VENTURA COUNTY EMPLOYEES' RETIREMENT ASSOCIATION

BOARD OF RETIREMENT

DISABILITY MEETING

July 7, 2014

AGENDA

PLACE: Ventura County Employees' Retirement Association
Second Floor Boardroom
1190 South Victoria Avenue
Ventura, CA 93003

TIME: 9:00 a.m.

ITEM:

		Master Page No.
I.	**CALL TO ORDER**	
II.	**APPROVAL OF AGENDA**	1 – 2
III.	**APPROVAL OF MINUTES**	
	A. Business Meeting of June 16, 2014.	3 – 9
IV.	**RECEIVE AND FILE PENDING DISABILITY APPLICATION STATUS REPORT**	10 – 54
V.	**APPLICATIONS FOR DISABILITY RETIREMENT**	
	A. Application for Service Connected and Non-Service Connected Disability Retirement; Brixie, Bonnie J.; Case No. 12-006.	55 – 74
	1. Summary of Evidence, Conclusions of Law, and Recommended Decision, submitted by Hearing Officer Irene P. Ayala, dated June 13, 2014.	
	2. Hearing Notice served on July 1, 2014	
	B. Application for Service Connected Disability Retirement, Nadon, David J.; Case No. 11-008.	75 – 165

V. APPLICATIONS FOR DISABILITY RETIREMENT (continued)

1. Petition for Reconsideration, submitted by Anthony R. Strauss, Attorney at Law, dated May 8, 2014.

2. Legal Memorandum Filed by Respondent, County of Ventura/Risk Management in Opposition to Petition filed by David Nadon, submitted by Stephen D. Roberson, Attorney at Law, dated May 19, 2014.

3. Hearing Notice served on May 9, 2014.

VI. NEW BUSINESS

A. Update on Retirement Administrator Recruitment, Pam Derby, Cooperative Personnel Services. 166 – 174
RECOMMENDED ACTION: Receive and File.

B. Litigation- Edward J. Lacey, et. al, vs Mark Lunn, Ventura County Clerk-Recorder/Registrar of Voters, et. al – Ventura County Superior Court Case No. 56-2014-00454309-CU-WM-VTA
RECOMMENDED ACTION: Consider Filing Amicuz Brief.

1. Summons, First Amendment Petition for Writ of Mandate; Notice of Case Assignment. 175 – 215

2. Pension Initiative Legal Analysis. 216 – 236

VII. INFORMATIONAL

A. Letter from Yves Chery, SACRS President- Status of SACRS Approach to Sustaining Public DB Plans. 237 – 267

B. Investment Trends Summit- Opal Financial Group; September 8-10, 2014, Santa Barbara, CA. 268 – 273

VIII. PUBLIC COMMENT

IX. STAFF COMMENT

X. BOARD MEMBER COMMENT

XI. ADJOURNMENT

VENTURA COUNTY EMPLOYEES' RETIREMENT ASSOCIATION

BOARD OF RETIREMENT

BUSINESS MEETING

June 16, 2014

MINUTES

DIRECTORS PRESENT:	Tracy Towner, Chair, Safety Employee Member William W. Wilson, Vice Chair, Public Member Steven Hintz, Treasurer-Tax Collector Peter C. Foy, Public Member Joseph Henderson, Public Member Mike Sedell, Public Member Deanna McCormick, General Employee Member Arthur E. Goulet, Retiree Member Will Hoag, Alternate Retiree Member Chris Johnston, Alternate Employee Member
DIRECTORS ABSENT:	Tom Johnston, General Employee Member
STAFF PRESENT:	Henry Solis, Chief Financial Officer Lori Nemiroff, Assistant County Counsel Julie Stallings, Retirement Operations Manager Christina Stevens, Fiscal Manager Stephanie Caiazza, Program Assistant Chantell Garcia, Retirement Benefits Specialist
PLACE:	Ventura County Employees' Retirement Association Second Floor Boardroom 1190 South Victoria Avenue Ventura, CA 93003
TIME:	9:00 a.m.

ITEM:

I. CALL TO ORDER

Chair Tracy Towner, called the Business Meeting of June 16, 2014, to order at 9:00 a.m.

II. APPROVAL OF AGENDA

Mr. Solis offered a correction to Item "IV.A. Approve Regular and Deferred Retirements and Survivors Continuances for the Month of May 2014", stating that the report should have included the effective date of May 2, 2014, for retiree Teri L. Norrdin.

MOTION: Approve the Agenda, as amended.

Moved by Wilson, seconded by Henderson.

Vote: Motion carried.
Yes: Goulet, Hintz, Foy, Henderson, McCormick, Wilson, Sedell, Towner
No: -
Absent: T. Johnston

III. APPROVAL OF MINUTES

A. Disability Meeting of June 2, 2014.

MOTION: Approve the Minutes.

Moved by Goulet, seconded by Henderson.

Vote: Motion carried.
Yes: Goulet, Hintz, Henderson, McCormick, Wilson, Sedell, Towner
No: -
Absent: T. Johnston
Abstain: Foy

IV. CONSENT AGENDA

A. Approve Regular and Deferred Retirements and Survivors Continuances for the Month of May 2014.

B. Receive and File Report of Checks Disbursed in May 2014.

C. Receive and File Budget Summary for FY 2013-14 Month Ending May 2014.

MOTION: Approve the Consent Agenda.

Moved by Wilson, seconded by Henderson.

Vote: Motion carried.
Yes: Goulet, Hintz, Foy, Henderson, McCormick, Wilson, Sedell, Towner
No: -
Absent: T. Johnston

END OF CONSENT AGENDA

V. STANDING ITEM

A. Receive an Oral Update on Pensionable Compensation and PEPRA.

Ms. Nemiroff informed the Board that the proposed regulations set forth by CalPERS have been released for public comment, and will be distributed to the Board.

VI. ANNUAL INVESTMENT PRESENTATIONS

A. Receive Annual Investment Presentation, Grantham, Mayo, Van Otterloo & Co. LLC, Tom Rosalanko, Portfolio Manager, and Lisa Stanton, Client Relationship Manager (30 Minutes).

Tom Rosalanko and Lisa Stanton were present on behalf of Grantham, Mayo, Van Otterloo & Co. LLC, to provide an organizational and investment performance update.

B. Receive Annual Investment Presentation, Parametric Clifton, Justin Henne, Senior Portfolio Manager, and Ben Lazarus, Director, Institutional Relationships (30 Minutes).

Justin Henne and Ben Lazarus were present on behalf of Parametric Clifton to provide an organizational and investment performance update.

VII. INVESTMENT INFORMATION

A. NEPC – Don Stracke, Senior Consultant, Allan Martin, Partner.

1. Receive and File Performance Report Month Ending May 31, 2014.

MOTION: Receive and file.

Moved by Henderson, seconded by Wilson.

Vote: Motion carried.
Yes: Goulet, Hintz, Foy, Henderson, McCormick, Wilson, Sedell, Towner
No: -
Absent: T. Johnston

2. Approval of Date for Summer Due Diligence Visits and Review of PIMCO Watch Status.

Mr. Stracke provided an update on PIMCO and recommended that the planned due diligence trips to Western and PIMCO be scheduled for July 29, 2014.

MOTION: Approve.

Moved by Goulet, seconded by Wilson.

Vote: Motion carried.
Yes: Goulet, Hintz, Foy, Henderson, McCormick, Wilson, Sedell, Towner
No: -
Absent: T. Johnston

Chair Towner appointed Mr. Wilson, Mr. Goulet, and Ms. McCormick to participate in the planned due diligence trips to Western and PIMCO.

3. Asset Allocation Update and Work Plan Discussion.

After discussion by the Board and Mr. Stracke, the following motion was made:

MOTION: Postpone the asset allocation update until the business meeting of July 21, 2014.

Moved by Goulet, seconded by Henderson.

Vote: Motion carried.
Yes: Goulet, Hintz, Foy, Henderson, McCormick, Wilson, Sedell, Towner
No: -
Absent: T. Johnston

After further discussion, Mr. Stracke resolved to revise the work plan to include more education on credit.

The following motion was made:

MOTION: Postpone the work plan discussion until the business meeting of July 21, 2014.

Moved by Henderson, seconded by Goulet.

Vote: Motion carried.
Yes: Goulet, Hintz, Foy, Henderson, McCormick, Wilson, Sedell, Towner
No: -
Absent: T. Johnston

4. Receive Direct Lending Educational Discussion, White Oak Global Advisors, LLC, Barbara McKee, Managing Partner, Casey Jones, Managing Director, Marketing, and Dave Hackett, Partner and Head of Underwriting.

   Barbara McKee, Casey Jones, and Dave Hackett were present on behalf of White Oak Global Advisors, LLC, to lead an educational discussion on direct lending.

   Mr. Foy left the meeting at 11:08 a.m.

5. Discussion of Potential Investment Retreat Dates and Subjects.

   Mr. Martin and Mr. Stracke provided information to the Board about potential topics for an off-site retreat. Chair Towner recommended that the Board postpone setting a date for the retreat until more progress can be made on filling vacant positions within the organization. Chair Towner requested that staff raise the subject again in September 2014.

   After further discussion by the Board, the following motion was made:

   MOTION: Postpone setting a date for the retreat until the business meeting of September 15, 2014.

   Moved by Goulet, seconded by Henderson.

   Vote: Motion carried.
   Yes: Goulet, Hintz, Henderson, McCormick, Wilson, Sedell, Towner

No: -
Absent: T. Johnston, Foy

VIII. NEW BUSINESS

A. Approval of Hearing Officer Contracts.

MOTION: Approve.

Moved by Goulet, seconded by Henderson.

Vote: Motion carried.
Yes: Goulet, Hintz, Henderson, McCormick, Wilson, Sedell, Towner
No: -
Absent: T. Johnston, Foy

B. Review of Ventura County Employees' Retirement Information System (VCERIS) Project Status Report, Month Ending May 2014.

MOTION: Receive and File.

Moved by Wilson, seconded by Henderson.

Vote: Motion carried.
Yes: Goulet, Hintz, Henderson, McCormick, Wilson, Sedell, Towner
No: -
Absent: T. Johnston, Foy

IX. PUBLIC COMMENT

None.

X. STAFF COMMENT

Mr. Solis notified the Board that Debbie Downey, IT Manager at VCERA, resigned from her position to pursue another opportunity. He stated that the department will be utilizing the services of County IT.

XI. BOARD MEMBER COMMENT

Mr. Hoag updated the Board on the ongoing Retirement Administrator recruitment, stating that the contract from CPS was reviewed by the Personnel Review Committee at their meeting of June 6, 2014. The contract was later revised by CPS and submitted to Counsel for final review.

Other topics discussed at the June 6, 2014 Personnel Review Committee meeting were VCERA staff organizational structure, staffing and salaries, including the Investment Officer and Operations Manager positions. Mr. Hoag stated that the Personnel Review Committee will meet again to continue discussing the previous topics, as well as the newly vacant IT Manager position.

XII. ADJOURNMENT

The meeting was adjourned at 11:36 a.m.

Respectfully submitted,

HENRY SOLIS, Chief Financial Officer

Approved,

TRACY TOWNER, Chairman

RETIREMENT ADMINISTRATOR RECRUITMENT

Presented to:

VCERA Retirement Board

Pam Derby, Sr. Executive Recruiter
CPS HR Consulting

Our Methodology

Phase 1: Define Ideal Candidate and Salary/Benefits Survey

- Conduct information gathering meetings with VCERA Representatives
- Develop Advertising and Candidate Procurement Strategy
- Set Profile and Parameters for Applicant Screening
- Define Application of Search Criteria
- Establish Strategic Plan for Identifying Applicants

Refine Recruitment Strategy and Identify Quality Applicants

- Access Professional Associations
- Reach Out to Stratified Groups within Associations
- Launch E-mail and Social Media Campaign
- Access Personal Contacts and Special Interest Groups

Our Methodology (continued)

Phase 2: Screen Applicants, Prepare Applicant Profiles and Findings

- Vet All Candidate Resumes for Minimum Qualifications per Ideal Candidate Profile and Advertised Qualifications
- Conduct Thorough Screening Interviews
- Structured Presentation of Candidates
- VCERA Selects Finalist Candidates

Phase 3: Prepare Evaluation Materials, Conduct VCERA Interviews

- Determine VCERA Selection Process, Assist with Question Formulation
- Coordinate Candidate Logistics
- Prepare Selection Materials
- Facilitate Selection Process

Our Methodology (continued)

Phase 3: Conduct Reference/Background Checks

- Conduct Comprehensive, Confidential Reference Checks With No Less Than Six Reference Sources Including Supervisors, Subordinates, and Peers
- Background Check Conducted by a Licensed Private Investigative Firm That Includes Criminal, Civil, Driving, Credit Checks, and Education Verification
- Provide Detailed Summary Reports to VCERA
- Assist With Employment Negotiation, As Necessary

Schedule

TASK	Completed By
• Individual Stakeholder Discussions • Kick-Off Meeting	July 7
• Provide Draft Brochure Text to Personnel Review Committee	July 11
• Brochure Text Approved	July 16
• Brochure Printed/Ads Placed	July 21
• Final Filing Date	August 22
• Deliver Client Report • Personnel Review Committee Selects Finalists	Week of September 1

CPS HR CONSULTING

Schedule

Task	Completed By
• Personnel Review Committee Interviews	Week of September 8
• Reference/Background Checks on Top Candidates	Week of September 15
• Recruitment Board Interviews	Week of September 22
• Appointment Announced	Week of September 29

Ideal Candidate Profile

- Proven leader/manager with a progressive management style and career with the ability to 'roll up their sleeves' if necessary
- Leadership presence and maturity
- Honest, ethical and transparent
- Collaborative and visionary with the ability to set a course through consensus and successfully implement that vision and strategic plan
- Truly be invested in the organization

Ideal Candidate Profile

- Politically astute with an apolitical nature
- Motivational team-player
- Relationship/Bridge builder
- Ability to quickly get up to speed on 37 Act if necessary
- Financial acumen
- Experience working with a Board
- Some knowledge of investment policy
- Priorities: Technology, Disability backlog, Initiative

Questions & Answers

POS-015

ATTORNEY OR PARTY WITHOUT ATTORNEY *(Name, State Bar number, and address)*:
Deborah B. Caplan SBN 196606; Lance H. Olson SBN 077634
OLSON HAGEL & FISHBURN LLP
555 Capitol Mall, Suite 1425
Sacramento, CA 95814
TELEPHONE NO.: 916/442-2952 FAX NO. *(Optional)*: 916/442-1280
E-MAIL ADDRESS *(Optional)*: deborah@olsonhagel.com
ATTORNEY FOR *(Name)*: Petitioners

FOR COURT USE ONLY

SUPERIOR COURT OF CALIFORNIA, COUNTY OF VENTURA
STREET ADDRESS: 800 S. Victoria Avenue
MAILING ADDRESS: P.O. Box 6489
CITY AND ZIP CODE: Ventura, CA 93006-6489
BRANCH NAME: Hall of Justice

PLAINTIFF/PETITIONER: EDWARD J. LACEY, et al.

DEFENDANT/RESPONDENT: MARK A. LUNN, et al

NOTICE AND ACKNOWLEDGMENT OF RECEIPT—CIVIL

CASE NUMBER: 56-2014-00454309-CU-WM-VTA

TO *(insert name of party being served)*: DEFENDANT Mark Lunn, Ventura County Clerk-Recorder/Registrar of Voters

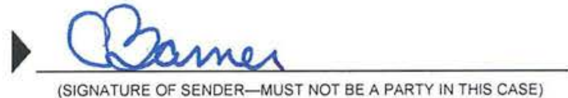
NOTICE

The summons and other documents identified below are being served pursuant to section 415.30 of the California Code of Civil Procedure. Your failure to complete this form and return it within 20 days from the date of mailing shown below may subject you (or the party on whose behalf you are being served) to liability for the payment of any expenses incurred in serving a summons on you in any other manner permitted by law.

If you are being served on behalf of a corporation, an unincorporated association (including a partnership), or other entity, this form must be signed by you in the name of such entity or by a person authorized to receive service of process on behalf of such entity. In all other cases, this form must be signed by you personally or by a person authorized by you to acknowledge receipt of summons. If you return this form to the sender, service of a summons is deemed complete on the day you sign the acknowledgment of receipt below.

Date of mailing: June 23, 2014

ANN BARNER
(TYPE OR PRINT NAME)


(SIGNATURE OF SENDER—MUST NOT BE A PARTY IN THIS CASE)

ACKNOWLEDGMENT OF RECEIPT

This acknowledges receipt of ***(to be completed by sender before mailing)***:

1. ☐ A copy of the summons and of the complaint.
2. ☑ Other *(specify)*:
Summons; First Amended Petition for Writ of Mandate, etc.; Notice of Case Assignment; ADR packet

(To be completed by recipient):

Date this form is signed:

(TYPE OR PRINT YOUR NAME AND NAME OF ENTITY, IF ANY, ON WHOSE BEHALF THIS FORM IS SIGNED)

(SIGNATURE OF PERSON ACKNOWLEDGING RECEIPT, WITH TITLE IF ACKNOWLEDGMENT IS MADE ON BEHALF OF ANOTHER PERSON OR ENTITY)

POS-015

ATTORNEY OR PARTY WITHOUT ATTORNEY *(Name, State Bar number, and address)*:	FOR COURT USE ONLY
Deborah B. Caplan SBN 196606; Lance H. Olson SBN 077634 OLSON HAGEL & FISHBURN LLP 555 Capitol Mall, Suite 1425 Sacramento, CA 95814 TELEPHONE NO.: 916/442-2952 FAX NO. *(Optional)*: 916/442-1280 E-MAIL ADDRESS *(Optional)*: deborah@olsonhagel.com ATTORNEY FOR *(Name)*: Petitioners	
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PLAINTIFF/PETITIONER: EDWARD J. LACEY, et al. DEFENDANT/RESPONDENT: MARK A. LUNN, et al	
NOTICE AND ACKNOWLEDGMENT OF RECEIPT—CIVIL	CASE NUMBER: 56-2014-00454309-CU-WM-VTA

TO *(insert name of party being served)*: DEFENDANT Ventura County Board of Supervisors

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(SIGNATURE OF PERSON ACKNOWLEDGING RECEIPT, WITH TITLE IF ACKNOWLEDGMENT IS MADE ON BEHALF OF ANOTHER PERSON OR ENTITY)

POS-015

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Deborah B. Caplan SBN 196606; Lance H. Olson SBN 077634 OLSON HAGEL & FISHBURN LLP 555 Capitol Mall, Suite 1425 Sacramento, CA 95814 TELEPHONE NO.: 916/442-2952 FAX NO. (Optional): 916/442-1280 E-MAIL ADDRESS (Optional): deborah@olsonhagel.com ATTORNEY FOR (Name): Petitioners	FOR COURT USE ONLY
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PLAINTIFF/PETITIONER: EDWARD J. LACEY, et al. DEFENDANT/RESPONDENT: MARK A. LUNN, et al	
NOTICE AND ACKNOWLEDGMENT OF RECEIPT—CIVIL	CASE NUMBER: 56-2014-00454309-CU-WM-VTA

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Date of mailing: June 23, 2014

ANN BARNER
(TYPE OR PRINT NAME)

(SIGNATURE OF SENDER—MUST NOT BE A PARTY IN THIS CASE)

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   Summons; First Amended Petition for Writ of Mandate, etc.; Notice of Case Assignment; ADR packet

(To be completed by recipient):

Date this form is signed:

(TYPE OR PRINT YOUR NAME AND NAME OF ENTITY, IF ANY, ON WHOSE BEHALF THIS FORM IS SIGNED)

(SIGNATURE OF PERSON ACKNOWLEDGING RECEIPT, WITH TITLE IF ACKNOWLEDGMENT IS MADE ON BEHALF OF ANOTHER PERSON OR ENTITY)

SUM-100

SUMMONS
(CITACION JUDICIAL)

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

VENTURA SUPERIOR COURT
FILED
JUN 20 2014
MICHAEL D. PLANET
Executive Officer and Clerk
By: C. RIOS, Deputy

NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):

MARK A. LUNN, Ventura County Clerk-Recorder/Registrar of Voters; and the VENTURA COUNTY BOARD OF SUPERVISORS

YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):

EDWARD J. LACEY; LEIGHTON ARMSTRONG; SCOTT A. PETERSON; ERIC MIRABELLI; and CITIZENS FOR RETIREMENT SECURITY, a California political committee

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (*www.courtinfo.ca.gov/selfhelp*), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (*www.lawhelpcalifornia.org*), the California Courts Online Self-Help Center (*www.courtinfo.ca.gov/selfhelp*), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of $10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case.

¡AVISO! Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. AVISO: Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de $10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:
(El nombre y dirección de la corte es):

CASE NUMBER: *(Número del Caso):* 56-2014-00454309-CU-WM-VTA

Ventura County Superior Court
800 S. Victoria Avenue, Ventura, CA 93006

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
Deborah Caplan, OLSON HAGEL & FISHBURN LLP, 555 Capitol Mall, #1425, Sacramento, CA 95814

DATE: *(Fecha)* JUN 20 2014 — MICHAEL D. PLANET, Clerk, by *(Secretario)* C. RIOS, Deputy *(Adjunto)*

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)
(Para prueba de entrega de esta citatión use el formulario Proof of Service of Summons, (POS-010)).

[SEAL]

NOTICE TO THE PERSON SERVED: You are served
1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of *(specify)*:
3. ☐ on behalf of *(specify)*:

under: ☐ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)
☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)
☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)
☐ other *(specify)*:

4. ☐ by personal delivery on *(date)*:

Form Adopted for Mandatory Use
Judicial Council of California
SUM-100 [Rev. July 1, 2009]

SUMMONS

Code of Civil Procedure §§ 412.20, 465
www.courtinfo.ca.gov

Deborah B. Caplan [SBN 196606]
Lance H. Olson [SBN 077634]
Matthew R. Cody [SBN 267191]
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Sacramento, CA 95814
Telephone: (916) 442-2952
Facsimile: (916) 442-1280

Attorneys for Petitioners

VENTURA SUPERIOR COURT
FILED
JUN 20 2014
MICHAEL D. PLANET
Executive Officer and Clerk
By: __________, Deputy
C. RIOS

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF VENTURA

EDWARD J. LACEY; LEIGHTON ARMSTRONG; SCOTT A. PETERSON; ERIC MIRABELLI; and CITIZENS FOR RETIREMENT SECURITY, a California political committee, Petitioners/Plaintiffs, v. MARK A. LUNN, Ventura County Clerk-Recorder/Registrar of Voters; and the VENTURA COUNTY BOARD OF SUPERVISORS, Respondents/Defendants, DAVID P. GRAU, RICHARD C. THOMSON and JAMES MCDERMOTT, Real Parties in Interest.	**CASE NO.:** 56-2014-00454309-CU-WM-VTA **FIRST AMENDED** **PETITION FOR WRIT OF MANDATE, COMPLAINT FOR JUDICIAL DECLARATION THAT PROPOSED INITIATIVE MEASURE CANNOT LAWFULLY BE SUBMITTED TO VOTERS, AND INJUNCTIVE RELIEF TO REMOVE MEASURE FROM NOVEMBER 2014 BALLOT** **(CCP §§ 1085, 1060 and 526)** **ELECTION MATTER** **EXPEDITED ACTION REQUESTED** DATE: TIME: JUDGE: DEPT.:

BY FAX

OLSON HAGEL & FISHBURN LLP
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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF VENTURA

EDWARD J. LACEY; LEIGHTON ARMSTRONG; SCOTT A. PETERSON; ERIC MIRABELLI; and CITIZENS FOR RETIREMENT SECURITY, a California political committee,

Petitioners/Plaintiffs,

v.

