opposition to Motion for Procedural Order; Certificate of Service (Appellant/Cross-Appellee State)
15.	7-Oct-2015	FILED: Reply to Responses to Motion for Procedural Order: Modifying Length of Answering Brief/Cross-Appeal Opening Brief and MOTION to Expedite Decision; Certificate of Service; (Duplicate) Certificate of Service (Appellees/Cross-Appellants Hall et al)
16.	7-Oct-2015	The Court has received Appellees/Cross-Appellants “Motion for Procedural Order: Modifying Length of Answering Brief/Cross-Appeal Opening Brief,” “EORP Defendants' Response in Opposition to Motion for Procedural Order Modifying Length of Answering Brief/Cross-Appeal Opening Brief,” “States' Joinder in EORP Defendants' Response in Opposition to Motion for Procedural Order” and Appellees/Cross-Appellants “Reply to Responses to Motion for Procedural Order: Modifying Length of Answering Brief/Cross-Appeal Opening Brief and Motion to Expedite Decision.” Upon review and consideration, IT IS ORDERED denying the Motion for Procedural Order: Modifying Length of Answering Brief/Cross-Appeal Opening Brief. (Hon. Randall M. Howe)
17.	14-Oct-2015	FILED: Appellees'/Cross-Appellants' Answering Brief and Opening Brief on Cross-Appeal; Certificate of Service; Certificate of Compliance (Appellees/Cross-Appellants Hall et al)
18.	27-Oct-2015	NOTICE OF ORAL ARGUMENT: Set for Thursday, February 18th, 2016 at 1:30 P.M. [twenty (20) minutes per side]
19.	27-Oct-2015	FILED: Notice of Filing Acknowledgment of Oral Argument (Ron Kilgard will argue) (Appellees/Cross-Appellants Hall et al)
20.	28-Oct-2015	FILED: Notice of Filing Acknowledgment of Oral Argument (Charles A. Grube will argue) (Appellant/Cross-Appellee State)
21.	29-Oct-2015	FILED: Notice of Filing Acknowledgment of Oral Argument (Bennett Evan Cooper will argue) (Appellant/Cross-Appellee Elected Official Retirement Plan)
22.	25-Nov-2015	FILED: EORP Defendants' and State of Arizona's Unopposed Motion for Procedural Order Extending the Time to File Their Combined Reply and Cross-Appeal Answering Briefs; Certificate of Service (Appellants/Cross-Appellees Elected Official Retirement Plan/State)
23.	30-Nov-2015	An "EORP Defendants’ and State of Arizona’s Unopposed Motion for Procedural Order Extending the Time to File Their Combined Reply and Cross-Appeal Answering Briefs" (Appellants/Cross-Appellees Elected Official Retirement Plan/State) having been filed on November 25, 2015, IT IS ORDERED granting an extension of time to file the briefs on or before December 21, 2015. No further extensions of time shall be granted absent extraordinary circumstances. (Hon Randall M Howe)
24.	21-Dec-2015	FILED: Combined Reply Brief and Cross-Appeal Answering Brief of the Elected Officials' Retirement Plan et al.; Certificate of Service for Combined Reply Brief and Cross-Appeal Answering Brief of Elected Officials' Retirement Plan et al.; Certificate of Compliance for Combined Reply Brief and Cross-Appeal Answering Brief of Elected Officials' Retirement Plan et al.; Appendix to Combined Reply Brief and Cross-Appeal Answering Brief of Elected Officials' Retirement Plan et al. (Appellants/Cross-Appellees Elected Official Retirement Plan)
25.	21-Dec-2015	FILED: State of Arizona's Combined Reply and Answering Brief; State of Arizona's Certificate of Service; State of Arizona's Certificate of Compliance (Appellant/Cross-Appellee State)
26.	30-Dec-2015	FILED: Stipulated Motion for Procedural Order: Extension of Time to File Cross-Appeal Reply Brief; Certificate of Service (Appellees/Cross-Appellants Hall et al)
27.	30-Dec-2015	A "Stipulated Motion for Procedural Order: Extension of Time to File Cross-Appeal Reply Brief" (Appellees/Cross-Appellants Hall et al) having been filed on December 30, 2015, IT IS ORDERED granting an extension of time to file the brief on or before January 29, 2016. No further extensions of time shall be granted absent extraordinary circumstances. (Hon Randall M Howe)
28.	11-Jan-2016	FILED: Amicus Brief of the National Conference on Public Employee Retirement Systems in Support of Plaintiffs (Filed with the Parties Consent); Certificate of Service; Certificate of Compliance (Amicus Curiae National Conference on Public Employee Retirement Systems)
29.	11-Jan-2016	FILED: (Copy of) Consent of all Parties (Amicus Curiae National Conference on Public Employee Retirement Systems)
30.	29-Jan-2016	FILED: Appellees'/Cross-Appellants' Reply Brief on Cross-Appeal; Appellees'/Cross-Appellants' Certificate of Service; Appellees'/Cross-Appellants' Certificate of Compliance (Appellees/Cross-Appellants Hall et al)

