

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2011-021234

01/27/2015

HON. RANDALL H. WARNER

CLERK OF THE COURT  
K. Ballard  
Deputy

PHILIP HALL, et al.

RON KILGARD

v.

ELECTED OFFICIALS RETIREMENT PLAN,  
THE, et al.

BENNETT EVAN COOPER

CHARLES A GRUBE

JUDGMENT SIGNED

Plaintiffs and EORP have each lodged a form of final judgment. The court has adopted the parties' agreed language and rules as follows on the areas of dispute.

The first question is what remedial injunction, if any, should be included in the judgment. The court has ruled that certain portions of SB 1609 regarding the Elected Officials Retirement Plan are unconstitutional, and the parties agree to declaratory relief in the final judgment. The declaration alone may be enough to raise these legal issues on appeal. But because Plaintiffs also seek injunctive relief, the judgment would not be final until that claim is resolved. For that reason, the judgment must include an injunction.

Yet it would be premature for the court to itself fashion a remedy. For both pragmatic and separation of powers reasons, EORP must have the opportunity to remedy the constitutional violation in the first instance. Only after it has had a reasonable opportunity to do so can Plaintiffs seek judicial intervention.

The court will therefore issue broad injunctive relief, simply directing EORP to remedy the violation within a reasonable time. That remedy might involve direct repayments or credits.

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It might or might not involve employers. If Plaintiffs are dissatisfied with EORP's remedy or believes EORP is unreasonably delaying, they can seek appropriate relief.

By including injunctive language in the judgment, the court does not intend to preclude EORP members from seeking administrative relief if they disagree with EORP's contribution or benefit determinations.

The next issue is prejudgment interest on member contributions in excess of 7%. Because EORP has not yet implemented a remedy, the question of interest is arguably premature. But all parties asked the court to resolve this issue so it can be decided on appeal. It presents a purely legal issue on which the court has found no controlling authority.

The court concludes that Plaintiffs are not entitled to prejudgment interest. In general, prejudgment interest serves to compensate the plaintiff for loss of use of money and prevent the defendant from being unjustly enriched. *La Paz County v. Yuma County*, 153 Ariz. 162, 168, 735 P.2d 772, 778 (1987). It also provides the defendant an incentive to pay. *See, e.g., AMX Enterprises, L.L.P. v. Master Realty Corp.*, 283 S.W.3d 506, 512 (Tex. App. 2009) ("Prejudgment interest serves two purposes. First, it compensates a claimant for lost use of the money due as damages during the lapse of time between the accrual of the claim and the date of judgment. . . . Second, it encourages settlement and removes incentives for delay."). In a typical case, these three purposes align.

Not here. For one, the Defendant is a pension fund that exists for Plaintiffs' benefit. Although Plaintiffs have lost the use of their money, EORP itself has not been unjustly enriched. Second, EORP was required by statute to take increased member contributions. It had no choice in the matter, and no power to give money back. EORP should not be charged interest on money it legally could not pay. *Cf. DKI Corporation/Sylvan Pools v. Industrial Commission*, 173 Ariz. 535, 537, 845 P.2d 461, 463 (1993) (interest only begins to accrue when there is a legal obligation to pay).

Finally, it is not necessary or appropriate to include in the judgment relief against the State. The State intervened to be heard on the statute's constitutionality, and Plaintiffs' September 21, 2012 notice is insufficient to assert claims against the State.

**IT IS ORDERED** approving and settling the formal written final judgment, modified consistent with this minute entry, signed by the court on January 27, 2015 and filed (entered) by the clerk on January 27, 2015. Because the underlying minute entries are of record, it is unnecessary to attach them to the judgment.

**IT IS ORDERED** granting the Motion for Entry of Judgment as set forth above.

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**Please note:** The court has signed a paper copy of the judgment which was originally provided electronically. Therefore, copies of the judgment and self-addressed, stamped envelopes are not available for mailing to the parties. After the judgment has been scanned and docketed by the Clerk of Court, copies of this judgment will be available through the ECR online at [www.clerkofcourt.maricopa.gov](http://www.clerkofcourt.maricopa.gov) or through [www.AZTurboCourt.gov](http://www.AZTurboCourt.gov) and from the Public Access Terminals at the Clerk of Court's offices located throughout Maricopa County.