MARK A. LUNN, Ventura County Clerk-Recorder/Registrar of Voters; and the VENTURA COUNTY BOARD OF SUPERVISORS,

Respondents/Defendants,

DAVID P. GRAU, RICHARD C. THOMSON and JAMES MCDERMOTT,

Real Parties in Interest.

CASE NO.: 56-2014-00454309-CU-WM-VTA

FIRST AMENDED
PETITION FOR WRIT OF MANDATE, COMPLAINT FOR JUDICIAL DECLARATION THAT PROPOSED INITIATIVE MEASURE CANNOT LAWFULLY BE SUBMITTED TO VOTERS, AND INJUNCTIVE RELIEF TO REMOVE MEASURE FROM NOVEMBER 2014 BALLOT

(CCP §§ 1085, 1060 and 526)

ELECTION MATTER
EXPEDITED ACTION REQUESTED

DATE:
TIME:
JUDGE:
DEPT.:

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PETITIONERS/PLAINTIFFS EDWARD J. LACEY, LEIGHTON ARMSTRONG, SCOTT A. PETERSON, ERIC MIRABELLI, and CITIZENS FOR RETIREMENT SECURITY allege:

INTRODUCTION

Petitioners/Plaintiffs in this case ask the Court to determine whether a proposed initiative measure may lawfully be submitted to the voters of Ventura County. The measure, titled "Repeal of County Employee Pension Plan and Creation of Defined Contribution Plan for New Employees" ("INITIATIVE") would immediately "repeal" the County's decades-long participation in the State-created system for county employee retirement benefits, as well as death and disability benefits, without providing a replacement system for current employees or retirees. While acknowledging a continuing legal obligation to those individuals, the INITIATIVE provides no mechanism or structure for meeting those obligations. For employees hired after July, 2015, the INITIATIVE would substitute a 401k-type plan with extremely limited County contributions, and would authorize the County Board of Supervisors ("BOS") to develop a death and disability plan without providing any substantive terms regarding the amount of those benefits.

Petitioners submit that the INITIATIVE cannot lawfully be presented to voters because it suffers from several fatal flaws. First and foremost, the actions contemplated by the INITIATIVE are not permitted by State law governing county employee retirement. The County long ago opted into the State's county retirement system and cannot unilaterally "repeal" its participation in that system without State legislative authorization that adequately protects the rights of employees who have participated in the system over the years. While County participation was initially optional, once it opted into the particular statutory scheme at issue, it became subject to the terms of State law, and those terms cannot be unilaterally repudiated either by the Board of Supervisors or the voters acting through initiative. Significantly, the Ventura County Counsel recently confirmed that the County's present system of retirement and death and disability benefits is part of a larger State program and cannot be altered by an individual county.

Apart from the fundamental conflict with State retirement law, the INITIATIVE also conflicts with State law regarding collective bargaining because it would prevent the BOS from fulfilling its duties under Meyers-Milias-Brown Act ("MMBA") to bargain in good faith with County employees

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over wages and other critical conditions of employment. Additionally, the INITIATIVE is impermissible because the California Constitution and Legislature have delegated exclusive authority to county boards of supervisors to provide for compensation and conditions of employment for county employees and such decisions are therefore outside the scope of initiative. As a related matter, the INITIATIVE would impermissibly impair essential government functions by interfering with the Board of Supervisors' budgetary and hiring responsibilities. Finally, the INITIATIVE is invalid because it is unreasonably vague and fails to provide the necessary legislative direction on two critical elements – the manner in which the vested rights of existing employees and retirees will be protected, and the nature of the death and disability benefits to be offered to employees hired in the future.

THE NEED FOR PRE-ELECTION REVIEW IN THIS CASE

Although the courts have often expressed a preference for reviewing the legality of initiatives after an election, the Supreme Court has been clear that pre-election judicial review may be necessary and appropriate in some circumstances. Where, as here, the proposed initiative impermissibly conflicts with State law, is beyond the voters' power to act through initiative, and/or would significantly interfere with essential governmental functions, the courts have a duty to remove the matter from the ballot. "The presence of an invalid measure on the ballot steals attention, time and money from the numerous valid propositions on the same ballot. It will confuse some voters and frustrate others, and an ultimate decision that the measure is invalid, coming after the voters have voted in favor of the measure, tends to denigrate the legitimate use of the initiative procedure." (*American Federation of Labor v. Eu* (1984) 36 Cal.3d 687, 697.)

The illegality of the INITIATIVE is strictly a question of law and thus particularly suited for pre-election review. Deferring review of the INITIATIVE until after the election would potentially waste tens of thousands of dollars of taxpayer money incurred in the process of preparing such initiative for the ballot. It is likely to cost taxpayers more than $10,000 to place the INITIATIVE on the November 2014 ballot, plus an additional amount in time and staff resources to comply with all the elections procedures, respond to inquiries from the public and otherwise prepare for the election. Upon information and belief, the County will begin incurring costs related to preparation of the ballot materials beginning in mid- to late July, 2014. In addition, proponents and opponents of the measure

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will spend countless more in support of their respective positions, and the measure is likely to create significant divisions within the community.

Pre-election review is additionally important in this case because allowing such a legally flawed measure to be submitted to voters would create a potential – and unnecessary – crisis in labor relations in the County. In the absence of pre-election review, both the County and its employees will be required to spend time and resources to prepare for the contingency that the INITIATIVE might be adopted by voters, thereby immediately impacting all aspects of the employment relationship. The potential threat caused by the INITIATIVE's failure to provide any mechanism for protecting the vested rights of current employees and retirees and its draconian limits on future compensation make it likely that many current employees will consider leaving, or will leave, County service. In addition, even the prospect of the measure being adopted by voters will have an immediate adverse impact on the County's ability to hire new employees, particularly law enforcement and fire personnel, who require longer lead times for the process of training and hiring.

In sum, the need for pre-election review of the INITIATIVE is manifest. As one appellate court has explained:

> If an initiative ordinance is invalid, no purpose is served by submitting it to the voters. The costs of an election – and of preparing the ballot materials necessary for each measure – are far from insignificant. [ ] Proponents and opponents of a measure may expend large sums of money during the election campaign. Frequently, the heated rhetoric of an election campaign may open permanent rifts in a community. That the people's right to directly legislate through the initiative process is to be respected and cherished does not require the useless expenditure of money and creation of emotional community divisions concerning a measure which is for any reason legally invalid.

(*Citizens for Responsible Behavior v. Superior Court* (1991) 1 Cal.App.4th 1013, 1023-24.)

Petitioners/Plaintiffs bring this action in order to obtain a judicial determination that the INITIATIVE may not be submitted to voters, and to obtain an order directing the elections officials to remove the INITIATIVE from the November, 2014 ballot.

PARTIES

1. Petitioner/Plaintiff Edward J. Lacey is, and was at all times mentioned herein, a registered voter, property owner, and taxpayer in the County of Ventura.

2. Petitioner/Plaintiff Leighton Armstrong is, and was at all times mentioned herein, a

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registered voter, property owner, and taxpayer in the County of Ventura. Petitioner/Plaintiff Armstrong worked for approximately 32 years as an employee of Ventura County. Since his retirement as an investigator for the Ventura County District Attorney's Office, Petitioner/Plaintiff Armstrong has continuously received retirement benefits from Ventura County Employees' Retirement Association ("VCERA"), the agency that administers retirement benefits and services to Ventura County's active and retired employees.

3. Petitioner/Plaintiff Scott A. Peterson is, and was at all times mentioned herein, a registered voter and taxpayer in the County of Ventura. Petitioner/Plaintiff Peterson is currently employed by the County of Ventura as an investigator for the Ventura County District Attorney's Office. By virtue of his employment with the County of Ventura, Petitioner/Plaintiff Peterson is an active member of VCERA.

4. Petitioner/Plaintiff Eric Mirabelli is, and was at all times mentioned herein, a property owner and taxpayer in the County of Ventura. Petitioner/Plaintiff Mirabelli is currently employed by the Ventura Regional Sanitation District. By virtue of his employment with the District and the District's decision to become part of VCERA, Petitioner/Plaintiff Mirabelli is a member of VCERA.

5. Petitioner/Plaintiff Citizens for Retirement Security ("CRS") is a coalition that includes the following groups: California Nurses Association; Ventura County Professional Firefighters Association; Ventura County Deputy Sheriffs' Association; Ventura County Sheriffs Correctional Officers Association; Ventura County Professional Peace Officers Association; Specialized Peace Officers Association of Ventura County; Ventura Employees Association; Criminal Justice Attorneys Association of Ventura County; International Union of Operating Engineers, Local 501; and Service Employees International Union, Local 721. CRS is organized as a political committee under state law and has been assigned identification number 1364624 by the California Fair Political Practices Commission.

6. Respondent/Defendant Mark A. Lunn is the Ventura County Clerk and Recorder/ Registrar of Voters and is responsible for the conduct of elections within Ventura County. Respondent/Defendant has certified that the INITIATIVE petition contained to qualify for placement on the November 2014 ballot unless the BOS take action to adopt the INITIATIVE before that time.

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Respondent/Defendant Lunn is responsible for the general conduct of the election and the canvassing of election results and, upon information and belief, intends to place the INITIATIVE on the November, 2014 general election ballot unless directed to do otherwise by this Court. Respondent/Defendant Lunn is sued in his official capacity only.

7. Respondent/Defendant Ventura County Board of Supervisors is the legal entity responsible for the governance of Ventura County and constitutionally responsible for setting the terms and conditions of employment for county personnel, subject only to State law. On June 17, 2014, the Board of Supervisors voted to place the INITIATIVE on the November 2014 ballot.

8. Real parties David P. Grau, Richard C. Thomson and James McDermott are the proponents of the INITIATIVE.

JURISDICTION

9. The court has jurisdiction over Petitioners/Plaintiffs' request for a writ of mandate pursuant to Code of Civil Procedure section 1085.

10. The Court has jurisdiction over Petitioners/Plaintiffs' claim for declaratory relief pursuant to Code of Civil Procedure section 1060.

11. The Court has jurisdiction over Petitioners/Plaintiffs' claim for injunctive relief pursuant to Code of Civil Procedure sections 526 and 526a.

ALLEGATIONS

Background of County Employee Retirement Law

12. As subdivisions of the State, the California Constitution provides that "[t]he Legislature shall provide for county powers…" (Cal. Const., art. XI, § 1.) Although charter counties have somewhat more authority over local affairs, general law counties may not enact local laws that conflict with State law. (See Cal. Const., art. XI, § 7 [counties may enact local laws not in conflict with general laws].)

13. Ventura County is a general law county.

14. In 1937, the Legislature enacted the County Employees Retirement Law ("CERL") "to recognize a public obligation to county and district employees who become incapacitated by age or long service in public employment and its accompanying physical disabilities by making provision for

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retirement compensation and death benefits as additional elements of compensation for future services." (Gov. Code, § 31451, emphasis added.) CERL is an enabling act, meaning that its provisions do not become operative in a county until the county takes action to accept its provisions.

15. CERL provides the structure for a county employee retirement trust fund in each county that accepts the provisions. As amended over the years, it now provides a variety of benefit levels available to participating counties with specified contributions by employees and the counties, administrative mechanisms for determining retirement benefits as well as death and disability benefits, and for the investment of retirement trust funds and tax exempt status for such funds. CERL was amended most recently by the Public Employees' Pension Reform Act ("PEPRA") in 2012-13 to add several cost-control provisions applicable primarily to new county employees first hired on or after January 1, 2013 including, but not limited to, a reduced benefit structure, a narrower definition of compensation upon which retirement benefits may be calculated, and county and employee contributions determined on the basis of equal sharing of the normal cost of the benefits. (See Gov. Code, §§ 7522-7522.74.) PEPRA also imposed some limitations on existing county employees, including new limitations on the ability of CERL members to return to work on a part-time basis with their former employer after retirement while remaining retired and a prohibition of the permissive purchase of additional service credit under specified circumstances.

16. CERL also provides an administrative structure by which the benefits are determined and administered in each participating county. It provides for the composition of the retirement boards, defines the scope of their duties, imposes an obligation on board members to act as fiduciaries, and requires board members to perform periodic accounting and actuarial functions in order to ensure the financial security of the county's retirement system.

17. A county may opt into the provisions of CERL by adopting an ordinance accepting its provisions by either a majority vote of the electors voting on the proposition at a special or general election, or by a four-fifths vote of the board of supervisors. (Gov. Code, § 31500.) Once a county has opted into CERL, it must comply with its regulatory provisions (although some provisions are optional) and it must provide benefits in accordance with the terms of the plans provided for by State statute or obtain legislative approval for any modification.

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18. When a county opts into CERL, "each person entering the county employ becomes a member [of the retirement association] on the first day of the calendar month after his entrance into the service…" (Gov. Code, §§ 31551-31552.) As a consequence of this language, when a county decides to participate in CERL, it is committing to participation in that system not only for current employees but for future employees as well.

19. Counties are not required to join CERL, but once a county has opted into CERL, there is no provision in the law for subsequent withdrawal and no provision for dissolving or terminating a county retirement system set up in accordance with CERL. A county therefore requires statutory authorization from the State Legislature before it can terminate an existing CERL retirement system.

20. Counties have also been given the option of joining the state Public Employee Retirement System ("PERS"). At this point, 20 of California's 58 counties have opted into CERL, with most of the remaining counties in PERS. San Francisco, a charter city/county, has created an independent system and San Luis Obispo County has created a pension trust under Government Code sections 53215 *et seq*.

21. In 1946, the BOS of Ventura County ("County") voted to accept the provisions of CERL and placed it before the voters, who also approved it. The ordinance was designated as No. 401, and subsequently codified in Ventura Ordinance No. 1221. The Ventura County Employees' Retirement Association ("VCERA") was established in 1947 and has operated continuously thereafter. VCERA has a governing board ("VCERA Board") that consists of nine members. VCERA currently has approximately $3.7 billion in assets and a total membership of more than 16,000 active, inactive and retired employees of Ventura County. In addition to County employees, VCERA currently includes the Ventura County court personnel and personnel of several special districts: the Ventura County Air Pollution Control District, the Ventura Regional Sanitation District, and the Ventura County Fire Protection District.

THE INITIATIVE

22. In early 2014, the INITIATIVE was filed with the County. County Counsel gave it the title "Repeal of County Employee Pension Plan and Creation of Defined Contribution Plan for New Employees," and it was subsequently circulated for signatures. (A true copy of the INITIATIVE is attached as Exh. A.)

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1 23. On June 2, 2014, the Ventura County Clerk –Recorder/Registrar of Voters certified that
2 the petitions in support of the INITIATIVE contained a sufficient number of signatures to qualify for
3 presentation to county voters.
4 24. On June 10, 2014, the County Clerk presented his certification of the INITIATIVE to the
5 BOS.
6 25. Unless relieved of such duty by the courts, State law requires the BOS to either adopt the
7 INITIATIVE without alteration, or submit the INITIATIVE, without alteration, to County voters at the
8 November 2014 general election. (See Elec. Code, § 9118.) On June 17, 2014, the BOS voted to place
9 the measure on the ballot, although four of the five members expressly did so for the purpose of
10 allowing the Court to determine the legal validity of the INITIATIVE.
11 26. The proposed INITIATIVE would "repeal" measure No. 401 and Ordinance No. 1221
12 and establish a "new retirement system for all new officers and employees of the County of Ventura."
13 (Proposed § 1221.) Its terms may only be "amended, modified or repealed by a Vote of the People."
14 (*Id.*)
15 27. While acknowledging existing vested rights, the INITIATIVE would immediately and
16 unequivocally repeal Ventura's participation in CERL; nothing in the text of the INITIATIVE creates
17 any new authority under which VCERA or the existing Defined Benefit Plan would continue to operate
18 once the County's authority to participate in CERL is "repealed." Nor does the INITIATIVE provide
19 any mechanism for ensuring the County's ongoing fulfillment of the vested rights it acknowledges.
20 28. The INITIATIVE's definitions of "county," "employee" and "member" include not only
21 Ventura County employees, but also those persons working for "subsidiary agencies" or governmental
22 entities covered by either the existing Defined Benefit Plan or the proposed Defined Contribution Plan.
23 It will therefore not only terminate participation in CERL for future Ventura County employees, but also
24 for employees of the Ventura Air Pollution Control District and Ventura Regional Sanitation District,
25 and for employees of other governmental entities currently participating in VCERA (e.g., court
26 personnel).
27 29. The INITIATIVE proposes a new Defined Contribution Plan modeled after a basic 401k
28 plan and would require all employees hired after July 2015 to be enrolled in the new Defined

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Contribution Plan. (§§ 1221, 1223(a).)

30. Under the INITIATIVE, the VCERA Board would have no authority for administration of the Defined Contribution Plan, which would be run by a "Plan Administrator" appointed by the BOS, who would have the authority and power "to select a reasonable number of investment choices to allow employees a variety of investment vehicles to choose from when investing their contributions made to their individual account within the Plan." (§§ 1222(j), 1223, 1227.)

31. The County's contributions to the Defined Contribution Plan would be limited to 4% of compensation for employees enrolled in Social Security; 5% for public safety employees who are enrolled in Social Security; and 11% for public safety employees not enrolled in Social Security. These amounts could not be changed by the BOS.

32. The INITIATIVE would also authorize the BOS to establish a new death and disability plan for all employees hired on or after July 1, 2015, with the manner of administration to be determined by the BOS. (§ 1227.) No parameters are provided for these benefits. The VCERA Board would purportedly continue to administer the death and disability plans for all employees hired before July 1, 2015, although it is unclear under what authority the VCERA Board would continue to operate once the County's participation in CERL is "repealed." (*Id.*)

33. While the BOS would be required to carry out the intent of the INITIATIVE "by ordinance and such other enactments as are necessary and appropriate," it would also be "prohibited from creating any additional retirement plans." (§ 1223(a), (f).) Any new, different, or additional retirement plan would therefore have to be created by the voters, and the BOS would be deprived of its authority to take these actions.

34. The INITIATIVE would impose a five-year limitation on increases to pensionable compensation by requiring that, for existing employees in the Defined Benefit Plan, the County's initial bargaining position in negotiations on a new or extended MOU must be no increases in pensionable compensation. (§ 1233.) If County representatives want to increase pensionable pay, any tentative agreement must be approved by the BOS with separate findings that the Defined Benefit Plan has "adequate funding to allow for any increase in long-term pension costs" which "shall be supported by actuarial and accounting justifications." (*Id.*)

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35. The term "adequate funding to allow for any increase in long-term pension costs" is not defined. Upon information and belief, based on the nature of defined benefit plans and fluctuating assets, the required "actuarial and accounting justification" will be impossible to obtain as a practical matter.

The INITIATIVE Conflicts With State Law Governing Public Employee Retirement Benefits

36. Because CERL is an enabling act, when the County opted into CERL in 1946, it became subject to CERL's provisions.

37. CERL provides that all employees at the time the provisions become operative in a county immediately become members of the retirement association and "each person entering the county employ becomes a member [of the retirement association] on the first day of the calendar month after his entrance into the service…" (Gov. Code, §§ 31551-31552.) This means that the County's then-employees became members when Ventura opted in, but also that all new employees automatically become members of the retirement system as they enter County employment.

38. CERL provides various levels ("tiers") of retirement benefits and allows counties to opt into one or more of those. Each county is required to comply with the terms of the one of the statutorily authorized plans. As a result, if a county wants to implement a new plan or other variation from CERL's requirements, the county is required to obtain specific legislative authorization in order to do so. Numerous counties, including Ventura, have done precisely that over the years.

39. The County obtained legislation authorized in 1980 to offer a new second tier for employees who began work after July 1, 1980. (Gov. Code, § 31485.) It also obtained legislative authorization in 1985 for a third tier for employees who began work after January 1, 1986. (Gov. Code, § 31511 *et seq*.) Although statutorily authorized, the provisions for the third tier require a negotiated and executed MOU reflecting the new terms and approval by the BOS before they may become effective, and have not been implemented to date. (See Gov. Code, § 31511(i).)

40. Unlike some other state-authorized retirement systems that allow a board of supervisors to terminate participation (see, e.g., Gov. Code, §§ 31931, 32231), there is no provision for a county to "opt out" or terminate its participation in CERL without additional legislative authority. In addition,

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other statutes that allow for withdrawal require certain financial arrangements to be in place to protect plan beneficiaries. (*Id.*) Likewise, entities may withdraw from PERS but are required to fund their outstanding liability as a pre-condition to withdrawal. (See, e.g., Gov. Code §§ 2570-20840; 2 CCR § 588.7.) In contrast, CERL requires statutory authorization tailored to each county.

41. Indeed, when the County wanted to terminate its participation in CERL for new employees in 1980, it was required to seek legislative approval to do so. A proposal for statutory authorization was contained in Senate Bill 1117 ("SB 1117"). The Assembly Committee Analysis for SB 1117 stated:

> Present '37 Act law requires that existing employees, and new employees, of a county participating under '37 Act law, be members of the county retirement system. SB 1117 would permit Ventura County, by resolution of the County Board of Supervisors, to exclude all new employees (other than those in classes eligible for safety members) from membership in the retirement system. The measure would also establish guidelines for possible alternative benefit plans for such employees.

42. The draft legislation made clear that it was intended to be a "study" and would not apply to any other county. Ultimately, the provision that would have allowed the County to terminate its participation for new employees was deleted from the legislation (although the third tier was approved that year). In addition, the BOS was authorized to allow current employees to voluntarily terminate "increased" benefits approved by the board, but not "basic" benefits. (See Gov. Code, § 31485.)

43. CERL thus continues to make all new county employees members of the existing retirement system in the absence of statutory authorization to treat them differently. It allows for the Board of Supervisors to repeal of certain optional provisions but not of county participation in CERL generally. (See Gov. Code, § 31483.) A separate provision requires that all new court employees automatically become members of the system once the Board of Supervisors includes court personnel, as was done in Ventura. (Gov. Code, § 31445.) The INITIATIVE'S attempt to repeal or terminate the County's participation in CERL for new county employees and new court employees without legislative authorization is therefore contrary to state law and legally invalid.

44. By treating future employees differently, the INITIATIVE also conflicts with Government Code section 31485.9(b), which prohibits a county from treating some subgroups of the general members differently from others, unless it is pursuant to a resolution or ordinance adopted

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pursuant to an approved MOU negotiated in accordance with the MMBA. The INITIATIVE would treat existing employees differently from new employees without a negotiated MOU.

45. Personnel of special districts may become members of the county retirement system if their governing board adopts a resolution including them in the retirement association and the BOS consents. (Gov. Code, § 31557.) The governing bodies of the Ventura County Air Pollution Control District and Ventura Regional Sanitation District have voted to join VCERA and the BOS has voted to include them. The BOS has likewise voted to include Fire Protection District employees in VCERA. CERL provides that employees of special districts may only be withdrawn from the system by a resolution of their governing body following a petition signed by the majority of the employees indicating that they wish to withdraw. (Gov. Code, § 31564.) State law also requires the return of all employee contributions and payment of the district's portion of any unfunded liability. (Gov. Code, §§ 31564-31564.2.)

46. By repealing the County's participation in CERL, the INITIATIVE would also violate State law by terminating the participation of employees of the Ventura County Air Pollution Control District, the Ventura Regional Sanitation District, and the Ventura County Fire Protection District without a withdrawal petition signed by the majority of the employees and without providing for any of the financial arrangements required by law. By defining "county," "member" and "employee" broadly to include personnel of these districts, the INITIATIVE also unlawfully attempts to regulate the retirement, death and disability benefits of entities not subject to the legislative control of the BOS.

47. The INITIATIVE is also contrary to law insofar as it prohibits the BOS from ever opting back into CERL in the future, contrary to the choice given by to each board of supervisors by the Legislature in Government Code section 31500, or from participating in a pension trust as authorized by Government Code section 53216.