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45 PROCEEDING ENTRIES

31.	3-Feb-2016	Judge Karl C. Eppich will not participate in argument or decision of the above captioned matter. Therefore, pursuant to Article 6, Section 3 of the Arizona Constitution, IT IS ORDERED that the Honorable Clint Bolick, Justice of the Arizona Supreme Court, is designated to sit on the case and participate until the matter is finally determined. (Hon. Randall M. Howe)
32.	8-Feb-2016	FILED: Response of Elected Officials' Retirement Plan et al. to Amicus Brief of National Conference on Public Employee Retirement Systems; Certificate of Service re Response of Elected Officials' Retirement Plan et al. to Amicus Brief of National Conference on Public Employee Retirement Systems; Certificate of Compliance re Response of Elected Officials' Retirement Plan et al. to Amicus Brief of National Conference on Public Employee Retirement Systems (Appellants/Cross-Appellees Elected Official Retirement Plan)
33.	8-Feb-2016	FILED: (Duplicate) Response of Elected Officials' Retirement Plan et al. to Amicus Brief of National Conference on Public Employee Retirement Systems; (Duplicate) Certificate of Service re Response of Elected Officials' Retirement Plan et al. to Amicus Brief of National Conference on Public Employee Retirement Systems; (Duplicate) Certificate of Compliance re Response of Elected Officials' Retirement Plan et al. to Amicus Brief of National Conference on Public Employee Retirement Systems (Appellants/Cross-Appellees Elected Official Retirement Plan)
34.	11-Feb-2016	FILED: Motion to Consider Recusal (of Justice Bolick); Certificate of Service; Exhibit A; Exhibit B (Appellees/Cross-Appellants Hall et al)
35.	16-Feb-2016	Counsel for Plaintiffs/Appellees/Cross-Appellants on February 11, 2016, filed a Motion to Consider Recusal in the above-captioned case pursuant to Arizona Code of Judicial Conduct Rule 2.11(A). As Movants observe, the "decision on whether to recuse is committed to the sound discretion of the judge himself," citing State v. Munoz, 110 Ariz. 419, 421 (1974) (Motion at 8). Movants state that they do not seek an order of disqualification "as a black-and-white matter," but rather request that I consider, "perhaps in consultation with the other members of the Court," whether recusal is appropriate in light of the facts presented (id. at 2). I have proceeded to do exactly that, in consultation with two of the members of the panel sitting on the case. As the Movants recite, this case presents a constitutional challenge on behalf of a class of judges to certain changes made to the Elected Officials' Retirement Plan in 2011 (Mot. at 2). Movants cite as possible grounds for recusal (1) an article in the Arizona Republic in 2010, prior to the enactment of the statute at issue here, ascribing to me the view that "certain changes" to public pensions "could be made without running afoul of the Constitution or contract law" (id. at 5-6); and (2) papers published by former colleagues at the Goldwater Institute during the time I was employed there, expressing views on public policy and legal issues relating to public pension reform (id. at 6 and n.1). I have carefully considered, with my fellow jurists' counsel, the facts in light of Rule 1.2 of the Code of Judicial Conduct, which requires judges to avoid impropriety and the appearance of impropriety with regard to the ability to consider cases in an impartial manner. Movants have taken care not to assert, based on the facts presented, that I have prejudged the case or acted in a fashion that would erode public confidence in the judiciary. Comment 5 to Rule 1.2 states in relevant part as follows: "An appearance of impropriety does not exist merely because a judge has previously rendered a decision on a similar issue, has a general opinion about a legal matter that relates to the case before him or her, or may have personal views that are not in harmony with the views or objectives of either party." As I have previously neither formed nor expressed an opinion on the legal issues presented in this case, the facts as presented and known to me do not approach the boundaries of conduct requiring disqualification. For the foregoing reasons, IT IS ORDERED that having taken the matter into careful consideration, disqualification is not warranted. (Hon. Clint Bolick)
36.	17-Feb-2016	FILED: Motion to Associate Counsel Pro Hac Vice for Amicus Curiae; Certificate of Service of Motion to Associate Counsel Pro Hac Vice for Amicus Curiae; (Copy of) Application for Appearance Pro Hac Vice (for Robert D. Klausner and Adam Levinson) (Amicus Curiae National Conference on Public Employee Retirement Systems)
37.	17-Feb-2016	Colin F. Campbell, having filed a "Motion to Associate Counsel Pro Hac Vice for Amicus Curiae" asking that Robert D. Klausner and Adam P. Levinson be allowed to appear and participate in the above-referenced matter and that the appropriate application and related materials having been submitted and found to be in compliance with Rule 38(a), Rules of the Supreme Court, IT IS ORDERED granting the Motion and authorizing Robert D. Klausner and Adam P. Levinson to appear Pro Hac Vice before this Court in this matter for a period not to exceed one year from the date of this Order. (Hon. Clint Bolick)
38.	18-Feb-2016	ORAL ARGUMENT - Submitted for decision en banc (Attorneys who argued: Ron Kilgard; Bennett Evan Cooper; Charles A. Grube)
39.	14-Apr-2016	FILED: Supplemental Citation of Authority; Appellees'/Cross-Appellants' Certificate of Service (Appellees/Cross-Appellants Hall et al)