The INITIATIVE Conflicts With The State's Collective Bargaining Laws

48. In 1968, the State enacted the Meyers-Milias-Brown Act (Gov. Code, §§ 3500 et seq., or "MMBA"), which sets out a structure for collective bargaining between public agencies and their employees. The California Supreme Court has indicated that "the procedures set forth in the MMBA are a matter of statewide concern, and are preemptive of contradictory local labor-management procedures."

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(*Voters for Responsible Retirement v. Board of Supervisors* (1994) 8 Cal.4th 765, 781.)

49. The MMBA expressly prohibits a governing body from "arriving at a determination of the policy or course of action" concerning employee wages, hours, or terms and conditions of employment *before* it has fully considered the proposals made by its recognized employee organizations." (Gov. Code, § 3505, emphasis added.) Moreover, a governing body is obligated to negotiate with its recognized public employee representatives with a "genuine desire to reach agreement." (*Claremont Police Officers Assn. v. City of Claremont* (2006) 39 Cal.4th 623, 630.)

50. The Initiative would conflict with the MMBA in the following ways: (1) by unilaterally limiting in advance the types and amount of compensation and other conditions of employment (e.g., pension benefits) that cannot be varied by negotiation; (2) by imposing caps in advance on the County's contribution to any defined contribution system; (3) by prohibiting the County from modifying the terms of the INITIATIVE or establishing any alternative retirement system; and (4) by prohibiting an increase in pensionable compensation for certain groups of existing VCERA members unless the BOS makes a finding that the Defined Benefit Plan "has adequate funding to allow for any increase in long-term pension costs," while allowing the County to define this term.

The INITIATIVE Would Interfere With Authority Conferred Exclusively on the Board of Supervisors to Determine Compensation and Terms of Employment

51. An initiative is impermissible if it seeks to exercise authority that has been conferred specifically on elected officials by the Constitution or the Legislature. (See, e.g., *Totten v. Board of Supervisors* (2006) 139 Cal.App.4th 826, 833.)

52. Article XI, section 1(b) of the State Constitution provides that each county's "*governing body* shall provide for the number, compensation, tenure, and appointment of employees." (Emphasis added.) This provision is an express delegation of authority exclusively to the board of supervisors for each county to determine employee compensation.

53. Article XI, section 1(b) uses the term "governing body" four different times. The courts have already determined that at least one reference to the "governing body" in section 1(b) represents an exclusive delegation to the board of supervisors. (*Meldrim v. Board of Supervisors* (1976) 57 Cal.App.3d 341, 344; *Jahr v. Casebeer* (1999) 70 Cal.App.4th 1250, 1255 ["In the context of article XI,

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section 1(b), 'governing body' can only refer to a local legislative body such as the Board"].)

54. The express delegation of authority to the BOS over compensation makes the use of an initiative impermissible and the proposed INITIATIVE unlawful.

55. The constitutional grant of authority has been implemented by the Legislature in Government Code section 25300, which states that the "board of supervisors shall provide for the … compensation … and conditions of employment of county employees."

56. Pension benefits are considered a form of compensation. (See *Sweesy v. Los Angeles County Peace Officers' Retirement Board* (1941) 17 Cal.2d 356, 360, quoting *O'Dea v. Cook* (1912) 176 Cal. 659, 661; see also 95 Ops.Cal.Atty.Gen. 31 ["Pension benefits are an element of a public employee's compensation."].)

57. Numerous provisions related to retirement benefits likewise refer specifically to the "governing body" or "board of supervisors."

58. The courts have concluded that a specific statutory reference to the "board of supervisors" is entitled to a "stronger" inference of exclusive delegation than a reference to the "governing body." (*Committee of Seven Thousand v. Superio Court* (1988) 45 Cal.3d 491, 504.)

59. A finding of exclusive delegation is buttressed if the subject is one of statewide concern. "[T]he Legislature's constitutional authority to restrict the right of local initiative or referendum generally derives from its partial preemption of local government authority pursuant to the fulfillment of a state mandate or objective." (*Citizens for Jobs & the Econ. v. County of Orange* (2002) 94 Cal.App.4th 1311, 1326, citation omitted.)

60. Delegation of exclusive authority to the board of supervisors to make specific compensation decisions for county employees, including appropriate retirement benefits, is supported by several state objectives, including: (1) the interest articulated in the MMBA in a predictable process for setting the terms of salaries and benefits; (2) the maintenance of stable employment relations; (3) the interest in protecting the boards of supervisors' fiscal and budgetary authority and ensuring they have adequate authority to adopt salaries and benefits in a way that allows them to attract and maintain critical personnel; and (4) the interest in ensuring that all retirement systems adequately protect employee's right to retirement income, that these systems meet appropriate fiduciary concerns, that the

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systems are sufficiently funded so that the "public obligation to county and district employees" for retirement compensation is met and that financial responsibility for retiree costs does not at some point shift to the State.

The INITIATIVE Impermissibly Interferes With Essential Government Functions

61. An initiative cannot be used where "the inevitable effect would be greatly to impair or wholly destroy the efficacy of some other governmental power, the practical application of which is essential." (*Simpson v. Hite* (1950) 36 Cal.2d 125, 134.) The INITIATIVE would impermissibly impair authority statutorily given to the BOS to determine the compensation and conditions of employment for County employees as well as responsibility for preparation of the annual County budget. (Gov. Code, §§ 25300 & 29080 *et seq.*)

62. The setting of a county budget is an essential government function and outside the scope of the initiative power. (*Geiger v. Board of Supervisors* (1957) 48 Cal.2d 832, 839.) Adopting a budget "entails a complex balancing of public needs in many and varied areas with finite financial resources available for distribution among those demands." (*Totten*, *supra*, 139 Cal.App.4th at 839.)

63. Employee salaries and benefits are the single largest expenditure in a county budget. Removing salaries and benefits from the authority of the BOS impermissibly interferes with the BOS' ability to establish and control the county budget. In addition, imposing limitations on certain benefits may create pressure to increase salaries, thus disrupting fiscal planning.

64. Although the INITIATIVE acknowledges that existing employees have a vested right to their benefits, it does not provide any mechanism for the County to meet those continuing obligations. By creating a "closed retirement system," i.e., a system in which there are no new members and therefore no new contributions, the County's cost to maintain the existing system is likely to increase because the applicable accounting rules will require the County to accelerate its payments on its unfunded liability, and because the shortened timeframe for operation may require the VCERA Board (or other entity authorized to make such determinations) to adopt a more conservative asset allocation over time that has a lower expected rate of return. These requirements will create new, unanticipated costs for the County and further interfere with the BOS' authority over fiscal planning.

65. The BOS is likewise responsible for ensuring that health and safety are adequately

protected in the County and for ensuring that appropriate personnel are hired to meet these responsibilities. The limitations imposed by the INITIATIVE would adversely affect the County's ability to hire and retain qualified personnel.

66. Under the INITIATIVE, retirement benefits would change from a secure, guaranteed lifetime retirement benefit to a contingent benefit that is entirely dependent upon the performance of the investments selected by each individual employee. Further, the amounts of employer contributions proposed in the INITIATIVE are substantially lower than the County contributions to the existing defined benefit plans currently available to new county hires and substantially less generous than those provided to employees of neighboring counties (Los Angeles, Santa Barbara, and San Luis Obispo). The INITIATIVE would make Ventura the only county in the State of California without a defined benefit plan. The existing death and disability benefits would be terminated for new employees and the terms of any future death and disability plan are unknown. This is likely to place the County at a significant competitive disadvantage with other counties and cities when recruiting prospective employees, particularly safety personnel. Alternatively, restrictions on benefits may result in the County being forced to offer significantly higher salaries for new employees in order to remain competitive.

67. The INITIATIVE would also impose a five year freeze on "pensionable pay" for certain employees in the existing plan unless the Board finds that the Defined Benefit Plan "has sufficient funding to allow for any increase in long-term pension costs." As a practical matter, this requirement will be impossible to meet, thus imposing a freeze on compensation for several years. This is also likely to adversely affect retention of current, experienced, employees.

68. Finally, the INITIATIVE would preclude the BOS from changing its terms, even if the County is unable to attract and retain essential employees.

The INITIATIVE Fails To Enact an Ordinance And Is Unreasonably Vague

69. An initiative can only enact a "legislative act," i.e., an act "which declare[s] a public purpose and make[s] provisions for the ways and means of its accomplishment." (*Hopping v. Council of Richmond* (1915) 170 Cal.605; *Fishman v. City of Palo Alto* (1978) 86 Cal.App.3d 506.)

70. Local action taken by a board of supervisors or county voters for the purpose of bringing the County under operation of a State enabling act, such as CERL, does not constitute a "legislative act."

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71. In addition, the INITIATIVE immediately "repeals" the County's participation in CERL. The terms of CERL currently define the benefits to be provided, the process for determining and paying those benefits, the level of death and disability benefits, and the authority of the VCERA Board to administer all aspects of the program. If adopted, the repeal would become effective shortly after the election results are certified, i.e., November, 2014. While the INITIATIVE acknowledges the vested rights of existing employees, it provides no mechanism for protecting those rights other than stating that the BOS may accomplish the "phase-out" of the current plan "by any lawful method." (§ 1228.) It provides absolutely no provisions that would guide such a "phase-out."

72. The INITIATIVE also eliminates the existing death and disability benefits for new employees. Section 1221(e) states that "a death and disability plan shall be established by the Board of Supervisors" for employees hired after July 2015, and that the administration of those benefits "shall be authorized in a manner determined by the Board of Supervisors." It provides no guidance to the BOS with respect to the amount of benefits to be provided.

73. The INITIATIVE provides no legislative guidance to the BOS and inadequate information to the voters about either how the rights of current employees and retirees will be protected or what the death and disability benefits of future employees will be. Each provision is critical to understanding the impact on both existing and future employees, but the terms are so vague as to render them unintelligible to voters considering the INITIATIVE. This failure renders the INITIATIVE invalid.

FIRST CAUSE OF ACTION

74. Petitioners/Plaintiffs re-allege and incorporate herein by reference paragraphs 1 through 73, inclusive, of the Petition/Complaint as though fully set forth herein.

75. The INITIATIVE is invalid for several reasons including, but not limited to, the following:

a. Critical provisions of the INITIATIVE conflict with State law and are not permitted by the terms of CERL or the MMBA;

b. The discretion to determine retirement benefits for county employees is exclusively delegated to the BOS as the governing body of the County and the exercise of such discretion is an administrative or executive function and not a legislative function subject to initiative;

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c. The provisions of the INITIATIVE impermissibly interfere with essential governmental functions;

d. The INITIATIVE does not validly propose to enact an ordinance because the necessary legislative directive is missing with respect to critical elements of the measure.

76. Respondent/Defendant BOS has a ministerial duty to either adopt the INITIATIVE without alteration or present the INITIATIVE, without alteration, to the County's voters on the November 4, 2014 general election ballot, absent a judicial order directing otherwise. On June 17, 2014, Respondent/Defendant BOS took action to place the INITIATIVE before the voters in November, 2014 despite its invalidity.

77. Absent a judicial order directing otherwise, upon information and belief, Respondent/Defendant Lunn will take the actions necessary to include the INITIATIVE on the November 4, 2014 general election ballot, including preparation of the ballot materials, beginning in late July, 2014.

78. Petitioners/Plaintiffs have a beneficial interest in ensuring that an invalid initiative measure, such as the INITIATIVE, not be placed on the November 4, 2014 general election ballot and in relieving Respondents/Defendants of their statutory duties regarding the INITIATIVE. They have no plain, speedy, or adequate remedy in the ordinary course of law.

79. An actual, present controversy exists as to whether the INITIATIVE cannot lawfully be submitted to voters for reasons including, but not limited to, the following:

a. Critical provisions of the INITIATIVE are contrary to State law;

b. The discretion to determine retirement benefits for county employees is exclusively delegated to the BOS as the governing body of the County and the exercise of such discretion is an administrative or executive function and not a legislative function subject to initiative;

c. The provisions of the INITIATIVE impermissibly interfere with essential governmental functions;

d. The INITIATIVE does not validly propose to enact an ordinance because it does not propose a legislative act, and because the necessary legislative directive is missing with respect to critical elements of the measure.

80. A judicial declaration pursuant to Code of Civil Procedure section 1060 is necessary and appropriate at this time in order to determine the rights of the parties and in particular whether the

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INITIATIVE may lawfully be submitted to the voters of the County and whether Defendant/ Respondents should be relieved of the legal obligation to submit the matter to the voters. In addition, a judicial declaration is necessary at this time to prevent the disruption of the public employment relationship in the County and the waste of taxpayer funds that will be required to place a matter before the voters that cannot lawfully be enacted.

81. Allowing voters to consider the INITIATIVE would involve a significant waste of public resources and would irreparably harm the residents of the County within the meaning of Code of Civil Procedure sections 526 and 526a. Pecuniary compensation would not afford adequate relief, and injunctive relief is therefore required.

PRAYER

WHEREFORE, Plaintiff prays for relief as follows:

1. That this Court issue a Peremptory Writ of Mandate commanding Respondents/Defendants to refrain from taking any action to present the INITIATIVE to County voters.

2. That this Court declare that the INITIATIVE is contrary to law and cannot lawfully be placed before the voters;

3. That this Court issue a permanent injunction prohibiting the INITIATIVE from being considered on the November 4, 2014 general election ballot;

4. For such other and further relief as the court deems proper.

Dated: June 20, 2014

Respectfully submitted,

OLSON HAGEL & FISHBURN LLP
Deborah B. Caplan
Lance H. Olson
Matthew R. Cody

By:
DEBORAH B. CAPLAN
Attorneys for Petitioners

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VERIFICATION

I, RICK SHIMMEL, am the treasurer of CITIZENS FOR RETIREMENT SECURITY and am authorized to make this declaration on its behalf. I hereby certify that I have read the foregoing **FIRST AMENDED PETITION FOR WRIT OF MANDATE, COMPLAINT FOR JUDICIAL DECLARATION THAT PROPOSED INITIATIVE MEASURE CANNOT LAWFULLY BE SUBMITTED TO VOTERS, AND INJUNCTIVE RELIEF TO REMOVE MEASURE FROM NOVEMBER 2014 BALLOT** and that the contents thereof are true and accurate to the best of my knowledge and belief.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: 6-20-14

RICK SHIMMEL

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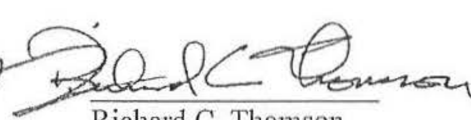
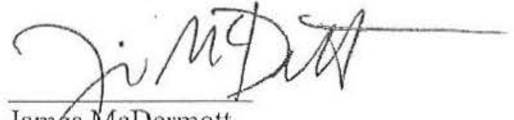
EXHIBIT A

Notice of Intention to Circulate Petition

Notice is hereby given by the persons whose names appear hereon of their intention to circulate the petition within the County of Ventura for the purpose of changing the County employee retirement plan from a Defined Benefit Plan to a Defined Contribution Plan as of July 1, 2015 for new employees, as well as to place new controls over the establishment of increases to pensionable compensation.

David P. Grau
1028 Bangor Lane
Ventura, CA 93001

Richard C. Thomson
132 Ventura Avenue
Oxnard, CA 93035

James McDermott
1050 S. Kimball Road
Ventura, CA 93004

PREAMBLE

A. Ventura County's required contribution to its defined pension plan has been climbing rapidly and diverting resources from important services. There is no end in sight to the growth of this massive expense under the current pension system.

B. The Voters of Ventura County realize they must take action to stop the growth of this unaffordable pension system. The Voters seek transparency, fairness and sustainability and want all new County employees to have a pension system that is no better and no worse than the private sector.

C. To curb runaway pension costs, the Voters hereby impose procedural limitations on benefit increases for certain classes of employees, along with rules that limit, for a five year period, pension-based salary increases.

An Initiative Petition for Submission to Voters of a Proposed Amendment to the County Employees Retirement Plan of the County of Ventura

To the Board of Supervisors of the County of Ventura:

We the undersigned, registered and qualified voters of the State of California, residents of the County of Ventura, pursuant to the California Constitution and the California Government Code, present to the Board of Supervisors of the County of Ventura, this petition and request that the following proposed amendment to the County Employees Retirement Plan be submitted to the registered and qualified voters of the County for their adoption or rejection at an election on a date to be determined by the Board of Supervisors.

The County Counsel has prepared the following title and summary of the chief purpose and points of the proposed measure:

COUNTY OF VENTURA INITIATIVE FOR FAIRNESS AND SUSTAINABILITY THROUGH THE ESTABLISHMENT OF A COUNTY EMPLOYEES' DEFINED CONTRIBUTION PLAN

(To Be Replaced by County Counsel's title)

The People of the County of Ventura do ordain as follows:

SECTION ONE. Ordinance Number 401, adopted by the voters on June 4, 1946, is repealed. Section 1221 of Division 1, Article 2 of the Ventura County Code of Ordinances is hereby repealed and replaced with Sections 1221 to 1233, inclusive, as follows:

Section 1221. Findings and Purpose

(a) There is hereby created, established and adopted a retirement system for all new officers and employees of the County of Ventura. The Board of Supervisors may adopt Ordinances and/or Resolutions necessary to implement this Ordinance. Notwithstanding the foregoing, this Ordinance may only be amended, modified or repealed by a Vote of the People.

(b) No new employees hired on or after July 1, 2015 will be enrolled in any defined benefit pension plan.

(c) New employees, hired on or after July 1, 2015, shall be enrolled in the County's Defined Contribution Plan, as established in this Ordinance, applying the same standards for eligibility for participation in the Plan as existed for the Defined Benefit Plan as of the Effective Date of this ordinance.

(d) No provisions in Ordinance Number 401, including Division 1, Article 2, Section 1221 of the Ventura County Code of Ordinances, shall apply to this Ordinance unless specifically incorporated hereunder. The purpose of this Ordinance is to phase out the Defined Benefit Plan established under Ordinance Number 401 and replace it with the Defined Contribution Plan established hereunder for new employees hired on or after July 1, 2015.

(e) All employees hired prior to July 1, 2015 shall remain eligible for existing death and disability benefits in place. This initiative shall have no impact on death and disability benefits in place as of the Effective Date of this initiative. For those employees hired on or after July 1, 2015, a death and disability plan shall be established by the Board of Supervisors with an effective date of July 1, 2015. The administration of the death and disability benefits for new employees hired on or after July 1, 2015 shall be authorized in a manner determined by the Board of Supervisors.

(f) An employee hired on or after July 1, 2015 may be enrolled in the Defined Benefit Plan instead of the Defined Contribution Plan if required by the terms of a Memorandum of Understanding in effect on July 1, 2015. No Memorandum of Understanding in effect on July 1, 2015 shall be extended or renewed beyond its original term in a manner that permits new employees to be enrolled in the Defined Benefit Plan.

Section 1222. Definitions.

The following words and phrases shall have the meaning ascribed to them in this initiative unless a different meaning is clearly indicated by the context:

(a) Administrator: Administrator shall hold the same meaning as Defined Contribution Plan Administrator.

(b) Base Hourly Salary: For the purposes of Section 1233, Base Hourly Salary shall include all components of an employee's hourly salary that are used by the County, as of the Operational Date of this initiative, to calculate the pension benefits and contributions required under the Defined Benefit Plan.

(c) Beneficiary: Persons entitled to receive a benefit from the Defined Contribution Plan.

(d) Board of Supervisors: Board of Supervisors shall mean the Ventura County Board of Supervisors.

(e) Compensation: For purposes of the Defined Contribution Plan established hereunder, compensation shall equal the employee's base hourly salary, excluding (to the extent permitted by applicable state or federal laws) any add-on elements of pay that may be authorized by the Board of Supervisors from time to time, multiplied by the employee's standard hours for each pay period. If there are no regular or weekly hours established by an MOU, Ordinance or resolution or other County policy, the Federal Fair Labor Standards Act regular working standard hours shall apply. Elements of pay to be excluded from Compensation include, by way of example and not limitation, special assignment pay, shift differentials, industrial leave, pay in lieu of annual leave, paid overtime (excluding scheduled overtime), workers' compensation benefits, long-term disability benefits, bonus awards, suggestion awards, termination payoffs for accrued sick leave and annual leave, retirement or deferred compensation benefit payments, any death benefits and any other element of pay required to be excluded by applicable state or federal laws. "Compensation" for any individual employee may not exceed the amount allowed for that employee under Internal Revenue Code section 401(a)(17), as amended, or under the California Public Employees' Pension Reform Act of 2013, as amended.

(f) County: County shall mean the county of Ventura in the State of California. "County" shall include all special districts, agencies and sub-governments that the Board of Supervisors serve as the governing board and/or any special districts, agencies and sub-governments that are part of any County retirement program.

(g) Date of Initial Hire: The Date of Initial Hire shall mean the date on which an employee is first hired, elected or appointed in service to the County, including employees of special districts that are subsidiary agencies that have employees enrolled in the County Defined Benefit Plan on or before the Operational Date of this Ordinance.

For any County employee who has previously been employed by the County but who left the County's employ before July 1, 2015 and is rehired by the County on or after July 1, 2015 the employee's Date of Initial Hire shall refer to the earliest date of employment by the County. No person hired by the County on or after July 1, 2015 shall be enrolled in the Defined Benefit Plan

under a reciprocity agreement unless the person had been a County employee prior to July 1, 2015.

(h) Defined Benefit Plan: The Defined Benefit Plan shall mean that retirement system known as the Ventura County Employees' Retirement Plan administered by the VCERA under the authority of Ordinance Number 401 as was codified in Ventura County Code of Ordinances Section 1221.

(i) Defined Contribution Plan: The Defined Contribution Plan shall mean any defined contribution plan authorized under the Internal Revenue Code and administered by the Defined Contribution Plan Administrator, and in this Ordinance shall mean and refer to that retirement system established hereunder and implemented by the Board of Supervisors.

(j) Defined Contribution Plan Administrator: Defined Contribution Plan Administrator shall mean and refer to the Administrator of the Defined Compensation Plan, appointed and authorized by the Board of Supervisors. The Administrator may be hired as an employee or by contract through a competitive bid for professional services. In addition, the Administrator may be a department of the County appointed for the purpose of administering the Defined Contribution Plan.

(k) Effective Date: This Initiative (Ordinance) will go into effect ten days after the declaration of the vote of the people in the manner provided by law.

(l) Employee: For the purposes of this Ordinance, Employee shall include all employees and officers of the County of Ventura, its subsidiary agencies, governmental entities and sub-governments that are qualified to be members of the Defined Benefit Plan or beneficiaries of the Defined Contribution Plan.

(m) Member: An officer or employee of the County of Ventura, including those working for subsidiary agencies covered by Ordinance Number 401, as codified in Section 1221 of the Ventura County Code of Ordinances, prior to the Operational Date of this Ordinance, who meets the membership requirements of the Plan as further defined in ordinance(s) establishing the benefits of the Plan and defined herein.

(n) Memorandum of Understanding ("MOU"): An "MOU" shall be an agreement regarding wages, hour and working conditions, of any kind, entered into by the County or its subsidiary agencies, governments or sub-governments with recognized bargaining groups under the authority of California Public Sector Labor Laws. An "MOU", for the purposes of this Ordinance, shall include an agreement, policy or arrangement in which the wages, hours and working conditions are established for unrepresented or management and confidential employees in the same or similar manner to an MOU with a recognized bargaining group.

(o) Operational Date: The "Operational Date" shall be July 1, 2015 as applied herein. This Ordinance will go into operation on July 1, 2015 by requiring the phasing out of the Defined Benefit Plan and the application of the Defined Contribution Plan to qualifying new employees with an Date of Initial Hire on or after July 1, 2015. The Defined Benefit Plan shall continue after the Operational Date only for eligible employees with a Date of Initial Hire before July 1,

2015 and other qualifying employees with vested rights in the Defined Benefit Plan as recognized herein.

(p) Ordinance: Ordinance shall mean the provisions of this people's initiative, including Section One which shall be codified in Division One, Article 2 of the Ventura County Code of Ordinances.

(q) Plan: The County of Ventura Employees' Defined Contribution Plan as adopted by the Board of Supervisors under authority of this Ordinance and any amendments approved by a vote of the People.

(r) Plan Administrator: Plan Administrator shall hold the same meaning as Defined Contribution Plan Administrator.

(s) Public Safety Member or Beneficiary: A Public Safety Member shall mean any officer or employee who is a firefighter, as defined in California Government Code Section 3251(a), or a public safety officer, as defined in California Government Code Section 3301, including public safety employees of special districts that are subsidiary agencies to the County and have public safety employees enrolled in the County Defined Benefit Retirement Plan.

(t) Retired Member: A member who has ceased employment with the County of Ventura and is receiving benefits from a VCERA-administered defined benefit pension or defined contribution withdrawals from the Plan. A Retired Member shall include surviving spouses and beneficiaries.

Section 1223. Establishment of the Ventura County Employee Defined Contribution Plan.

(a) A Defined Contribution Plan is established by this Ordinance with an Operational Date of July 1, 2015 when it is applicable to all qualifying County employees hired on or after that date who do not otherwise have vested rights to be part of the Defined Benefit Plan. The Board of Supervisors shall, by ordinance and such other enactments as are necessary and appropriate to carry out the intent of this Ordinance, implement the Defined Contribution Plan for the retirement of all County employees whose Date of Initial Hire is on or after the Operational Date of the Defined Contribution Plan.

(b) To the extent that this Plan applies to employee groups that are not a part of the Social Security System established under the United States Internal Revenue Code, it is the intent that this Plan shall meet the legal requirements established by the United States Internal Revenue Code in order to allow the County to retain Social Security Safe harbor status for those employee groups. For those employee groups that are not currently enrolled in the Social Security System, the County Board of Supervisors may enroll in the Social Security System , subject to any bargaining obligations with recognized bargaining groups affected by the action and applicable federal and state legal procedures, as long as the Defined Contribution Plan contributions do not exceed the limits as established in Section 1224 of this initiative.

(c) The Plan shall be a defined contribution plan, the benefits from which are payable on an employee's termination of service, retirement, disability or death. The amount of benefits payable to the employee shall be the balance in the employee's individual account, comprised of the accumulated contributions by the employer and employee, adjusted for investment gains and

losses allocated to the employee's individual account. The Defined Contribution Plan established pursuant to this Ordinance shall be designed and implemented to maintain its status as a qualified defined contribution pension plan that meets the requirements of applicable sections of the Internal Revenue Code.

(d) The Defined Contribution Plan Administrator shall develop the Defined Contribution Plan document and shall make recommendations to the Board of Supervisors with respect to the elements contained in the Defined Contribution Plan, including permitted levels of employee contribution. In addition to such elements of the Defined Contribution Plan as are specifically established in this Ordinance, the Defined Contribution Plan Administrator may recommend, and the Board of Supervisors may include such terms and provisions in the Defined Contribution Plan, including but not limited to terms concerning investment options, rollovers, loans, in-service withdrawals, breaks in service, forfeitures, or other terms and provisions customarily included in a qualified defined contribution plan, consistent with the best interests of the employees and sound fiscal management.

(e) To the extent allowed by law, the County may offer a Plan that allows employees to convert their defined contribution retirement account into an annuity or other County-approved investment instrument as of their date of retirement. No conversion under this section shall require the County to contribute additional funds to convert the defined contribution retirement account to another approved investment instrument.

(f) The County is prohibited from creating any additional retirement plans beyond that created under this Ordinance. Any additional retirement plans must be submitted to a vote for approval by the electorate.

Section 1224. County Contributions.

(a) For employees enrolled under the Defined Contribution Plan who are enrolled in Social Security, the County shall contribute no more than four percent (4%) of Compensation to the employees' account within the Defined Contribution Plan. For public safety employees enrolled under the Defined Contribution Plan who are not enrolled in Social Security, the County shall contribute no more than eleven percent (11%) of Compensation to the employees' account within the Defined Contribution Plan. For public safety employees who are enrolled in Social Security, the County shall contribute no more than five percent (5%) of Compensation to the employees' account within the Defined Contribution Plan.

(b) Any employee enrolled in the Defined Benefit Plan shall not be eligible for any employer contributions to any defined contribution plan, except employees with vested rights in any defined contribution plans that predate the Operational Date of this initiative.

Section 1225. Vesting.

Subject to applicable Internal Revenue Code requirements, as amended, the County contributions in the Defined Contribution Plan shall be immediately vested.

Section 1226. Implementation.

To the extent consistent with the intent of the electorate established in this Ordinance and custom and practice in the establishment and implementation of a defined contribution plan, the Board of Supervisors is authorized and empowered to enact, by ordinance or resolution as necessary, such changes to the Defined Contribution Plan as may be advised by the Defined Contribution Plan Administrator who shall act as a fiduciary to protect and advance the best interests of the employees participating in the Defined Contribution Plan.

Section 1227. Defined Contribution Plan Administrator.

(a) The Defined Contribution Plan Administrator shall be authorized and empowered to select a reasonable number of investment choices to allow employees a variety of investment vehicles to choose from when investing their contributions made to their individual account within the Plan.

(b) The Board of VCERA shall not have any authority or responsibility for administration of the Defined Contribution Plan. Said retirement board shall retain applicable jurisdiction over the payment and administration of death and disability benefits to employees covered under this Ordinance for service retirement purposes of Members in the Defined Benefit Plan. The Board of Supervisors shall determine the manner of administration of death and disability benefits for eligible Beneficiaries of the Defined Contribution Plan.

Section 1228. Phase Out Options for the Defined Benefit Plan.

Subject to applicable vested rights of employees and obligations to qualifying employees, the Defined Benefit Plan may be phased out by the Board of Supervisors, in accordance with applicable law, by any lawful method.

Section 1229. Adoption of Administrative Rules to Comply with Federal or State Law.

If at any time, federal or state law should become preemptive or controlling with respect to the provisions of this Plan, the Administrator shall have the power to adopt such rules as may be necessary to comply with such federal or state law. Such rules shall be adopted upon the advice and with the concurrence of the county counsel.

Section 1230. Funding of the Defined Contribution Fund.

(a) Creation of Funds. A separate and distinct fund is hereby created and established for record keeping, actuarial and other administrative purposes, one of which shall be known as the "Ventura County Employees' Defined Contribution Fund".

(b) The Ventura County Employees Defined Contribution Fund shall consist of:

(1) all monies appropriated to the fund by the Board of Supervisors for the purpose of required contributions;

(2) all contributions of County employees into their individual retirement accounts; and

(3) all interest, earnings and profits resulting from investment of such monies.

(c) Use of Funds. The monies in the Fund shall be used, other than for the investment thereof, exclusively for the benefit of the employees covered by this Ordinance in the manner required by law. Each individual sub-account held for the benefit of an individual employee shall be managed and maintained in accordance with the requirements of the Internal Revenue Code, applicable County laws and policies and any applicable requirements of any Memorandum of Understanding entered into by the County with a recognized bargaining group.

Section 1231. Compliance with Certain Internal Revenue Code Provisions.

(a) The benefits payable to any person who becomes a Defined Contribution Plan Beneficiary shall be subject to the pension contribution limitations set forth in Section 415 of the Internal Revenue Code, as amended.

(b) If any of the provisions of Section 415 of the Internal Revenue Code should be repealed, the provisions of this section shall be deemed repealed to the same extent.

Section 1232. Implementation of Social Security Participation.

(a) Should Social Security participation be mandated or made available to uncovered Plan Beneficiaries by federal legislation amending the Social Security Act or by action taken by the County or by Plan Beneficiaries as provided by law, the following provisions shall govern the manner in which such participation by Plan Beneficiaries is to be implemented and the limitations hereinafter set forth shall be controlling unless federal law is contrary to these provisions, is in conflict therewith and is clearly intended to be preemptive. Should applicable provisions of federal law in any respect differ from the provisions contained in this section and should they be determined to be preemptive as to any part thereof, then and in that event, those provisions of this section not affected by such federal law shall remain in full force and effect.

(b) Board of Supervisors Authority to Coordinate Benefits and Contributions. As to the rights and entitlement to benefits of Plan Beneficiaries participating in such Social Security coverage, the Board of Supervisors shall have the power and authority to adopt ordinances modifying the benefits and conditions of entitlement provided in this Ordinance, subject to the limitations stated herein

(c) For public safety employees enrolled under the Defined Contribution Plan who enroll in Social Security, the County shall contribute no more than five percent (5%) of Compensation to the employees' account within the Defined Contribution Plan.

Sec. 1233. Five Year Salary Limitations on All General Tier I Pensionable Pay Increases.

To reduce pension spiking, for five years after the Operational Date or the termination date contained in any MOU in effect on the Operational Date, whichever is later, the County's initial bargaining position in negotiations on any new or extended, Management Resolution,

MOU, including any side letter MOU, as such MOU's relate to public safety employees and those officers and employees who have the right to any General Tier I and General Tier I PEPRA benefits, shall propose terms that do not increase pensionable pay. This section does not apply to participants in the Defined Contribution Plan.

County bargaining representatives may be authorized to negotiate tentative agreements with employee organizations incorporating changes in employee compensation and other employee benefits provided, however, that no provision of a tentative agreement that increases pensionable pay shall become effective unless and until it is approved by the County Board of Supervisors with separate findings by the Board that the Defined Benefit Pension Plan has adequate funding to allow for any increase in long-term pension costs. Such findings shall be supported by actuarial and accounting justifications.

SECTION TWO. SEVERABILITY.

If any section, sub-section, sentence, clause, phrase, part, or other portion of this measure, or application thereof, is held to be invalid or unconstitutional by a final judgment of a court of competent jurisdiction, such decision shall not affect the remaining portions or provisions of this measure. It is hereby declared by the people voting for this measure that this measure, and each section, sub-section, sentence, clause, phrase, part, or portion thereof would have been adopted or passed even if one or more sections, sub-sections, sentences, clauses, phrases, parts or portions, or the application thereof, are declared invalid or unconstitutional.

SECTION THREE. CONFLICTING BALLOT MEASURES.

This measure is inconsistent with and intended as an alternative to any other initiative or measure placed on the same ballot that addresses the same subject matter as this measure. In the event that this measure and another initiative or measure addressing the same subject matter as this measure, or any part thereof, is approved by a majority of voters as the same election, and this measure receives a greater number of affirmative votes than any other such initiative or measure, then this measure shall prevail and control in its entirety and said other initiative or measure shall be rendered void and without any legal effect.

SECTION FOUR. AMENDMENT BY THE PEOPLE.

This Ordinance Amendment shall only be repealed, amended or modified by a vote of the people. Nothing herein prevents the Board of Supervisors from placing before the electorate any amendments to this Ordinance including amendments at the request of a recognized bargaining group as part of an agreement reached during the labor relations bargaining process.

SECTION FIVE. LIBERAL CONSTRUCTION.

The provisions of this Ordinance shall be liberally construed to affect its purposes. The purpose of the Initiative is to control pension costs and allow County employees the same or similar benefits as are customary in the private sector.

SECTION SIX. VESTED RIGHTS.

This Ordinance shall not affect the vested rights of employees who enrolled under the Defined Benefit Plan administered by VCERA prior to the application of thisInitiative. Nothing herein shall limit or restrict the Board of Supervisors from "meeting and conferring" with recognized bargaining groups regarding the implementation of this measure as required by law. Nothing herein impairs any existing Memorandum of Understanding entered into by the County before the effective date of this Ordinance for the term of those agreements. After July 1, 2015, pre-existing MOUs shall not be extended or continued beyond their termination date without complying with this Ordinance.

SUPERIOR COURT OF CALIFORNIA
COUNTY OF VENTURA

800 South Victoria Avenue
Ventura , CA 93009
(805) 654-2609

NOTICE OF CASE ASSIGNMENT

Case Number: **56-2014-00454309-CU-WM-VTA**

Your case has been assigned for all purposes to the judicial officer indicated below. A copy of this Notice of Case Assignment must be served on all named defendants/respondents with the complaint or petition, and with any cross-complaint that names a new party to the underlying action.

ASSIGNED JUDICIAL OFFICER	COURT LOCATION	DEPT/ROOM
Hon. Kent Kellegrew	Ventura	43
EVENT TYPE		
EVENT DATE	EVENT TIME	EVENT DEPT/ROOM

SCHEDULING INFORMATION

Judicial Scheduling Calendar Information

Court calendars vary from courtroom to courtroom. You may contact the clerk's office for more information when you need to schedule a hearing before the judicial officer.

Ex Parte Matters

To set an ex parte hearing, contact the judicial secretary in the assigned department. Per Local Rule 15.03, all ex parte documents must be filed in the courthouse where the ex parte application shall be heard.

Noticed Motions

Contact the clerk's office to reserve a date for a law and motion matter. Per Local Rule 3.19, all law and motion documents must be filed in the courthouse where the motion shall be heard.

Other Information

You can visit the court's website at www.ventura.courts.ca.gov for public access to non-confidential case information, local rules and forms, and other court information.

Clerk of the Court,

Date: 06/17/2014

By: S McCarthy
Sharon McCarthy, Clerk

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF VENTURA

ALTERNATVE DISPUTE RESOLUTION (ADR) INFORMATION

Most civil disputes are resolved without filing a lawsuit, and most civil lawsuits are resolved without a trial. The courts, community organizations, and private providers offer a variety of Alternative Dispute Resolution (ADR) processes to help people resolve disputes without a trial. Many courts encourage or require parties to try ADR before trial, and it may be beneficial to do this early in the case.

Below is some information about the potential advantages and disadvantages of ADR, the most common types of ADR, and how to find a local ADR program or neutral. You can read more information about these ADR processes and watch videos that demonstrate them at www.courtinfo.ca.gov/programs/adr/types.htm. A form for agreeing to use ADR is attached.

Potential Advantages and Disadvantages

ADR may have a variety of advantages or disadvantages over a trial, depending on the type of ADR process used and the particular case:

Potential Advantages
- Saves time
- Saves money
- Gives parties more control over the dispute resolution process and outcome
- Preserves or improves relationships

Potential Disadvantages
- May take more time and money if ADR does not resolve the dispute
- Procedures to learn about the other side's case (discovery), jury trial, appeal, and other court protections may be limited or unavailable

Most Common Types of ADR

Mediation – A neutral person called a "mediator" helps the parties communicate in an effective and constructive manner so they can try to settle their dispute. The mediator does not decide the outcome, but helps the parties to do so. Mediation is usually confidential, and may be particularly useful when parties want or need to have an ongoing relationship, such as in disputes between family members, neighbors, co-workers, or business partners.

Settlement Conferences – A judge or another neutral person called a "settlement officer" helps the parties to understand the strengths and weaknesses of their case and to discuss settlement. The judge or settlement officer does not make a decision in the case but helps the parties to negotiate a settlement. Settlement conferences may be particularly helpful when the parties have very different ideas about the likely outcome of a trial and would like an experienced neutral to help guide them toward a resolution.

Arbitration – The parties present evidence and arguments to a neutral person called an "arbitrator" who then decides the outcome of the dispute. Arbitration is less formal than a trial, and the rules of evidence are usually relaxed. If the parties agree to *binding arbitration,* they waive their right to a trial and agree to accept the arbitrator's decision as final. With *nonbinding arbitration,* any party may reject the arbitrator's decision and request a trial. Arbitration may be appropriate when the parties want another person to decide the outcome of their dispute but would like to avoid the formality, time, and expense of a trial, or want an expert in the subject matter of the dispute to make a decision.

Local ADR Programs for Civil Cases

Mediation – The Ventura Superior Court has maintained a mediation program since April 1, 1993. Its goals are to speed resolution of cases by bringing the parties together before they have made a major economic and emotional investment in litigation, and to increase awareness of this effective method of alternative dispute resolution.

Mediators need not be attorneys, but must have 25 hours of formal mediation training by a recognized mediation training/education provider. Mediator duties include a brief review/preparation time and three hours of hearing time on a pro bono basis and pursuant to such rules as may be designated for mediators by the Ventura Superior Court.

Party Pay Mediation Panel – The court has a second mediation panel where mediators are paid by the parties rather than offering their services pro bono. Mediators on the "party pay" panel must have completed 25 hours of formal mediation training and have participated as mediator a minimum of 25 court assigned mediations with a minimum hearing time of two hours each from any California Superior Court. All mediators on the "party pay" panel will provide three hours of mediation services per case at the rate of $150 per hour to be shared equally by all participating parties.

Arbitration – Arbitration is normally an informal process in which a neutral person (the arbitrator) decides the dispute after hearing the evidence and arguments of the parties. The parties can agree to binding or nonbinding arbitration. Binding arbitration is designed to give each side a resolution of their dispute when they cannot agree between themselves or with a mediator. If the arbitration is nonbinding, any party can reject the arbitrator's decision and request a trial.

Mandatory Early Settlement Conference – The MESC program was implemented through joint efforts of the Superior Court and the Ventura County Bar Association working primarily through the Bench/Bar Subcommittee. Cases that are appropriate for the program are identified and referred to a settlement officer to conduct a settlement conference. The parties have the opportunity for a serious exchange of facts, theories, and evaluations at the earliest possible time with an impartial attorney volunteer conducting the conference. The basic difference between cases assigned to the MESC and Mediation programs is the nature of the case and the relief sought. If the injury or damage is compensable in money damages and there is no emotional component or "hidden agenda" on the part of one or more of the parties, as is frequently the case in mediation cases, then the case is sent to the MESC program. MESC may be appropriate when negotiations between the parties have not proven successful.

Settlement Conference – Settlement Conferences may be mandatory or voluntary. In general, if the settlement conference is mandatory, ordered by the judge, the parties to the dispute and their attorneys will meet with a judge who conducts conference aimed at negotiating an agreement to settle the dispute rather than doing through the formal trial process.

More Information about Court-Connected ADR: Visit the court's webpage at www.ventura.courts.ca.gov.

Dispute Resolution Programs Act (DRPA) funded ADR Program - The following community dispute resolution programs are funded under DRPA (Bus. and Prof. Code 465 et seq.):

- Ventura Center for Dispute Settlement, 1200 Paseo Camarillo, Suite 165, Camarillo, CA 93010
  805-384-1313
- Ventura County District Attorney's Consumer Mediation Unit
  805-654-3110

Private ADR – To find a private ADR program or neutral, search the internet, your local telephone or business directory, or legal newspaper for dispute resolution, mediation, settlement, or arbitration services.

Legal Representation and Advice – To participate effectively in ADR, it is generally important to understand your legal rights and responsibilities and the likely outcomes if you went to trial. ADR neutrals are not allowed to represent or to give legal advice to the participants in the ADR process. If you do not already have an attorney, the California State Bar or your local County Bar Association can assist you in finding an attorney. Information about obtaining free and low cost legal assistance is also available on the California Courts Website at www.courtinfo.ca.gov/selfhelp/lowcost.

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name and Address) Telephone Number ATTORNEY FOR (Name):	FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF VENTURA ☐ 800 SOUTH VICTORIA AVE. VENTURA, CA 93009	
PLAINTIFF/PETITIONER DEFENDANT/RESPONDENT	
STIPULATION TO USE OF ALTERNATIVE DISPUTE RESOLUTION PROCESS	CASE NUMBER:

The parties and their attorneys stipulate that the claim(s) in this action shall proceed to the following alternative dispute resolution process:

☐ Private Mediation

☐ Volunteer Mediation ____________________

☐ Mandatory Early Settlement Conference

☐ Assignment to Private Judge

☐ Binding Arbitration

☐ Non-Binding Arbitration

☐ Other (specify) : ____________________

It is further stipulated that the deadline for selection of a neutral and completion of the ADR process is: ____________

____________________ Plaintiff (print)

____________________ Defendant (print)

____________________ Signature of Plaintiff

____________________ Signature of Defendant

____________________ Plaintiff's Attorney (print)

____________________ Defendant's Attorney (print)

____________________ Attorney's Signature

____________________ Attorney's Signature

Dated: ____________________

Dated: ____________________

IT IS SO ORDERED.

IT IS FURTHER ORDERED THAT: ____________________

Dated: ____________________

____________________ Judicial Officer

MEMORANDUM
COUNTY OF VENTURA
COUNTY COUNSEL'S OFFICE

June 13, 2014

TO: Members, Board of Supervisors

FROM: Leroy Smith, County Counsel

RE: LEGAL ANALYSIS OF INITIATIVE PENSION MEASURE

You have asked for a report back on legal issues raised by the initiative pension measure ("measure"), which would repeal the County of Ventura's ("County") defined benefit pension plan for future employees and replace it with a 401(k)-style plan. This report discusses the major legal issues identified, however, additional research is needed to fully analyze all of the legal issues raised by the proposed measure.

In our opinion, the measure is illegal because it would directly conflict with, and therefore be preempted by, state law that mandates County employees be enrolled in a defined benefit plan as specified in the County Employees Retirement Law of 1937 (the "1937 Act"). Further, the measure is improper because it proposes an administrative act, rather than a legislative act. All or parts of the measure are also invalid for other legal reasons discussed below.

A. THE MEASURE IS INVALID BECAUSE IT PURPORTS TO REPEAL STATE LAW BY LOCAL ORDINANCE

1. County's Defined Benefit Plan is a Creation of State Law

The measure suffers from a basic misconception about the origins of the County's defined benefit plan. The County's defined benefit plan was created by state law, not local law. The County's voters did not enact a defined benefit plan in 1946 when they voted for Ordinance No. 401, which had been submitted to them for ratification by the Board of Supervisors ("Board"). Rather, the voters "accepted" the implementation of a state law, the 1937 Act, in the County. That state law became "operative" in the County when it was "accepted" pursuant to the procedures dictated by the 1937 Act, but it has always been, and remains, a state law.

Once a state law is "accepted" by a local government, whether by its governing body or its voters, it cannot be "unaccepted" or otherwise repealed by the local government unless there are express provisions in the state law allowing it to do so. There are no such provisions in the 1937 Act.

Controlling legal authorities support this conclusion. In enacting state legislation, the California Legislature usually passes laws in a manner that the effective date and operative date are the same – January 1 of the year following its enactment. (Cal. Const., art. IV, § 8c, subd. (c)(1).) However, the Legislature has the power to establish an operative date later than the effective date. (*People v. Camba* (1996) 50 Cal.App.4th 857, 865-856.)[1/] As stated in *Preston v. State Board of Equalization* (2001) 25 Cal.4th 197, 223:

> "The effective date [of a statute] is . . . the date upon which the statute came into being as an existing law.' [Citation.] '[T]he operative date is the date upon which the directives of the statute may be actually implemented.' [Citation.] Although the effective and operative dates of a statute are often the same, the Legislature may 'postpone the operation of certain statutes until a later time.'"

Moreover, the Legislature may provide for a statute to go into effect or become operative contingent upon the happening of a future or uncertain event. (See *Busch v. Turner* (1945) 26 Cal.2d 817, 821 [providing that the Legislature has the power to pass an act to be effective upon the occurring of an uncertain event]; *Ross v. Board of Retirement* (1949) 92 Cal.App.2d 188, 194 [providing that after a law becomes effective, its operation may be postponed if it is made dependent upon a contingency which may occur in the future].) And the decision of a local governing body to accept or reject the new statute may be such a contingent event. (*Firemen's Benevolent Assn. v. City Counsel* (1959) 168 Cal.App.2d 765, 768 [providing a statutory enactment may ordinarily provide that it will take effect on the happening of some future event and the decision of a local governing board may be one such event].)