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45 PROCEEDING ENTRIES

40.	10-Nov-2016	OPINION - We affirm the trial court's judgment with respect to the unconstitutionality of the two provisions of the Bill at issue, but reverse with respect to the court's denial of attorneys' fees, prejudgment interest, and relief against the State. (Hon. Randall M Howe - Author; Hon. Michael J Butler - Concur; Hon. Kent E Cattani Judge - Special Concurrence; Hon. Clint Bolick - Dissent in part and Concurred in the judgment in part; Hon. Patricia A Trebesch - Dissent in part and Concurred in the judgment in part) *Opinion corrected by letter dated November 14, 2016
41.	23-Nov-2016	FILED: EORP Defendants' and State of Arizona's Unopposed Motion for Procedural Order Extending the Time to File Motions for Reconsideration; Certificate of Service
42.	23-Nov-2016	An "EORP Defendants' and State of Arizona's Unopposed Motion for Procedural Order Extending the Time to File Motion for Reconsideration" having been filed on November 23, 2016, IT IS ORDERED granting an extension of time to file the Motion for Reconsideration on or before December 27, 2016. No further extensions of time shall be granted absent extraordinary circumstances. (Janet Johnson, Clerk)
43.	27-Dec-2016	FILED: Motion for Reconsideration of the Elected Officials' Retirement Plan et al.; Certificate of Service; Certificate of Compliance (Appellants/Cross-Appellees Elected Official Retirement Plan)
44.	27-Dec-2016	FILED: State's Joinder in EORP Defendants' Motion for Reconsideration; Cerificate of Service
45.	29-Dec-2016	On December 27, 2016, a "Motion for Reconsideration of the Elected Officials' Retirement Plan et al." and "State's Joinder in EORP Defendants' Motion for Reconsideration" were filed. Therefore, IT IS ORDERED that Plaintiffs/Appellees/Cross-Appellants Hall et al. shall file a Response to the Motion for Reconsideration on or before January 17, 2017. (Hon. Clint Bolick)

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