[1/] An enactment is law on its effective date in the sense that it cannot be changed except by the legislative process; but rights of individuals under the law's provisions are not affected until the provisions become "operative" as law. (*People v. Camba*, *supra*, 50 Cal.App.4th 857 at p. 866.)

Pursuant to this authority, the California Legislature adopted the 1937 Act, as an uncodified statute. (Stats. 1937, ch. 677, § 2, p. 1898.) The 1937 Act was amended in 1939, 1941, 1943, and 1945. As of 1946, section 40 of the act read as follows:

> "40. There is established in any county of the State a retirement system for its officers and employees, and for the officers and employees of districts therein, *by the acceptance of the provisions of this act* by a majority vote of the electors voting upon such acceptance proposition at any special or general election at which the proposition of accepting the provisions of this act may be submitted or by an ordinance passed by four-fifths vote of its board of supervisors. The provisions of this act become operative in such county on either the first day of January, or the first day of July next, as specified in the ordinance, but not sooner than sixty days after the passage of the ordinance." (Italics added.)[2/]

The required contingency for the 1937 Act to become operative in the County and to establish the retirement system in the County occurred in 1946 when, in accordance with section 40 of the 1937 Act, the County Board of Supervisors voted 5-0 to adopt Ordinance No. 401, entitled "An Ordinance of the County of Ventura, Accepting The Provisions of the County Employees Retirement Act of 1937 (Chapter 677, Statutes of 1937), And Establishing A Retirement System For the Officers and Employees of the County of Ventura And Districts Therein." Section 1 of Ordinance 401 provided in material part that "the Board of Supervisors of the County of Ventura does *hereby accept* the provisions of said County Employees Retirement Act of 1937, . . ." (Italics added.) Although acceptance by a 5-0 vote of the Board was sufficient to make the 1937 Act operative in the County, the Board nonetheless submitted an acceptance proposition to the qualified voters of the County asking them to approve the Board's ordinance accepting the 1937 Act. (Ordinance No. 401, section 2.) On June 4, 1946, a majority of voters approved the proposition accepting the 1937 Act.

[2/] In 1948, the Legislature codified the 1937 Act at section 31450 et seq. of the California Government Code. Section 40 of the act was slightly reworded and codified at sections 31500 and 31501 of the Government Code.

In 1953, the County included the essence of Ordinance No. 401 in its newly created Ventura County Ordinance Code ("VCOC"), without repealing or amending Ordinance No. 401. Since 1953, Division 1, Chapter 2, Article 2, Section 1221 of the County Ordinance Code has provided: "The provisions of the 'County Employees Retirement Law of 1937 (Chapter 677, Statutes of 1937, as amended) are hereby accepted, and in compliance therewith a retirement system is hereby established, of and for the employees of the County and of the districts therein permitted, or entitled to, membership in such system."

All contingencies for making the 1937 Act operative in the County having been met as of June 4, 1946, the 1937 Act (a state law) became fully enacted, effective and operative in Ventura County as of July 1, 1946.

2. The Operation of the 1937 Act in Ventura County Cannot Be Repealed by a Local Ordinance

Because the measure proposes only a local ordinance, which cannot by law disestablish the 1937 Act plan in the County, the measure is illegal and of no effect. Once accepted, the 1937 Act provides no procedure by which a county can disestablish the retirement system or unaccept the retirement law by any subsequent local action, either by the voters or by the board of supervisors. Further, the act provides no authority or process for a county to withdraw from the system.[3/]

The proper method to repeal or amend a state law such as the 1937 Act now operative in the County is for the California Legislature to enact a repealing or amending statute or for the state electorate through a statewide initiative process to enact a repealing or amending law.

[3/] In contrast, the 1937 Act expressly allows for districts to withdraw from the retirement system (otherwise leaving the local retirement system in place). If a district withdraws, the 1937 Act specifies what happens: all accumulated contributions are refunded to the affected employees and the district, or transferred to another public retirement system. (Gov. Code, § 31564.) There is no statutory mechanism for a district to phase out participation in the system, leaving some employees covered and others not.

In fact, this was considered in 1979, but the Legislature declined to grant the County authority to exclude future employees from the 1937 Act plan and provide them with 401(k)-type benefits instead. Senate Bill 1117 was introduced in April 1979, and as initially drafted would have permitted Ventura County (and only Ventura County) to "adopt a resolution excluding from membership all persons who enter county or district service after the effective date of the resolution." (SB 1117, § 1 (1979-1980) (Apr. 5, 1979).) The bill was amended to exclude "classes eligible for safety membership" from the proposal, and to insert the following expression of legislative intent:

> "It is the intent of the Legislature, in authorizing a county of the 13th class [i.e., Ventura County] to exclude employees hired after the effective date of this section from membership in the existing retirement system, to study the effects of removal of mandatory retirement system membership in a county that is currently participating in the County Employees Retirement Law of 1937.
>
> "It is not the intent of the Legislature, at this time, to allow other counties who participate in this retirement system to exclude new employees from membership.
>
> "Any alternative retirement of deferred compensation plans for employees excluded from existing retirement system membership pursuant to this section shall be reviewed by an actuary to verify that all contributions, liabilities, actuarial interest rates, and other valuation factors shall be determined on the basis of actuarial assumptions and methods which, in combination, offer the actuary's best estimate of anticipated experience under the new system.
>
> "The additional contributions required under the new system shall be computed as a level percentage of member compensation. The additional contribution rate required at the time the new system is adopted shall not be less than the sum of (1) the actuarial normal cost, plus accrued liability attributable to benefits over a period of not more than 30 years from the date the new system becomes operative.

> "Any reports or studies prepared as a result of actions taken by the board of supervisors pursuant to this section shall be transmitted to the policy [sic] and Rules Committees of both houses of the Legislature."

Ultimately, this language was deleted from the bill, and a very different version of SB 1117 was enacted, the only effect of which was to make an innocuous reference to a county treasurer's duties. (See Gov. Code, § 31520.)

This Legislative history comports with our interpretation of the relevant law. It is clear that, at least in 1979, the Legislature understood that a county that had accepted the 1937 Act could not disestablish the system without Legislative authorization. In our view, that remains the law today. Interestingly, the Legislature itself considered using Ventura County as a pilot program to study the effects of changing from a defined benefit plan to a defined contribution plan for future employees, but rejected the idea.

The above principles regarding legislative powers and the legislative process are grounded in decisions of the California Supreme Court and the opinions of the California Attorney General. The opinion in *Board, etc. Trustees v. Supervisors* (1893) 99 Cal. 571, is particularly instructive. Orange County had adopted an ordinance electing to come within a state act for law libraries, and later attempted to repeal the ordinance. The California Supreme Court held the attempted repeal was unlawful, finding that:

> "We think the legislature had the power to provide in the act that counties might come within or remain without the provisions of the act, as the boards of supervisors of the respective counties might determine . . . . 'Not only had the legislature the power to provide upon what condition or contingency the provisions of the act might be carried into effect, but also to provide within what time it must be done, if done at all.'
>
> "It is also plain that the attempted repeal of the ordinance declaring Orange County within the provisions of the act was of no avail. When Orange County once came within the provisions of the act, it was there for all purposes; as fully and completely there, as if it had passed directly under its provisions at the date of the original enactment. We do not perceive how it can evade the force and effect

> of the statute of the state (which, after the passage of ordinance No. 14, applied to it) in any different manner or to any greater extent than it can escape the force and effect of any other statute of the state. If it can do so in this instance it has the power to disorganize, for it was created under an act involving the same principle." (*Board, etc. Trustees v. Supervisors*, *supra*, 99 Cal. 571 at p. 573.)

Similarly, the California Attorney General, addressed the question of whether a county was bound by legislative amendments made to the 1937 Act after a county's acceptance of the system. The Attorney General opined that any amendments to the 1937 Act, either before or after a county's approval, are part of the retirement system because the 1937 Act is statewide legislation in force throughout the state and subject to amendment by the Legislature just as any other state legislation, and stated:

> "Undoubtedly the Legislature intended to adopt a system of retirement benefits for county employees which would be uniform in the several counties of the State which have or will in the future accept the system. . . . There is no method provided in the Act by which a county can acquiesce in subsequent amendments by the Legislature and *there is no way in which a county can by ordinance change the system*. . . . The legislation here . . . is State-wide in scope and subject to amendment [and repeal] in the same manner as any other [state] legislation." (10 Ops.Cal.Atty.Gen. (1947) 96, 99, italics added.)

3. The Measure is Preempted by State Law

Article XI, section 7 of the California Constitution confers on each city and county the power to "make and enforce within its limits all local, police, sanitary, and other ordinances and regulations *not in conflict with general laws*." (Italics added.) Where a local ordinance conflicts with general law, it is void. (*Cohen v. Board of Supervisors* (1985) 40 Cal.3d 277, 290; *Sherwin-Williams Co. v. City of Los Angeles* (1993) 4 Cal.4th 893, 897-898.)

The legislative powers of the electorate of the County are generally coextensive with the powers of the County Board of Supervisors (*DeVita v. County of Napa*, (1995), 9 Cal.4th 763, 775), so the limitation as to conflicts with state law applies to the

enactments of the board of supervisors and the voters. (*Galvin v. Board of Supervisors of Contra Costa County* (1925) 195 Cal. 686, 692.)

Because the measure, by its own terms, contradicts and is inimical to rights established by the 1937 Act, a state law, it is preempted.

B. THE MEASURE PROPOSES AN ADMINISTRATIVE ACT

1. Administrative Acts are not a Proper Subject for an Initiative

"[T]he reserved powers of initiative and referendum do not encompass all possible actions of a legislative body." (*Worthington v. City Council of Rohnert Park* (2005) 130 Cal.App.4th 1132, 1143 ("*Worthington*").) Both state and local initiatives are limited to legislative acts and may not be used to undertake, modify or rescind administrative, adjudicative, or quasi-judicial actions. (*Citizens for Jobs & the Economy v. County of Orange* (2002) 94 Cal.App.4th 1311, 1331-1333 ("*Citizens for Jobs*").) The purpose of this rule is to promote the efficient administration of the business affairs of government. (*Lincoln Property Co. No. 41, Inc. v. Law* (1975) 45 Cal.App.3d 230, 233-234.)

2. The Measure Proposes an Administrative Act

The test for distinguishing legislative from administrative acts is well settled:

> "'The power to be exercised is legislative in its nature if it prescribes a new policy or plan; whereas, it is administrative in its nature if it merely pursues a plan already adopted by the legislative body itself, *or some power superior to it.*' [Citations.]" (*Valentine v. Town of Ross* (1974) 39 Cal.App.3d 954, 957-958; see also *Citizens for Jobs*, *supra*, 94 Cal.App.4th 1311 at pp. 1331-1333. (Italics added.)

In *City of San Diego v. Dunkl* (2001) 86 Cal.App.4th 384, 400, the court held that:

> "Once a legislative policy has been established, the administrative acts that follow therefrom are not subject to referendum or initiative. They should not obstruct the project, but should carry it out.

> [Citation.] An enactment that interferes with the City's ability to carry out its day-to-day business is not a proper subject of voter power."

Similarly, in *Kleiber v. City etc. of San Francisco* (1941) 18 Cal.2d 718, 723, the court held that: . . . "if the action [is] designed to carry into effect law already enacted it may be said to be administrative rather than legislative action." In *Worthington*, *supra*, 130 Cal.App.4th 1132 at p. 1142, footnote 9, the court stated that when a local body merely pursues a plan already adopted by a superior power, it acts administratively, not legislatively, citing 5 McQuillin, Municipal Corporations (3d ed. 2004) section 16:54, pages 407-410.

Applying these principles to the 1937 Act and a county's acceptance, it must be concluded that the County's acceptance of the 1937 Act in 1946 was an administrative act.[4/]

The purpose of the 1937 Act was to enact a new policy and plan, and the ways and means of accomplishing the plan, for retirement systems among the State's counties. To accomplish this policy, the Legislature included in the 1937 Act the ways and means for counties to create an entirely new retirement system, replacing pre-existing systems and providing for a retirement board, investments, pensions, death benefits, disabilities and a means of opting into the system. (Gov. Code, § 31520 et seq.) Thus, the new legislative policy and plan was established and completed by the Legislature in 1937, with subsequent changes accomplished through amendments by the Legislature. With every

---

[4/] That acceptance of the 1937 Act was done by ordinance, does not make it a legislative act.

> "Generally, whether what is done by a municipal legislative body is an ordinance or a resolution depends not on what the action is called but on the reality. Thus the mere doing of a particular thing in the form of an ordinance does not necessarily constitute it an ordinance; in other words, acting by ordinance rather than by resolution does not necessarily constitute municipal legislation. Conversely, where a resolution is in substance and effect an ordinance or permanent regulation, the name given to it is immaterial." (5 McQuillin Mun. Corp. (3d ed. 2013) § 15.2.)

legislative aspect of the 1937 Act completed by the Legislature, there was nothing left for the County to decide except whether to participate or not. The County's action in 1946 to carry into effect a law already enacted by a superior power is properly characterized as an administrative act and not a legislative one.

The correctness of this conclusion is demonstrated by the Attorney General opinion referenced above:

> "The action of the electors in adopting the statute [i.e., the 1937 Act] in Tulare County was not a legislative act in the true sense of the word. [¶] . . . [A] county, when accepting the provisions of the Act, does not legislate but merely evinces the event upon the happening of which the statute becomes effective in the particular county." (10 Ops.Cal.Atty.Gen. (1947) 96, 99.)

Because Ordinance No. 401 was an administrative act, any attempted repeal of Ordinance No. 401 must similarly be deemed an administrative act. (*Citizens for Jobs*, *supra*, 94 Cal.App.4th at p. 1322 [initiative and referendum cannot be invoked to annul administrative acts which are not within the reach of the initiative and referendum process].) Because administrative acts are not proper and lawful subjects for an initiative measure, the measure is illegal.

C. THE MEASURE IMPROPERLY ATTEMPTS TO REGULATE THE FIRE DISTRICT AND OTHER NON-COUNTY ENTITIES AND EMPLOYEES

The measure purports to control the retirement benefits, wages, and collective bargaining processes of the Ventura County Fire Protection District ("Fire District") and other non-County entities through the simple device of defining the "County" to include such entities. Section 1222 (Definitions) of the proposed new ordinance defines "County" to "include all special districts, agencies and sub-governments that the Board of Supervisors serve as the governing board and/or any special districts, agencies and sub-governments that are part of any County retirement program." (Proposed ordinance, section 1222, subd. (f).) Similarly, the measure defines "Employee" to "include all employees and officers of the County of Ventura, its subsidiary agencies, governmental entities and sub-governments that are qualified to be members of the Defined Benefit

Plan or beneficiaries of the Defined Contribution Plan." (Proposed Ordinance, section 1222, subd. (l).)[5/]

The initiative petition was submitted and qualified under the county initiative provisions of the Elections Code. (Elec. Code, §§ 9100-9126.) The initiative proposes adoption of a County ordinance. It does not propose adoption of a district ordinance, or a state statute, nor could it.

The non-County entities purportedly regulated by the proposed new ordinance, besides the Fire District, include the Ventura County Superior Court ("Court"), the Ventura County Air Pollution Control District ("VCAPCD") and the Ventura Regional Sanitation District ("VRSD"). The Court is a state agency, and the others are special districts. Each non-County entity participates in the County's 1937 Act plan; each has its own governing body; and each is legally separate and independent from the County.

Each of these non-County entities has the authority to establish the compensation and benefits of its employees, and conduct its own collective bargaining. (See Health & Saf. Code, §§ 4700, 40121, 40122 & 13861 [authorizing governing boards of the VRSD, the VCAPCD, and the VCFPD and not a county board of supervisors to establish compensation for their employees]; Cal. Const., art. VI, § 4; Gov. Code, § 71600 et seq. [courts set compensation of court employees].)

Thus, under principles of sovereign immunity, these state agencies and special districts are not subject to County ordinances. (*Hall v. City of Taft* (1956) 47 Cal.2d 177, 183; *City of Orange v. Valenti* (1974) 37 Cal.App.3d 240 [state and its special districts not subject to local regulation of sovereign activities unless waived by express statute].) The measure cannot avoid this legal prohibition on County power by artful drafting. Thus, the provisions in the proposed new ordinance that purport to regulate the retirement benefits, wages and collective bargaining processes of the non-County entities are unlawful and invalid.[6/]

[5/] The measure also improperly includes non-County entities or employees within the definitions for Date of Hire, Member, and Memorandum of Understanding. (Measure, section 1222, subds. (g), (m) & (n).

[6/] A qualified voter wishing to qualify an ordinance applicable to special districts
(continued...)

In theory, these entities and employees could be indirectly affected by the repeal of County Ordinance No. 401 by the County or its voters, if that could be legally accomplished. A repeal would have the effect of immediately disestablishing the County's 1937 Act retirement plan, and its governing body, the Ventura County Employees Retirement Association ("VCERA"), leaving plan members in limbo. But even if that were legally possible, the measure's other provisions cannot be applied to these entities or their employees. That means under any scenario, the following provisions of the measure, among others, cannot legally be applied to the Fire District, VRSD, VCAPCD or the Court: mandatory creation of a 401(k)-style plan as the vehicle for retirement benefits; mandatory employer contributions to a 401(k)-style plan; limitations on compensation increases for safety or tier I members; prohibitions against the creation of new defined benefit retirement plans; prohibitions against participating in both a defined benefit plan and a defined contribution plan; and mandatory establishment of a death and disability plan.

D. MEASURE IS VAGUE AND UNWORKABLE, AND THEREFORE INVALID

Initiatives are subject to the same state and federal constitutional limitations as are laws adopted by the Legislature and ordinances adopted by counties. Thus, an initiative is invalid if it is arbitrary and capricious or unconstitutionally vague. (*Building Industry Assn. v. City of Camarillo* (1986) 41 Cal.3d 810, 824; *Legislature v. Deukmejian* (1983) 34 Cal.3d 658, 674.) An ordinance is unconstitutionally vague if it is not sufficiently clear to allow persons of common intelligence to understand its meaning and comply with its language (*City of Costa Mesa v. Soffer* (1992) 11 Cal.App.4th 378, 387) or to allow agencies to administer its provisions (*McMurtry v. State Board of Medical Examiners* (1960) 180 Cal.App.2d 760, 766). Likewise, an initiative is invalid if it creates internal inconsistency in an existing legislative scheme. (See *Lesher Communications, Inc. v. City of Walnut Creek* (1990) 52 Cal.3d 531, 541.)

The measure is internally inconsistent, vague and unworkable in that it would immediately repeal and disestablish the existing 1937 Act plan, but at the same time require a lengthy phase out or continuation of the plan. (Measure, section one; Proposed

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[6](...continued)
or the Court could attempt to do so, but only through the special district initiative law or the statewide initiative law. (Elec. Code, §§ 9000-9096 or 9300-9323.)

Ordinance, section 1221, subd. (d).) Pursuant to Election Code section 9122 and section 1222, subdivision (k) of the proposed ordinance, the repeal of County Ordinance No. 401 would become effective 10 days after the election results are certified. On that date, the measure would rescind the establishment of the 1937 Act system in the County, so that legally the County's 1937 Act retirement system would no longer exist in the County, and its governing board would be eliminated. After that date there simply would be no 1937 Act system in the County, no defined benefit plan, no elected and appointed retirement board, and no 1937 Act plan in which the County can participate. Such an outcome would be inconsistent with the rights of members vested in the 1937 Act plan to have the plan administered by qualified, elected and appointed, trustees and staff. The measure's purported delegation to the Board to phase out the defined benefit plan by any lawful method is not consistent with the remaining rights and interests of plan members under the 1937 Act.

Despite these facts, the measure contradictorily provides that VCERA's Board shall retain jurisdiction over the payment and administration of death and disability benefits to employees covered under the defined benefit plan. (Proposed ordinance, section 1227, subd. (b).) VCERA's Board could not possibly perform that function if the measure is adopted because it would cease to exist upon the effective date of the repeal of County Ordinance No. 401. Numerous other inconsistent and unworkable provisions exist in the measure.

The internal inconsistencies and vagueness in the measure make it impossible for the County to lawfully administer the provisions of the measure, rendering the initiative invalid. (*Citizens for Jobs*, *supra*, 94 Cal.App.4th at p.1335 [initiative invalidated for vagueness where so vague as to be unworkable interference with board's duties].)

E. THE MEASURE'S PROVISIONS WHICH PURPORT TO REGULATE COLLECTIVE BARGAINING ARE PREEMPTED

Section 1233 of the ordinance proposed by the measure directs the Board concerning its bargaining position with unions that represent employees entitled to public safety retirement benefits or general tier I benefits. For five years after the measure's operative date, the Board's initial bargaining position in negotiations regarding such employees must not propose terms that would increase pensionable pay. The measure further provides that any tentative agreements reached with unions for changes in

compensation and other benefits require special findings and procedures (findings regarding long term funding and actuarial and accounting justifications) before the Board can approve them.

These provisions directly conflict with the Meyers-Milias-Brown Act ("MMBA") (Gov. Code, § 3500 et seq.), the labor relations statute applicable to the County. The purpose of the MMBA is to promote full communication between public employers and their employees by providing a reasonable method of resolving disputes between public employers and public employee organizations regarding wages, hours and other terms and conditions of employment. (*Voters for Responsible Retirement v. Board of Supervisors* (1994) 8 Cal.4th 765, 780 ("*VFRR*").) Labor relations in the public sector are matters of statewide concern. (*Huntington Beach Police Officers Association v. City of Huntington Beach* (1976) 58 Cal.App.3d 492, 500 ("*Huntington Beach*").) Thus, the procedures set forth in the MMBA are a matter of statewide concern and are preemptive of contradictory local labor-management procedures. (*VFRR*, *supra*, 8 Cal.4th at 781.)

In *VFRR*, the county entered a memorandum of understanding ("MOU") providing for entry in the California Public Employee Retirement System's ("PERS") "2% at 60" program. A petition called for a referendum on the ordinance approving the contract amendment between the county and PERS. The court held that the ordinance was not subject to referendum because the MMBA embodies a statutory scheme in an area of statewide concern that justifies exemption from the referendum process. (*VFRR, supra*, 8 Cal.4th at pp. 781-782.)

Because, as *VFRR* held, the electorate is prohibited from holding a referendum on a MOU between the county and an employee organization, it stands to reason that the electorate may not preemptively direct the board of supervisors as to the positions it must take in bargaining. Yet, that is precisely what the measure purports to do.

The courts have consistently struck down local regulations, whether adopted by the governing body or by initiative, that interfere with the procedures established by the MMBA. For example, in *Huntington Beach*, the city adopted an employer-employee resolution that purported to exclude work hour schedules from the scope of representation. The court held that the provisions of the employer-employee resolution purporting to exclude the subject of working hours from the meet and confer process was in direct conflict with provisions of the MMBA imposing on governing bodies of public

agencies an obligation to meet and confer in good faith. (*Huntington Beach, supra*, 58 Cal.App.3d at p. 500.)

Therefore, even assuming that a properly drafted initiative could limit the amount of compensation payable to public employees, it is clearly unlawful to attempt to accomplish that result by interfering in the collective bargaining processes mandated by the MMBA. Thus, section 1223 of the ordinance proposed by the measure is preempted and invalid.

F. THE INITIATIVE MAY VIOLATE THE SINGLE SUBJECT RULE

Article II, section 8, subdivision (d) of the California Constitution, provides:

> "An initiative measure embracing more than one subject may not be submitted to the electors or have any effect."

This rule applies to both statewide and local initiatives. (*Shea Homes Limited Partnership v. County of Alameda* (2003) 110 Cal.App.4th 1246, 1255.) To constitute a single subject, each provision of the measure must be: (1) functionally related or reasonably germane to the other provisions; (2) reasonably germane to the purposes of the measure; and (3) not overly broad in connection. (*League of Women Voters v. Eu* (1992) 7 Cal.App.4th 649, 659; *California Gillnetters Assn. v. Department of Fish & Game* (1995) 39 Cal.App.4th 1145, 1161 [rule forbids joining provisions that are germane only to topics of excessive generality such as public welfare].) Here, the subjects of the measure are arguably multiple and not functionally related.

In *Senate of the State of Cal. v. Jones* (1999) 21 Cal.4th 1142, the California Supreme Court found that a State initiative which embraced two matters both generally involving state legislators (the power of reapportionment and compensation) was in actuality two separate and unrelated subjects, which violated the single subject rule. The Supreme Court expressed:

> ". . . [o]ur decisions emphatically have rejected any suggestion 'that initiative proponents are given blank checks to draft measures containing unduly diverse or extensive provisions bearing no reasonable relationship to each other or to the general object which is sought to be promoted. . . . Unrelated proposals always may be

> placed before the voters through separate initiative measures, which may be circulated contemporaneously, affording the electorate the choice of approving all, some, or none of the distinct proposals." (*Id* at pp. 1157-1158.)

The measure's stated purpose is arguably multiple, that of "changing the County employee retirement plan from a Defined Benefit Plan to a Defined Contribution Plan as of July 1, 2015, as well as to place new controls over the establishment to pensionable compensation" (Notice of Intention to Circulate Petition) and to "curb runaway pension costs" and "impose procedural limitations." (Preamble, § C.)

Moreover, the measure purports to regulate not only the County, but "all special districts, agencies and sub-governments that the Board of Supervisors serve as the governing board and/or any special districts, agencies and sub-governments that are part of any County retirement program." (Proposed Ordinance, section 1222, subd. (f).)

A voter wishing to impose the measure's terms on the County, but not on the Court or other entities purportedly covered by the measure, might nevertheless be motivated to vote for the measure to achieve part of his or her goal. This is the sort of undesirable situation the single subject matter rule seeks to avoid.

G. THE MEASURE APPEARS TO CONFLICT WITH STATE LAW AUTHORIZING PARTICIPATION IN DEFERRED COMPENSATION PLANS

Government Code section 53214 provides:

> "Notwithstanding any other provision of law, a participant in a deferred compensation plan may also participate in a public retirement system, and, in ascertaining the amount of compensation of such participant for purposes of computing the amount of his contributions or benefits under a public retirement system, any amount deducted from his wages pursuant to this article shall be included."

We have not fully researched the legislative purpose for this statute, but on its face it appears to be designed to protect public employees who participate in a deferred

compensation plan (which includes 401(k)-type plans) from being excluded from public retirement systems maintained by their employer. The measure appears to directly conflict with this state law, and the presumed legislative purpose. Section 1221, subdivision (b) of the new ordinance proposed by the measure provides that no new employee hired by the County after July 1, 2015 (with the exception of employees permitted to enroll in VCERA by contract) may be enrolled in VCERA or any other defined benefit plan administered by the County. Instead, all employees hired after that date will be permitted to participate only in the new defined contribution plan established by the measure. (Proposed Ordinance, sections 1221(c) and 1221(o).)

H. THE MEASURE APPEARS TO CONFLICT WITH STATE LAW AUTHORIZING COUNTIES TO ESTABLISH PENSION TRUSTS

Government Code section 53216 provides, in relevant part, as follows:

> "The legislative body of a local agency may establish a pension trust funded by individual life insurance contracts, individual annuities, group policies of life insurance, or group annuities, or any one or combination of them, or by any other investment authorized by this article for the benefit of its officers and employees."

The County has relied on this authority in the past, for example when it established a Supplemental Retirement Plan in lieu of social security benefits for extra-help and part-time workers.

Pursuant to Section 1223, subdivision (f), the County would be "prohibited from creating any additional retirement plans beyond that created under this Ordinance." Thus, the measure directly conflicts this state statute. Additional research would be necessary, however, to determine whether this conflict is sufficient to give rise to state preemption.

I. SEVERABILITY

The measure contains a severability clause providing that if any part of the measure is held to be invalid by a court, no other part of the measure shall be affected.

And that it is intent of the people voting for the measure that each part thereof would have been adopted even if one or more of the other parts of the measure are declared invalid or unconstitutional. (Measure, section Two.) Literal compliance with this clause would require the measure to be submitted to the voters even if a single provision was a legally proper subject for an initiative. For example, section 1224 of the proposed new ordinance requires that the County make employer contributions ranging from 4 percent to 11 percent of compensation to a new 401(k)-type plan on behalf of all employees hired on or after July 1, 2015. Assuming that section was lawful, and all other parts of the measure were found to be unconstitutional, the severability clause would still require the Board to submit the measure to an election (or adopt it itself). And if passed, the severability clause would require the County to make the specified employer contributions even though new employees continued to participate in the 1937 Act plan. The law does not require such absurd results.

A legislative enactment can be severed if, and only if, the valid parts are grammatically, functionally, and volitionally separable from the invalid parts. (See *Jevne v. Superior Court* (2005) 35 Cal.4th 935.) In sum, the remainder of the measure, after separation of the invalid parts, must be complete in and of itself and capable of independent application. (See *Abbott Laboratories v. Franchise Tax Bd.* (2009) 175 Cal.App.4th 1346.)

An ordinance is "functionally separable" if the invalid parts are not necessary to the measure's operation and purpose. An ordinance is "volitionally separable" if the severed parts were not of critical importance to the measure's enactment. (*Jevne v. Superior Court*, *supra,* 35 Cal.4th at p. 960.)

"Volitional separability" depends on whether a court can determine that the remainder of the ordinance would have been adopted without the invalid parts had the adopters known the invalid parts would be removed from the enactment. (See *California Redevelopment Assn. v. Matosantos* (2011) 53 Cal. 4th 231.) The invalid provisions of an ordinance are "volitionally separable," and the remaining provisions can stand on their own, if the invalid parts were not of critical importance to the measure's enactment. (*Jevne v. Superior Court*, *supra,* 35 Cal.4th at p. 961; *Schweitzer v. Westminster Investments*, (2007) 157 Cal.App.4th 1195, 1212-1213.)

This three-part test (grammatical, functional, and volitional severability) applies to voter initiative measures the same as it applies to statutes and ordinances

adopted by legislative bodies. Moreover, in order for a voter initiative to be considered volitionally severable, the provisions to be severed must have been presented to the electorate in a manner that established their independent significance and independent evaluation by the voters in light of the assigned purposes of the initiative measure. (*People v. Salazar-Merino* (2001) 89 Cal.App.4th 590, 600.)

A final determination on whether the valid parts of the measure, if any, can or should be adopted by the Board or referred to the voters cannot be made without knowing how a court has ruled on any legal challenges to the measure. However, as the legal analysis elsewhere in this memorandum shows, the legal flaws in the measure are so fundamental that it is unlikely the valid parts of the measure, if any, can or should be adopted by the Board or referred to the voters.

J. PRE-ELECTION JUDICIAL REVIEW

California trial courts will review an initiative measure for legal validity prior to submission to the voters if the voters lack the power to enact the measure or if the measure would conflict with state law. However, the decision to review an initiative measure prior to its submission to the voters lies wholly within the discretion of the court (*deBottrari v. City Council* (1985) 171 Cal.App.3d 1204, 1209). There is no constitutional right to place an invalid initiative on the ballot (*San Francisco Forty-Niners v. Nishioka* (1999) 75 Cal.App.4th 637, 645-648). And in considering a pre-election challenge, a court balances two competing interests: the court's concern with preventing the waste of public funds in pointless elections against the court's reluctance to delay the exercise of the public's right to vote on a measure while its legality is being determined (See *Gayle v. Hamm* (1972) 25 Cal.App.3d 250, 257-258.)

Under these competing interests, the courts have developed and applied an appropriate standard for pre-election review: while a trial court should give great deference to the electorates' constitutional right to enact laws through the initiative process, a court will remove an initiative from the ballot only if a proper case has been established for interfering, i.e., where the invalidity is clear beyond a doubt (*Save Stanislaus Area Farm Economy v. Board of Supervisors* (1993) 13 Cal.App.4th 141, 150-151).

For example, in *City of San Diego v. Dunkle* (2001) 86 Cal.App.4th 141, involving the pre-election challenge to a baseball stadium initiative, the court stated:

> "It is well established that preelection review of ballot measures is appropriate where the validity of a proposal is in serious question, and where the matter can be resolved as a matter of law before unnecessary expenditures of time and effort have been placed into a futile election campaign"

The appellate court found that the measure was administrative and not legislative in character and beyond the power of the voters, and was therefore invalid.

In *Senate of the State of California v. Jones*, *supra*, 21 Cal.4th at p. 1154, (involving a pre-election challenge to Proposition 24, which would transfer reapportionment power from the Legislature to the California Supreme Court and provide for the compensation of state legislators and officers), the Supreme Court directed that the measure be kept off the ballot because it violated the single subject requirement of the California Constitution. The court stated that deferring the decision until after the election "may contribute to an increasing cynicism on the part of the electorate with respect to the efficacy of the initiative process." The court further stated that:

> "The presence of an invalid measure on the ballot steals attention, time, and money from the numerous valid propositions on the same ballot. It will confuse some voters and frustrate others, and an ultimate decision that the measure is invalid, coming after the voters have voted in favor of the measure, tends to denigrate the legitimate use of the initiative procedure. [Citation omitted.]
>
> "In our view, this state's experience with successful postelection challenges to initiative measures . . . amply confirms the accuracy of these observations. [citation omitted]. If an initiative measure is facially defective in its entirety, it is "wholly unjustified to allow voters to give their time, thought, and deliberation to the question of the desirability of the legislation as to which they are to cast their ballots, and thereafter, if their vote be in the affirmative, confront them with a judicial decree that their action was in vain." (*Id* at pp. 1154-1155.)

In *Citizens for Responsible Behavior v. Superior Court* (1991) 1 Cal.App.4th 1013, 1036 (involving a pre-election review of an initiative measure pertaining to

homosexuality and acquired immune deficiency syndrome), the court found the initiative was both substantively invalid and beyond the power of the electorate and did not require that it be placed on the ballot, because it would "constitute a fraud on the electorate if [the court] permitted the initiative to reach the ballot in its present form." The court further stated:

> "[I]f an initiative ordinance is invalid, no purpose is served by submitting it to the voters. The costs of an election-and of preparing the ballot materials necessary for each measure-are far from insignificant. Proponents and opponents of a measure may both expend large sums of money during the election campaign. Frequently, the heated rhetoric of an election campaign may open permanent rifts in a community.That the people's right to directly legislate through the initiative process is to be respected and cherished does not require the useless expenditure of money and creation of emotional community divisions concerning a measure which is for any reason legally invalid." (*Id* at p. 1023.)

Substantial questions have been raised concerning the measure, both as to the county electorate's power to adopt the measure as well as the legal validity of the measure if adopted. Under such circumstances, a trial court may well exercise its discretion to conduct pre-election judicial review of the measure and if it is demonstrated that the invalidity of the measure is clear beyond a doubt, the court may exclude the measure from the ballot.

LS:cn

Date: June 19, 2014

To: SACRS Chief Executive Officers, Retirement Administrators & SACRS Systems Board Chairs

From: Yves Chery, SACRS President

Subject: Status of SACRS' Approach to Sustaining Public DP Plans

Background:

In April, SACRS Executive Director, Robert Palmer, sent a memorandum to all SACRS Affiliates and SACRS Systems regarding the establishment of an educational program on the positive benefits of providing defined benefit retirement plans.

So far, Mr. Palmer has received very little formal feedback from the systems on the proposal to seek out and fund a profession public relations firm to educate the public on the positive aspects of DB plans, such as our CERL systems. He has told me that you folks at the local system level have a better feel for this matter. But at the SACRS staff level, there are a variety of comments surfacing. Some have said that trustees are fiduciaries, not proponents of DB. Some believe that this matter is a plan sponsor and labor organization issue. Others have said that to do anything in the way of a public relations firm creating public support could become very divisive at the local level. Others want to have more discussion before proceeding. In fact, some have suggested either a special session on this topic or put it on the agenda for the November SACRS Conference. Others, pointedly, just want to wait and see what happens with the Ventura County initiative.

New Approach:

As the new SACRS President, I have established an ad hoc committee to look into this educational concept for SACRS and to make recommendations back to the organization. Those selected (and volunteering) are:

Gregg Rademacher, Los Angeles CERA
Richard Stensrud, Sacramento CERS
Jeff Wickman, Marin CERA
Skip Murphy, San Diego CERA
Tracy Towner, Ventura CERA

Continued

We are in the process of setting the first working session for this group. They will start with a pretty open slate. Does SACRS have a role in education of public DB plans? Should it be the "Honest Broker" on these pension topics, as it has done in Sacramento with the Legislature and the Governor's Office? Should SACRS consider retaining a communications firm to assist with the educational program? Does SACRS have an obligation to become involved with initiatives, such as Ventura? If so, to what level?

As the ad hoc committee develops concepts, they will be seeking feedback from the SACRS systems on what is being proposed.

The Ventura Initiative:

Since April memorandum, the focus has moved to what is happening in Ventura County. We all know by now that the proposed initiative received the necessary number of voter signatures to qualify for the November elections. There are three moving parts at this time; I have included summary documents providing their points of view.

1) The Reason Foundation's article on pension reform in Ventura County
2) Ventura County Counsel's legal analysis of the initiative
3) Overview of the lawsuit filed by the opponents of the initiative, Citizens for Retirement Security (CRS).

Your Input:

As we move forward on this educational approach, we welcome comments; suggestions and feedback from all the SACRS systems. Clearly, this is a new role for the SACRS organization…uncharted waters as they say. We have set a session on this topic for the November Conference.

If you have any questions or comments please send to either Bob Palmer at sirbpalmer@aol.com or to Yves Chery at ychery2013@gmail.com.

Thank you,

Yves Chery

Yves Chery, SACRS President

Attachments (3)

Ventura County Pension Reform Would Save $460 Million, Reduce Debt $1.8 billion

By Anthony Randazzo, Director of Economic Research

Summary: If adopted, the Initiative for Pension Fairness and Sustainability would save Ventura County $5.4 million in cash flow over the first two years, $51.6 million in cumulative savings over five years of reform, and $460 million in total savings over 15 years—all while separately eliminating $1.8 billion in pension debt. In the long run, moving to a new defined-contribution system would protect taxpayers from unfunded liabilities and investment return risks in public retirement systems.

The Problem: The Ventura County Employees' Retirement Association (VCERA) is poorly positioned to stay properly funded in the coming years, and local taxpayers may be forced to pick up a hefty tab of unfunded liabilities if substantive changes are not made in the near future.

While the County's payroll has increased just 6.2% from 2008 to 2013, annual taxpayer contributions to the pension system have grown 26.7% during the same time (from $104.4 million to $142.4 million). Despite this large increase in taxpayer payments, during this time period VCERA fell from having 91.3% of the funding needed to pay future pension benefits to having just 79.2%. And during that time, the defined-benefit pension system's unfunded liability has more than tripled to $953.4 million.

This funding disparity is a result of a few different dynamics, including the pension fund's asset investment inability to meet the unrealistic assumed 7.75% rate of return. Investment returns have averaged just 5.82% over the last five years, and 6.93% over the past ten years, indicating that missing the investment target has not been only related to the financial crisis and recession.

Additionally, VCERA has not properly anticipated that retirees are living longer and that more funds are needed to pay those pension benefits over longer retirement spans. Taken together, these are indications of an unsustainable system.

The California Public Employees' Pension Reform Act (PEPRA), which was passed in 2013, attempted to solve problems like these by changing the rules governing local government pension systems statewide. PEPRA does not solve Ventura County's core problems, however. For example, PEPRA has no affect on the County's unfunded liability. Neither does it address shortfalls in investment returns.

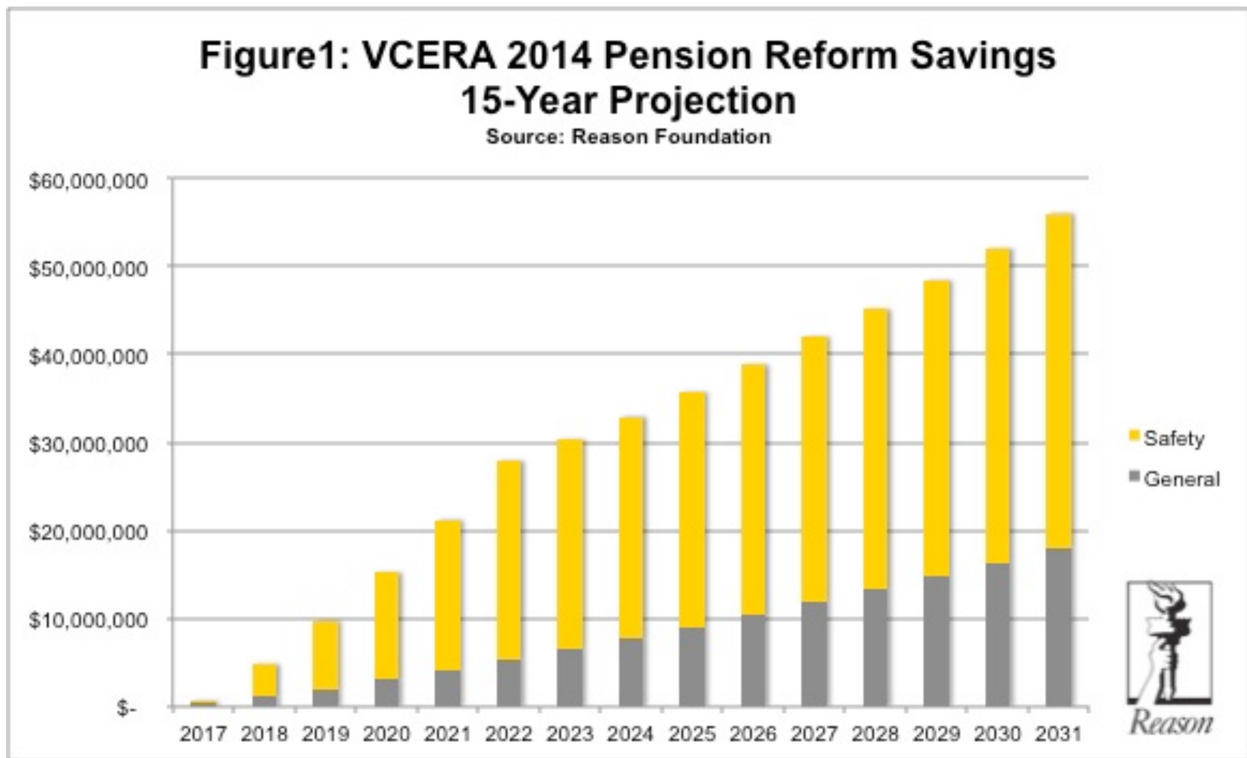
The combination of needing to both pay down the unfunded liability and adopt more realistic investment assumptions will require an increase in County taxpayer contributions into the system unless fundamental reforms beyond PEPRA are implemented.

The Solution: An initiative by county residents would address the risk of long-term liabilities by putting new hires into a 401(k)-style defined-contribution system and phasing out the defined-benefit system over time. Defined-contribution systems have no investment return assumptions, and eliminate taxpayer investment risk.

The defined-contribution system for all new Ventura County employees will have contribution rates from the County of 11% for

public safety employees not enrolled in social security, and 4% for general employees enrolled in social security. The defined contribution system would create no long-term liabilities for the County. All current employees would continue accruing benefits as normal, subject to PEPRA.

The initiative also includes a provision that holds pensionable pay constant for 5 years for all General Tier 1, General Tier 1-PEPRA, and public safety employees. This would create immediate cash flow savings that would enable to the County to pay for increased normal costs in phasing out the defined-benefit system.



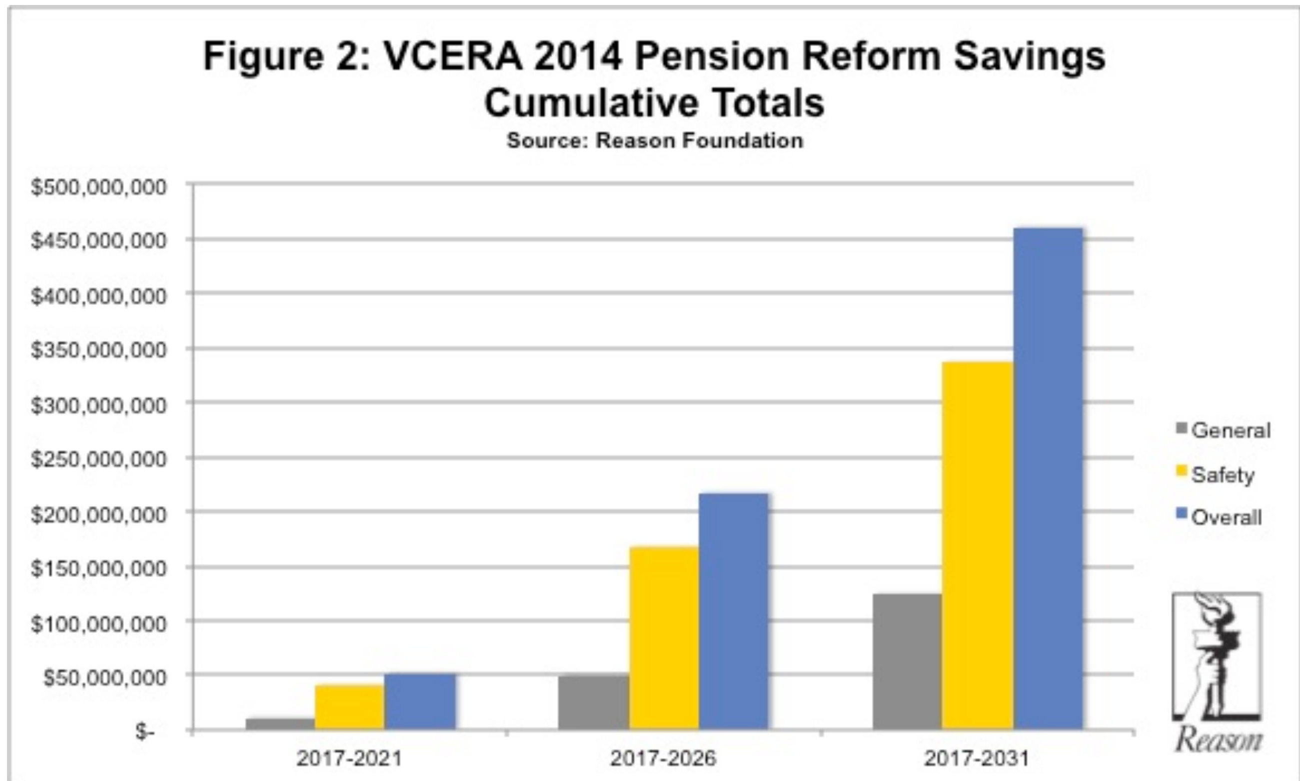
The Savings: Should all elements of this initiative be adopted, Ventura County would see cash flow savings of:

- $508,000 in the first year of implementation, and $4.9 million in the second year of implementation;
- $51.6 million in cumulative savings over the first five years;
- $217.1 million in cumulative savings over ten years;
- $460.4 million in cumulative savings over fifteen years. [1]

VCERA currently amortizes the unfunded liability over fifteen years, which is why the independent actuarial analysis provides projected savings over that time frame. Importantly, these projected savings would be *in addition* to any savings that might occur as a result of implementing PEPRA.

Figure 1 above shows the annual net savings to Ventura County for both general employees and public safety employees. Figure 2 below shows the cumulative savings over fifteen-years for general and public safety employees.

[1] The County will be voting on the proposed initiative after the start of fiscal year 2015; as a result, the changes would be implemented in fiscal year 2016. Therefore, independent actuarial analysis assumes that accrued liability would change starting in fiscal year 2016, and reductions to normal cost would start in fiscal year 2017. The fifteen-year cumulative savings period is from fiscal years 2017 to 2031.



The proposed initiative would also reduce the long-term liabilities of the defined-benefit fund, both by phasing it out it over time and as a result of holding pensionable pay constant. By the end of the 15-year amortization period, VCERA's liabilities would be $1.771 billion lower than without reform (see Table 1 on the next page). This is separate from the annual cash-flow savings.

As also shown in Table 1, the proposed initiative would lead to $230 million in reduced unfunded liabilities over the first five years. By fiscal year 2024, the defined-benefit fund would be fully funded.

The Details: These savings were determined through an independent actuarial analysis performed for Ventura County Taxpayers Association.[2] The actuary modeled the anticipated changes proposed in the reform initiative versus the projected growth in liabilities of the current pension system.

The actuary adopted all of the assumptions used in the most recent valuation for VCERA, except employment growth.[3] Thus, the baseline that the proposed initiative was compared to incorporated changes due to PEPRA. The costs and savings were amortized over 15 years, consistent with current policy. The actuary also assumed that the County would continue to make 100% of its annual contributions.

The official VCERA actuary has been making the unrealistic assumption that the County would not expand the workforce by even one person over the next 15 years.[4] That has not been true over the last 15 years and is not likely to be true in the future.

[2] The independent actuary was William J. Sheffler, FCA, EA, MSPA, ASA of Sheffler Consulting Actuaries, Inc. The actuary reports that their modeling approach was inherently conservative.

[3] The actuary used the most recent Segal Co. valuation for VCERA, Fiscal Year Ended June 30, 2013.

[4] This actuarial valuation was completed by Segal Co.

Table 1: Changes in VCERA Liabilities Due to Pension Reform

Source: Reason Foundation

FY	Unfunded Liability			Accrued Liability		
	Current	After Reform	Net Reduced	Current	After Reform	Net Reduced
2015	$862,000,000	$862,000,000	$0	$5,120,000,000	$5,120,000,000	$0
2016	$767,000,000	$767,000,000	$0	$5,412,000,000	$5,375,000,000	$37,000,000
2017	$741,000,000	$660,000,000	$81,000,000	$5,659,000,000	$5,579,000,000	$81,000,000
2018	$667,000,000	$540,000,000	$127,000,000	$5,963,000,000	$5,810,000,000	$153,000,000
2019	$583,000,000	$407,000,000	$176,000,000	$6,268,000,000	$6,037,000,000	$231,000,000
2020	$488,000,000	$260,000,000	$228,000,000	$6,578,000,000	$6,254,000,000	$324,000,000
2021	$380,000,000	$150,000,000	$230,000,000	$6,893,000,000	$6,512,000,000	$381,000,000
2022	$312,000,000	$86,000,000	$226,000,000	$7,211,000,000	$6,764,000,000	$447,000,000
2023	$242,000,000	$21,000,000	$221,000,000	$7,532,000,000	$7,006,000,000	$526,000,000
2024	$182,000,000	-$33,000,000	$215,000,000	$7,853,000,000	$7,236,000,000	$618,000,000
2025	$97,000,000	-$111,000,000	$208,000,000	$8,174,000,000	$7,450,000,000	$724,000,000
2026	-$11,000,000	-$210,000,000	$199,000,000	$8,494,000,000	$7,646,000,000	$848,000,000
2027	-$83,000,000	-$271,000,000	$188,000,000	$8,809,000,000	$7,820,000,000	$989,000,000
2028	-$129,000,000	-$305,000,000	$176,000,000	$9,119,000,000	$7,970,000,000	$1,149,000,000
2029	-$177,000,000	-$338,000,000	$161,000,000	$9,420,000,000	$8,088,000,000	$1,332,000,000
2030	-$228,000,000	-$373,000,000	$145,000,000	$9,709,000,000	$8,171,000,000	$1,538,000,000
2031	-$281,000,000	-$406,000,000	$125,000,000	$9,982,000,000	$8,211,000,000	$1,771,000,000

The independent actuary assumes there will be modest employment growth in County government, which makes the estimate of savings from the proposed initiative more conservative.[5] If the County actuary turns out to be right and Ventura County does not hire more workers over the next 15 years, savings from the initiative will be even greater than those predicted here.

The independent actuary had to assume no additional changes to the existing VCERA defined-benefit pension plan over the next 15 years, but should any future reforms be implemented, they could result in costs or savings not included in this analysis. Additionally, any future underfunded contributions or missed investment return targets would affect the net position of VCERA's financial condition.

Finally, the savings projection assumes that pensionable pay will increase on a normal basis after the five-year holding period. However, if County leaders decide in the future to retroactively add the five-year of pay increases into pensionable pay (known as "catching up" pensionable pay)—that is, if all pay increases over the next five years are rolled back into pensionable pay—that would be costly to County taxpayers as employee contributions could not be increased to cover the sudden increase in liabilities.

Zero "Transition Costs": The proposed initiative requires *zero additional costs* for Ventura County taxpayers. The County could make separate policy choices that mean costs increase beyond the status quo, such as setting the defined-contribution rate high, or increasing the debt payments for VCERA. But any costs related to these policy choices would be *unrelated* to transitioning from defined-benefit to defined-contribution.

There are two components to pension funding: the annual cost to pre-fund pension liabilities (known as "normal cost"), and the cost to pay off unfunded pension debt. There is no legal reason that VCERA would have to change its defined-benefit debt payment plan due to the transition towards a defined-contribution system. It is important to clarify that employee contributions *never* subsidize debt payments. So there are no transition costs related to debt repayment.

More importantly, the actuary's model shows that the County would save $318,000 from its normal, annual pension cost in the first year, and would spend $332 million less over 15 years because of the change to a defined-contribution plan (see Table 2, next page).

Holding pensionable pay constant saves the County $190,000 in the first year of reform and $128.6 million after 15 years *on top of normal pension cost savings* (see Table 2). These savings could be passed from VCERA to the County. Or it might be necessary to reinvest the money into the defined-benefit fund to offset future losses that the defined-benefit system may still experience due to its unrealistic actuarial assumptions.

Importantly, there may be increased costs in the future for the County due to missing investment targets in the defined-benefit system as it is phased out—the proposed initiative does not change County investment return assumptions for the defined-benefit plan. But any increased costs would be because of faulty assumptions presently in the system, and thus would be incurred even without the transition to defined-contribution system.

[5] The actuary used headcount changes from 2011-2013 to estimate new hires into the future and then applied the salary change assumptions from the Segal valuation.

Table 2: Pension Reform Savings

Source: Reason Foundation

FY	Reduced Normal Cost	Savings from Pensionable Pay Change	Net Savings
2017	$318,000	$190,000	$508,000
2018	$2,548,000	$2,302,000	$4,850,000
2019	$5,323,000	$4,415,000	$9,738,000
2020	$8,662,000	$6,555,000	$15,217,000
2021	$13,179,000	$8,082,000	$21,261,000
2022	$18,841,000	$8,983,000	$27,824,000
2023	$20,914,000	$9,344,000	$30,258,000
2024	$23,192,000	$9,708,000	$32,900,000
2025	$25,576,000	$10,130,000	$35,706,000
2026	$28,323,000	$10,464,000	$38,787,000
2027	$31,088,000	$10,858,000	$41,946,000
2028	$33,724,000	$11,354,000	$45,078,000
2029	$36,682,000	$11,710,000	$48,392,000
2030	$39,841,000	$12,137,000	$51,978,000
2031	$43,563,000	$12,398,000	$55,961,000
2017-2021	**$30,030,000**	**$21,544,000**	**$51,574,000**
2017-2026	**$146,876,000**	**$70,173,000**	**$217,049,000**
2017-2031	**$331,774,000**	**$128,630,000**	**$460,404,000**

For a more detailed breakdown of the savings numbers see Table 3 at the end of this document.

However, after those on the defined-benefit payroll have completely retired, there would be no further accrued liabilities for VCERA, eliminating all normal annual pension costs. There may still be debt payments required into the defined-benefit system because the actuarial assumptions did not lead the County to completely pre-fund promised benefits. But, again, these debt payments would be required whether or not the County transitioned to a defined-contribution system.

The dynamic effects of the proposed initiative mean that the County would not only reduce liabilities in the long-term, but also save money on a cash flow basis in the short-term, shoring up pension obligations it has for current employees and retirees.

Conclusion: The proposed reform to VCERA saves $460 million over 15 years, eventually eliminates unfunded liabilities by closing the current defined-benefit plan, and puts new hires into a defined-contribution system. Holding pensionable pay constant would pay for the transition from defined-benefit to defined-contribution and provide cash flow savings in the first fiscal year it is adopted for Ventura County, as well as every subsequent year.

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Table 3: Pension Reform Savings Detailed Breakdown

In thousands ($000); Source: Reason Foundation

	Reduced Normal Cost			Pensionable Pay Change Savings			Net Savings		
FY	General	Safety	Overall	General	Safety	Overall	General	Safety	Overall
2017	$277	$41	**$318**	$91	$99	**$190**	$368	$140	**$508**
2018	$748	$1,800	**$2,548**	$383	$1,919	**$2,302**	$1,131	$3,719	**$4,850**
2019	$868	$4,455	**$5,323**	$1,167	$3,248	**$4,415**	$2,035	$7,703	**$9,738**
2020	$1,152	$7,510	**$8,662**	$1,936	$4,619	**$6,555**	$3,088	$12,129	**$15,217**
2021	$2,173	$11,006	**$13,179**	$2,051	$6,031	**$8,082**	$4,224	$17,037	**$21,261**
2022	$3,236	$15,605	**$18,841**	$2,118	$6,865	**$8,983**	$5,354	$22,470	**$27,824**
2023	$4,242	$16,672	**$20,914**	$2,238	$7,106	**$9,344**	$6,480	$23,778	**$30,258**
2024	$5,333	$17,859	**$23,192**	$2,354	$7,354	**$9,708**	$7,687	$25,213	**$32,900**
2025	$6,462	$19,114	**$25,576**	$2,519	$7,611	**$10,130**	$8,981	$26,725	**$35,706**
2026	$7,883	$20,440	**$28,323**	$2,587	$7,877	**$10,464**	$10,470	$28,317	**$38,787**
2027	$9,243	$21,845	**$31,088**	$2,708	$8,150	**$10,858**	$11,951	$29,995	**$41,946**
2028	$10,389	$23,335	**$33,724**	$2,927	$8,427	**$11,354**	$13,316	$31,762	**$45,078**
2029	$11,773	$24,909	**$36,682**	$2,998	$8,712	**$11,710**	$14,771	$33,621	**$48,392**
2030	$13,198	$26,643	**$39,841**	$3,124	$9,013	**$12,137**	$16,322	$35,656	**$51,978**
2031	$15,028	$28,535	**$43,563**	$3,071	$9,327	**$12,398**	$18,099	$37,862	**$55,961**
2017-2021	$5,218	$24,812	**$30,030**	$5,628	$15,916	**$21,544**	$10,846	$40,728	**$51,574**
2017-2026	$32,374	$114,502	**$146,876**	$17,444	$52,729	**$70,173**	$49,818	$167,231	**$217,049**
2017-2031	$92,005	$239,769	**$331,774**	$32,272	$96,358	**$128,630**	$124,277	$336,127	**$460,404**

MEMORANDUM
COUNTY OF VENTURA
COUNTY COUNSEL'S OFFICE

June 13, 2014

TO: Members, Board of Supervisors

FROM: Leroy Smith, County Counsel

RE: LEGAL ANALYSIS OF INITIATIVE PENSION MEASURE

You have asked for a report back on legal issues raised by the initiative pension measure ("measure"), which would repeal the County of Ventura's ("County") defined benefit pension plan for future employees and replace it with a 401(k)-style plan. This report discusses the major legal issues identified, however, additional research is needed to fully analyze all of the legal issues raised by the proposed measure.

In our opinion, the measure is illegal because it would directly conflict with, and therefore be preempted by, state law that mandates County employees be enrolled in a defined benefit plan as specified in the County Employees Retirement Law of 1937 (the "1937 Act"). Further, the measure is improper because it proposes an administrative act, rather than a legislative act. All or parts of the measure are also invalid for other legal reasons discussed below.

A. THE MEASURE IS INVALID BECAUSE IT PURPORTS TO REPEAL STATE LAW BY LOCAL ORDINANCE

1. County's Defined Benefit Plan is a Creation of State Law

The measure suffers from a basic misconception about the origins of the County's defined benefit plan. The County's defined benefit plan was created by state law, not local law. The County's voters did not enact a defined benefit plan in 1946 when they voted for Ordinance No. 401, which had been submitted to them for ratification by the Board of Supervisors ("Board"). Rather, the voters "accepted" the implementation of a state law, the 1937 Act, in the County. That state law became "operative" in the County when it was "accepted" pursuant to the procedures dictated by the 1937 Act, but it has always been, and remains, a state law.

Once a state law is "accepted" by a local government, whether by its governing body or its voters, it cannot be "unaccepted" or otherwise repealed by the local government unless there are express provisions in the state law allowing it to do so. There are no such provisions in the 1937 Act.

Controlling legal authorities support this conclusion. In enacting state legislation, the California Legislature usually passes laws in a manner that the effective date and operative date are the same – January 1 of the year following its enactment. (Cal. Const., art. IV, § 8c, subd. (c)(1).) However, the Legislature has the power to establish an operative date later than the effective date. (*People v. Camba* (1996) 50 Cal.App.4th 857, 865-856.)[1/] As stated in *Preston v. State Board of Equalization* (2001) 25 Cal.4th 197, 223:

> "The effective date [of a statute] is . . . the date upon which the statute came into being as an existing law.' [Citation.] '[T]he operative date is the date upon which the directives of the statute may be actually implemented.' [Citation.] Although the effective and operative dates of a statute are often the same, the Legislature may 'postpone the operation of certain statutes until a later time.'"

Moreover, the Legislature may provide for a statute to go into effect or become operative contingent upon the happening of a future or uncertain event. (See *Busch v. Turner* (1945) 26 Cal.2d 817, 821 [providing that the Legislature has the power to pass an act to be effective upon the occurring of an uncertain event]; *Ross v. Board of Retirement* (1949) 92 Cal.App.2d 188, 194 [providing that after a law becomes effective, its operation may be postponed if it is made dependent upon a contingency which may occur in the future].) And the decision of a local governing body to accept or reject the new statute may be such a contingent event. (*Firemen's Benevolent Assn. v. City Counsel* (1959) 168 Cal.App.2d 765, 768 [providing a statutory enactment may ordinarily provide that it will take effect on the happening of some future event and the decision of a local governing board may be one such event].)

[1/] An enactment is law on its effective date in the sense that it cannot be changed except by the legislative process; but rights of individuals under the law's provisions are not affected until the provisions become "operative" as law. (*People v. Camba, supra*, 50 Cal.App.4th 857 at p. 866.)

Pursuant to this authority, the California Legislature adopted the 1937 Act, as an uncodified statute. (Stats. 1937, ch. 677, § 2, p. 1898.) The 1937 Act was amended in 1939, 1941, 1943, and 1945. As of 1946, section 40 of the act read as follows:

> "40. There is established in any county of the State a retirement system for its officers and employees, and for the officers and employees of districts therein, *by the acceptance of the provisions of this act* by a majority vote of the electors voting upon such acceptance proposition at any special or general election at which the proposition of accepting the provisions of this act may be submitted or by an ordinance passed by four-fifths vote of its board of supervisors. The provisions of this act become operative in such county on either the first day of January, or the first day of July next, as specified in the ordinance, but not sooner than sixty days after the passage of the ordinance." (Italics added.)[2/]

The required contingency for the 1937 Act to become operative in the County and to establish the retirement system in the County occurred in 1946 when, in accordance with section 40 of the 1937 Act, the County Board of Supervisors voted 5-0 to adopt Ordinance No. 401, entitled "An Ordinance of the County of Ventura, Accepting The Provisions of the County Employees Retirement Act of 1937 (Chapter 677, Statutes of 1937), And Establishing A Retirement System For the Officers and Employees of the County of Ventura And Districts Therein." Section 1 of Ordinance 401 provided in material part that "the Board of Supervisors of the County of Ventura does *hereby accept* the provisions of said County Employees Retirement Act of 1937, . . ." (Italics added.) Although acceptance by a 5-0 vote of the Board was sufficient to make the 1937 Act operative in the County, the Board nonetheless submitted an acceptance proposition to the qualified voters of the County asking them to approve the Board's ordinance accepting the 1937 Act. (Ordinance No. 401, section 2.) On June 4, 1946, a majority of voters approved the proposition accepting the 1937 Act.

[2/] In 1948, the Legislature codified the 1937 Act at section 31450 et seq. of the California Government Code. Section 40 of the act was slightly reworded and codified at sections 31500 and 31501 of the Government Code.

In 1953, the County included the essence of Ordinance No. 401 in its newly created Ventura County Ordinance Code ("VCOC"), without repealing or amending Ordinance No. 401. Since 1953, Division 1, Chapter 2, Article 2, Section 1221 of the County Ordinance Code has provided: "The provisions of the 'County Employees Retirement Law of 1937 (Chapter 677, Statutes of 1937, as amended) are hereby accepted, and in compliance therewith a retirement system is hereby established, of and for the employees of the County and of the districts therein permitted, or entitled to, membership in such system."

All contingencies for making the 1937 Act operative in the County having been met as of June 4, 1946, the 1937 Act (a state law) became fully enacted, effective and operative in Ventura County as of July 1, 1946.

2. The Operation of the 1937 Act in Ventura County Cannot Be Repealed by a Local Ordinance

Because the measure proposes only a local ordinance, which cannot by law disestablish the 1937 Act plan in the County, the measure is illegal and of no effect. Once accepted, the 1937 Act provides no procedure by which a county can disestablish the retirement system or unaccept the retirement law by any subsequent local action, either by the voters or by the board of supervisors. Further, the act provides no authority or process for a county to withdraw from the system.[3/]

The proper method to repeal or amend a state law such as the 1937 Act now operative in the County is for the California Legislature to enact a repealing or amending statute or for the state electorate through a statewide initiative process to enact a repealing or amending law.

[3/] In contrast, the 1937 Act expressly allows for districts to withdraw from the retirement system (otherwise leaving the local retirement system in place). If a district withdraws, the 1937 Act specifies what happens: all accumulated contributions are refunded to the affected employees and the district, or transferred to another public retirement system. (Gov. Code, § 31564.) There is no statutory mechanism for a district to phase out participation in the system, leaving some employees covered and others not.

In fact, this was considered in 1979, but the Legislature declined to grant the County authority to exclude future employees from the 1937 Act plan and provide them with 401(k)-type benefits instead. Senate Bill 1117 was introduced in April 1979, and as initially drafted would have permitted Ventura County (and only Ventura County) to "adopt a resolution excluding from membership all persons who enter county or district service after the effective date of the resolution." (SB 1117, § 1 (1979-1980) (Apr. 5, 1979).) The bill was amended to exclude "classes eligible for safety membership" from the proposal, and to insert the following expression of legislative intent:

> "It is the intent of the Legislature, in authorizing a county of the 13th class [i.e., Ventura County] to exclude employees hired after the effective date of this section from membership in the existing retirement system, to study the effects of removal of mandatory retirement system membership in a county that is currently participating in the County Employees Retirement Law of 1937.
>
> "It is not the intent of the Legislature, at this time, to allow other counties who participate in this retirement system to exclude new employees from membership.
>
> "Any alternative retirement of deferred compensation plans for employees excluded from existing retirement system membership pursuant to this section shall be reviewed by an actuary to verify that all contributions, liabilities, actuarial interest rates, and other valuation factors shall be determined on the basis of actuarial assumptions and methods which, in combination, offer the actuary's best estimate of anticipated experience under the new system.
>
> "The additional contributions required under the new system shall be computed as a level percentage of member compensation. The additional contribution rate required at the time the new system is adopted shall not be less than the sum of (1) the actuarial normal cost, plus accrued liability attributable to benefits over a period of not more than 30 years from the date the new system becomes operative.

> "Any reports or studies prepared as a result of actions taken by the board of supervisors pursuant to this section shall be transmitted to the policy [sic] and Rules Committees of both houses of the Legislature."

Ultimately, this language was deleted from the bill, and a very different version of SB 1117 was enacted, the only effect of which was to make an innocuous reference to a county treasurer's duties. (See Gov. Code, § 31520.)

This Legislative history comports with our interpretation of the relevant law. It is clear that, at least in 1979, the Legislature understood that a county that had accepted the 1937 Act could not disestablish the system without Legislative authorization. In our view, that remains the law today. Interestingly, the Legislature itself considered using Ventura County as a pilot program to study the effects of changing from a defined benefit plan to a defined contribution plan for future employees, but rejected the idea.

The above principles regarding legislative powers and the legislative process are grounded in decisions of the California Supreme Court and the opinions of the California Attorney General. The opinion in *Board, etc. Trustees v. Supervisors* (1893) 99 Cal. 571, is particularly instructive. Orange County had adopted an ordinance electing to come within a state act for law libraries, and later attempted to repeal the ordinance. The California Supreme Court held the attempted repeal was unlawful, finding that:

> "We think the legislature had the power to provide in the act that counties might come within or remain without the provisions of the act, as the boards of supervisors of the respective counties might determine . . . . 'Not only had the legislature the power to provide upon what condition or contingency the provisions of the act might be carried into effect, but also to provide within what time it must be done, if done at all.'
>
> "It is also plain that the attempted repeal of the ordinance declaring Orange County within the provisions of the act was of no avail. When Orange County once came within the provisions of the act, it was there for all purposes; as fully and completely there, as if it had passed directly under its provisions at the date of the original enactment. We do not perceive how it can evade the force and effect

> of the statute of the state (which, after the passage of ordinance No. 14, applied to it) in any different manner or to any greater extent than it can escape the force and effect of any other statute of the state. If it can do so in this instance it has the power to disorganize, for it was created under an act involving the same principle." (*Board, etc. Trustees v. Supervisors*, *supra*, 99 Cal. 571 at p. 573.)

Similarly, the California Attorney General, addressed the question of whether a county was bound by legislative amendments made to the 1937 Act after a county's acceptance of the system. The Attorney General opined that any amendments to the 1937 Act, either before or after a county's approval, are part of the retirement system because the 1937 Act is statewide legislation in force throughout the state and subject to amendment by the Legislature just as any other state legislation, and stated:

> "Undoubtedly the Legislature intended to adopt a system of retirement benefits for county employees which would be uniform in the several counties of the State which have or will in the future accept the system. . . . There is no method provided in the Act by which a county can acquiesce in subsequent amendments by the Legislature and *there is no way in which a county can by ordinance change the system*. . . . The legislation here . . . is State-wide in scope and subject to amendment [and repeal] in the same manner as any other [state] legislation." (10 Ops.Cal.Atty.Gen. (1947) 96, 99, italics added.)

3. The Measure is Preempted by State Law

Article XI, section 7 of the California Constitution confers on each city and county the power to "make and enforce within its limits all local, police, sanitary, and other ordinances and regulations *not in conflict with general laws*." (Italics added.) Where a local ordinance conflicts with general law, it is void. (*Cohen v. Board of Supervisors* (1985) 40 Cal.3d 277, 290; *Sherwin-Williams Co. v. City of Los Angeles* (1993) 4 Cal.4th 893, 897-898.)

The legislative powers of the electorate of the County are generally coextensive with the powers of the County Board of Supervisors (*DeVita v. County of Napa*, (1995), 9 Cal.4th 763, 775), so the limitation as to conflicts with state law applies to the

enactments of the board of supervisors and the voters. (*Galvin v. Board of Supervisors of Contra Costa County* (1925) 195 Cal. 686, 692.)

Because the measure, by its own terms, contradicts and is inimical to rights established by the 1937 Act, a state law, it is preempted.

B. THE MEASURE PROPOSES AN ADMINISTRATIVE ACT

1. Administrative Acts are not a Proper Subject for an Initiative

"[T]he reserved powers of initiative and referendum do not encompass all possible actions of a legislative body." (*Worthington v. City Council of Rohnert Park* (2005) 130 Cal.App.4th 1132, 1143 ("*Worthington*").) Both state and local initiatives are limited to legislative acts and may not be used to undertake, modify or rescind administrative, adjudicative, or quasi-judicial actions. (*Citizens for Jobs & the Economy v. County of Orange* (2002) 94 Cal.App.4th 1311, 1331-1333 ("*Citizens for Jobs*").) The purpose of this rule is to promote the efficient administration of the business affairs of government. (*Lincoln Property Co. No. 41, Inc. v. Law* (1975) 45 Cal.App.3d 230, 233-234.)

2. The Measure Proposes an Administrative Act

The test for distinguishing legislative from administrative acts is well settled:

> "'The power to be exercised is legislative in its nature if it prescribes a new policy or plan; whereas, it is administrative in its nature if it merely pursues a plan already adopted by the legislative body itself, *or some power superior to it.*' [Citations.]" (*Valentine v. Town of Ross* (1974) 39 Cal.App.3d 954, 957-958; see also *Citizens for Jobs*, *supra*, 94 Cal.App.4th 1311 at pp. 1331-1333. (Italics added.)

In *City of San Diego v. Dunkl* (2001) 86 Cal.App.4th 384, 400, the court held that:

> "Once a legislative policy has been established, the administrative acts that follow therefrom are not subject to referendum or initiative. They should not obstruct the project, but should carry it out.

> [Citation.] An enactment that interferes with the City's ability to carry out its day-to-day business is not a proper subject of voter power."

Similarly, in *Kleiber v. City etc. of San Francisco* (1941) 18 Cal.2d 718, 723, the court held that: . . . "if the action [is] designed to carry into effect law already enacted it may be said to be administrative rather than legislative action." In *Worthington*, *supra*, 130 Cal.App.4th 1132 at p. 1142, footnote 9, the court stated that when a local body merely pursues a plan already adopted by a superior power, it acts administratively, not legislatively, citing 5 McQuillin, Municipal Corporations (3d ed. 2004) section 16:54, pages 407-410.

Applying these principles to the 1937 Act and a county's acceptance, it must be concluded that the County's acceptance of the 1937 Act in 1946 was an administrative act.[4/]

The purpose of the 1937 Act was to enact a new policy and plan, and the ways and means of accomplishing the plan, for retirement systems among the State's counties. To accomplish this policy, the Legislature included in the 1937 Act the ways and means for counties to create an entirely new retirement system, replacing pre-existing systems and providing for a retirement board, investments, pensions, death benefits, disabilities and a means of opting into the system. (Gov. Code, § 31520 et seq.) Thus, the new legislative policy and plan was established and completed by the Legislature in 1937, with subsequent changes accomplished through amendments by the Legislature. With every

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[4/] That acceptance of the 1937 Act was done by ordinance, does not make it a legislative act.

> "Generally, whether what is done by a municipal legislative body is an ordinance or a resolution depends not on what the action is called but on the reality. Thus the mere doing of a particular thing in the form of an ordinance does not necessarily constitute it an ordinance; in other words, acting by ordinance rather than by resolution does not necessarily constitute municipal legislation. Conversely, where a resolution is in substance and effect an ordinance or permanent regulation, the name given to it is immaterial." (5 McQuillin Mun. Corp. (3d ed. 2013) § 15.2.)

legislative aspect of the 1937 Act completed by the Legislature, there was nothing left for the County to decide except whether to participate or not. The County's action in 1946 to carry into effect a law already enacted by a superior power is properly characterized as an administrative act and not a legislative one.

The correctness of this conclusion is demonstrated by the Attorney General opinion referenced above:

> "The action of the electors in adopting the statute [i.e., the 1937 Act] in Tulare County was not a legislative act in the true sense of the word. [¶] . . . [A] county, when accepting the provisions of the Act, does not legislate but merely evinces the event upon the happening of which the statute becomes effective in the particular county." (10 Ops.Cal.Atty.Gen. (1947) 96, 99.)

Because Ordinance No. 401 was an administrative act, any attempted repeal of Ordinance No. 401 must similarly be deemed an administrative act. (*Citizens for Jobs*, *supra*, 94 Cal.App.4th at p. 1322 [initiative and referendum cannot be invoked to annul administrative acts which are not within the reach of the initiative and referendum process].) Because administrative acts are not proper and lawful subjects for an initiative measure, the measure is illegal.

C. THE MEASURE IMPROPERLY ATTEMPTS TO REGULATE THE FIRE DISTRICT AND OTHER NON-COUNTY ENTITIES AND EMPLOYEES

The measure purports to control the retirement benefits, wages, and collective bargaining processes of the Ventura County Fire Protection District ("Fire District") and other non-County entities through the simple device of defining the "County" to include such entities. Section 1222 (Definitions) of the proposed new ordinance defines "County" to "include all special districts, agencies and sub-governments that the Board of Supervisors serve as the governing board and/or any special districts, agencies and sub-governments that are part of any County retirement program." (Proposed ordinance, section 1222, subd. (f).) Similarly, the measure defines "Employee" to "include all employees and officers of the County of Ventura, its subsidiary agencies, governmental entities and sub-governments that are qualified to be members of the Defined Benefit

Plan or beneficiaries of the Defined Contribution Plan." (Proposed Ordinance, section 1222, subd. (l).)[5/]

The initiative petition was submitted and qualified under the county initiative provisions of the Elections Code. (Elec. Code, §§ 9100-9126.) The initiative proposes adoption of a County ordinance. It does not propose adoption of a district ordinance, or a state statute, nor could it.

The non-County entities purportedly regulated by the proposed new ordinance, besides the Fire District, include the Ventura County Superior Court ("Court"), the Ventura County Air Pollution Control District ("VCAPCD") and the Ventura Regional Sanitation District ("VRSD"). The Court is a state agency, and the others are special districts. Each non-County entity participates in the County's 1937 Act plan; each has its own governing body; and each is legally separate and independent from the County.

Each of these non-County entities has the authority to establish the compensation and benefits of its employees, and conduct its own collective bargaining. (See Health & Saf. Code, §§ 4700, 40121, 40122 & 13861 [authorizing governing boards of the VRSD, the VCAPCD, and the VCFPD and not a county board of supervisors to establish compensation for their employees]; Cal. Const., art. VI, § 4; Gov. Code, § 71600 et seq. [courts set compensation of court employees].)

Thus, under principles of sovereign immunity, these state agencies and special districts are not subject to County ordinances. (*Hall v. City of Taft* (1956) 47 Cal.2d 177, 183; *City of Orange v. Valenti* (1974) 37 Cal.App.3d 240 [state and its special districts not subject to local regulation of sovereign activities unless waived by express statute].) The measure cannot avoid this legal prohibition on County power by artful drafting. Thus, the provisions in the proposed new ordinance that purport to regulate the retirement benefits, wages and collective bargaining processes of the non-County entities are unlawful and invalid.[6/]

[5/] The measure also improperly includes non-County entities or employees within the definitions for Date of Hire, Member, and Memorandum of Understanding. (Measure, section 1222, subds. (g), (m) & (n).

[6/] A qualified voter wishing to qualify an ordinance applicable to special districts
(continued...)

In theory, these entities and employees could be indirectly affected by the repeal of County Ordinance No. 401 by the County or its voters, if that could be legally accomplished. A repeal would have the effect of immediately disestablishing the County's 1937 Act retirement plan, and its governing body, the Ventura County Employees Retirement Association ("VCERA"), leaving plan members in limbo. But even if that were legally possible, the measure's other provisions cannot be applied to these entities or their employees. That means under any scenario, the following provisions of the measure, among others, cannot legally be applied to the Fire District, VRSD, VCAPCD or the Court: mandatory creation of a 401(k)-style plan as the vehicle for retirement benefits; mandatory employer contributions to a 401(k)-style plan; limitations on compensation increases for safety or tier I members; prohibitions against the creation of new defined benefit retirement plans; prohibitions against participating in both a defined benefit plan and a defined contribution plan; and mandatory establishment of a death and disability plan.

D. MEASURE IS VAGUE AND UNWORKABLE, AND THEREFORE INVALID

Initiatives are subject to the same state and federal constitutional limitations as are laws adopted by the Legislature and ordinances adopted by counties. Thus, an initiative is invalid if it is arbitrary and capricious or unconstitutionally vague. (*Building Industry Assn. v. City of Camarillo* (1986) 41 Cal.3d 810, 824; *Legislature v. Deukmejian* (1983) 34 Cal.3d 658, 674.) An ordinance is unconstitutionally vague if it is not sufficiently clear to allow persons of common intelligence to understand its meaning and comply with its language (*City of Costa Mesa v. Soffer* (1992) 11 Cal.App.4th 378, 387) or to allow agencies to administer its provisions (*McMurtry v. State Board of Medical Examiners* (1960) 180 Cal.App.2d 760, 766). Likewise, an initiative is invalid if it creates internal inconsistency in an existing legislative scheme. (See *Lesher Communications, Inc. v. City of Walnut Creek* (1990) 52 Cal.3d 531, 541.)

The measure is internally inconsistent, vague and unworkable in that it would immediately repeal and disestablish the existing 1937 Act plan, but at the same time require a lengthy phase out or continuation of the plan. (Measure, section one; Proposed

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[6](...continued)
or the Court could attempt to do so, but only through the special district initiative law or the statewide initiative law. (Elec. Code, §§ 9000-9096 or 9300-9323.)

Ordinance, section 1221, subd. (d).) Pursuant to Election Code section 9122 and section 1222, subdivision (k) of the proposed ordinance, the repeal of County Ordinance No. 401 would become effective 10 days after the election results are certified. On that date, the measure would rescind the establishment of the 1937 Act system in the County, so that legally the County's 1937 Act retirement system would no longer exist in the County, and its governing board would be eliminated. After that date there simply would be no 1937 Act system in the County, no defined benefit plan, no elected and appointed retirement board, and no 1937 Act plan in which the County can participate. Such an outcome would be inconsistent with the rights of members vested in the 1937 Act plan to have the plan administered by qualified, elected and appointed, trustees and staff. The measure's purported delegation to the Board to phase out the defined benefit plan by any lawful method is not consistent with the remaining rights and interests of plan members under the 1937 Act.

Despite these facts, the measure contradictorily provides that VCERA's Board shall retain jurisdiction over the payment and administration of death and disability benefits to employees covered under the defined benefit plan. (Proposed ordinance, section 1227, subd. (b).) VCERA's Board could not possibly perform that function if the measure is adopted because it would cease to exist upon the effective date of the repeal of County Ordinance No. 401. Numerous other inconsistent and unworkable provisions exist in the measure.

The internal inconsistencies and vagueness in the measure make it impossible for the County to lawfully administer the provisions of the measure, rendering the initiative invalid. (*Citizens for Jobs*, *supra*, 94 Cal.App.4th at p.1335 [initiative invalidated for vagueness where so vague as to be unworkable interference with board's duties].)

E. THE MEASURE'S PROVISIONS WHICH PURPORT TO REGULATE COLLECTIVE BARGAINING ARE PREEMPTED

Section 1233 of the ordinance proposed by the measure directs the Board concerning its bargaining position with unions that represent employees entitled to public safety retirement benefits or general tier I benefits. For five years after the measure's operative date, the Board's initial bargaining position in negotiations regarding such employees must not propose terms that would increase pensionable pay. The measure further provides that any tentative agreements reached with unions for changes in

compensation and other benefits require special findings and procedures (findings regarding long term funding and actuarial and accounting justifications) before the Board can approve them.

These provisions directly conflict with the Meyers-Milias-Brown Act ("MMBA") (Gov. Code, § 3500 et seq.), the labor relations statute applicable to the County. The purpose of the MMBA is to promote full communication between public employers and their employees by providing a reasonable method of resolving disputes between public employers and public employee organizations regarding wages, hours and other terms and conditions of employment. (*Voters for Responsible Retirement v. Board of Supervisors* (1994) 8 Cal.4th 765, 780 ("*VFRR*").) Labor relations in the public sector are matters of statewide concern. (*Huntington Beach Police Officers Association v. City of Huntington Beach* (1976) 58 Cal.App.3d 492, 500 ("*Huntington Beach*").) Thus, the procedures set forth in the MMBA are a matter of statewide concern and are preemptive of contradictory local labor-management procedures. (*VFRR*, *supra*, 8 Cal.4th at 781.)

In *VFRR*, the county entered a memorandum of understanding ("MOU") providing for entry in the California Public Employee Retirement System's ("PERS") "2% at 60" program. A petition called for a referendum on the ordinance approving the contract amendment between the county and PERS. The court held that the ordinance was not subject to referendum because the MMBA embodies a statutory scheme in an area of statewide concern that justifies exemption from the referendum process. (*VFRR, supra*, 8 Cal.4th at pp. 781-782.)

Because, as *VFRR* held, the electorate is prohibited from holding a referendum on a MOU between the county and an employee organization, it stands to reason that the electorate may not preemptively direct the board of supervisors as to the positions it must take in bargaining. Yet, that is precisely what the measure purports to do.

The courts have consistently struck down local regulations, whether adopted by the governing body or by initiative, that interfere with the procedures established by the MMBA. For example, in *Huntington Beach*, the city adopted an employer-employee resolution that purported to exclude work hour schedules from the scope of representation. The court held that the provisions of the employer-employee resolution purporting to exclude the subject of working hours from the meet and confer process was in direct conflict with provisions of the MMBA imposing on governing bodies of public

agencies an obligation to meet and confer in good faith. (*Huntington Beach, supra*, 58 Cal.App.3d at p. 500.)

Therefore, even assuming that a properly drafted initiative could limit the amount of compensation payable to public employees, it is clearly unlawful to attempt to accomplish that result by interfering in the collective bargaining processes mandated by the MMBA. Thus, section 1223 of the ordinance proposed by the measure is preempted and invalid.

F. THE INITIATIVE MAY VIOLATE THE SINGLE SUBJECT RULE

Article II, section 8, subdivision (d) of the California Constitution, provides:

> "An initiative measure embracing more than one subject may not be submitted to the electors or have any effect."

This rule applies to both statewide and local initiatives. (*Shea Homes Limited Partnership v. County of Alameda* (2003) 110 Cal.App.4th 1246, 1255.) To constitute a single subject, each provision of the measure must be: (1) functionally related or reasonably germane to the other provisions; (2) reasonably germane to the purposes of the measure; and (3) not overly broad in connection. (*League of Women Voters v. Eu* (1992) 7 Cal.App.4th 649, 659; *California Gillnetters Assn. v. Department of Fish & Game* (1995) 39 Cal.App.4th 1145, 1161 [rule forbids joining provisions that are germane only to topics of excessive generality such as public welfare].) Here, the subjects of the measure are arguably multiple and not functionally related.

In *Senate of the State of Cal. v. Jones* (1999) 21 Cal.4th 1142, the California Supreme Court found that a State initiative which embraced two matters both generally involving state legislators (the power of reapportionment and compensation) was in actuality two separate and unrelated subjects, which violated the single subject rule. The Supreme Court expressed:

> ". . . [o]ur decisions emphatically have rejected any suggestion 'that initiative proponents are given blank checks to draft measures containing unduly diverse or extensive provisions bearing no reasonable relationship to each other or to the general object which is sought to be promoted. . . . Unrelated proposals always may be

> placed before the voters through separate initiative measures, which may be circulated contemporaneously, affording the electorate the choice of approving all, some, or none of the distinct proposals." (*Id* at pp. 1157-1158.)

The measure's stated purpose is arguably multiple, that of "changing the County employee retirement plan from a Defined Benefit Plan to a Defined Contribution Plan as of July 1, 2015, as well as to place new controls over the establishment to pensionable compensation" (Notice of Intention to Circulate Petition) and to "curb runaway pension costs" and "impose procedural limitations." (Preamble, § C.)

Moreover, the measure purports to regulate not only the County, but "all special districts, agencies and sub-governments that the Board of Supervisors serve as the governing board and/or any special districts, agencies and sub-governments that are part of any County retirement program." (Proposed Ordinance, section 1222, subd. (f).)

A voter wishing to impose the measure's terms on the County, but not on the Court or other entities purportedly covered by the measure, might nevertheless be motivated to vote for the measure to achieve part of his or her goal. This is the sort of undesirable situation the single subject matter rule seeks to avoid.

G. THE MEASURE APPEARS TO CONFLICT WITH STATE LAW AUTHORIZING PARTICIPATION IN DEFERRED COMPENSATION PLANS

Government Code section 53214 provides:

> "Notwithstanding any other provision of law, a participant in a deferred compensation plan may also participate in a public retirement system, and, in ascertaining the amount of compensation of such participant for purposes of computing the amount of his contributions or benefits under a public retirement system, any amount deducted from his wages pursuant to this article shall be included."

We have not fully researched the legislative purpose for this statute, but on its face it appears to be designed to protect public employees who participate in a deferred

compensation plan (which includes 401(k)-type plans) from being excluded from public retirement systems maintained by their employer. The measure appears to directly conflict with this state law, and the presumed legislative purpose. Section 1221, subdivision (b) of the new ordinance proposed by the measure provides that no new employee hired by the County after July 1, 2015 (with the exception of employees permitted to enroll in VCERA by contract) may be enrolled in VCERA or any other defined benefit plan administered by the County. Instead, all employees hired after that date will be permitted to participate only in the new defined contribution plan established by the measure. (Proposed Ordinance, sections 1221(c) and 1221(o).)

H. THE MEASURE APPEARS TO CONFLICT WITH STATE LAW AUTHORIZING COUNTIES TO ESTABLISH PENSION TRUSTS

Government Code section 53216 provides, in relevant part, as follows:

> "The legislative body of a local agency may establish a pension trust funded by individual life insurance contracts, individual annuities, group policies of life insurance, or group annuities, or any one or combination of them, or by any other investment authorized by this article for the benefit of its officers and employees."

The County has relied on this authority in the past, for example when it established a Supplemental Retirement Plan in lieu of social security benefits for extra-help and part-time workers.

Pursuant to Section 1223, subdivision (f), the County would be "prohibited from creating any additional retirement plans beyond that created under this Ordinance." Thus, the measure directly conflicts this state statute. Additional research would be necessary, however, to determine whether this conflict is sufficient to give rise to state preemption.

I. SEVERABILITY

The measure contains a severability clause providing that if any part of the measure is held to be invalid by a court, no other part of the measure shall be affected.

And that it is intent of the people voting for the measure that each part thereof would have been adopted even if one or more of the other parts of the measure are declared invalid or unconstitutional. (Measure, section Two.) Literal compliance with this clause would require the measure to be submitted to the voters even if a single provision was a legally proper subject for an initiative. For example, section 1224 of the proposed new ordinance requires that the County make employer contributions ranging from 4 percent to 11 percent of compensation to a new 401(k)-type plan on behalf of all employees hired on or after July 1, 2015. Assuming that section was lawful, and all other parts of the measure were found to be unconstitutional, the severability clause would still require the Board to submit the measure to an election (or adopt it itself). And if passed, the severability clause would require the County to make the specified employer contributions even though new employees continued to participate in the 1937 Act plan. The law does not require such absurd results.

A legislative enactment can be severed if, and only if, the valid parts are grammatically, functionally, and volitionally separable from the invalid parts. (See *Jevne v. Superior Court* (2005) 35 Cal.4th 935.) In sum, the remainder of the measure, after separation of the invalid parts, must be complete in and of itself and capable of independent application. (See *Abbott Laboratories v. Franchise Tax Bd.* (2009) 175 Cal.App.4th 1346.)

An ordinance is "functionally separable" if the invalid parts are not necessary to the measure's operation and purpose. An ordinance is "volitionally separable" if the severed parts were not of critical importance to the measure's enactment. (*Jevne v. Superior Court*, *supra,* 35 Cal.4th at p. 960.)

"Volitional separability" depends on whether a court can determine that the remainder of the ordinance would have been adopted without the invalid parts had the adopters known the invalid parts would be removed from the enactment. (See *California Redevelopment Assn. v. Matosantos* (2011) 53 Cal. 4th 231.) The invalid provisions of an ordinance are "volitionally separable," and the remaining provisions can stand on their own, if the invalid parts were not of critical importance to the measure's enactment. (*Jevne v. Superior Court*, *supra,* 35 Cal.4th at p. 961; *Schweitzer v. Westminster Investments*, (2007) 157 Cal.App.4th 1195, 1212-1213.)

This three-part test (grammatical, functional, and volitional severability) applies to voter initiative measures the same as it applies to statutes and ordinances

adopted by legislative bodies. Moreover, in order for a voter initiative to be considered volitionally severable, the provisions to be severed must have been presented to the electorate in a manner that established their independent significance and independent evaluation by the voters in light of the assigned purposes of the initiative measure. (*People v. Salazar-Merino* (2001) 89 Cal.App.4th 590, 600.)

A final determination on whether the valid parts of the measure, if any, can or should be adopted by the Board or referred to the voters cannot be made without knowing how a court has ruled on any legal challenges to the measure. However, as the legal analysis elsewhere in this memorandum shows, the legal flaws in the measure are so fundamental that it is unlikely the valid parts of the measure, if any, can or should be adopted by the Board or referred to the voters.

J. PRE-ELECTION JUDICIAL REVIEW

California trial courts will review an initiative measure for legal validity prior to submission to the voters if the voters lack the power to enact the measure or if the measure would conflict with state law. However, the decision to review an initiative measure prior to its submission to the voters lies wholly within the discretion of the court (*deBottrari v. City Council* (1985) 171 Cal.App.3d 1204, 1209). There is no constitutional right to place an invalid initiative on the ballot (*San Francisco Forty-Niners v. Nishioka* (1999) 75 Cal.App.4th 637, 645-648). And in considering a pre-election challenge, a court balances two competing interests: the court's concern with preventing the waste of public funds in pointless elections against the court's reluctance to delay the exercise of the public's right to vote on a measure while its legality is being determined (See *Gayle v. Hamm* (1972) 25 Cal.App.3d 250, 257-258.)

Under these competing interests, the courts have developed and applied an appropriate standard for pre-election review: while a trial court should give great deference to the electorates' constitutional right to enact laws through the initiative process, a court will remove an initiative from the ballot only if a proper case has been established for interfering, i.e., where the invalidity is clear beyond a doubt (*Save Stanislaus Area Farm Economy v. Board of Supervisors* (1993) 13 Cal.App.4th 141, 150-151).

For example, in *City of San Diego v. Dunkle* (2001) 86 Cal.App.4th 141, involving the pre-election challenge to a baseball stadium initiative, the court stated:

> "It is well established that preelection review of ballot measures is appropriate where the validity of a proposal is in serious question, and where the matter can be resolved as a matter of law before unnecessary expenditures of time and effort have been placed into a futile election campaign"

The appellate court found that the measure was administrative and not legislative in character and beyond the power of the voters, and was therefore invalid.

In *Senate of the State of California v. Jones*, *supra*, 21 Cal.4th at p. 1154, (involving a pre-election challenge to Proposition 24, which would transfer reapportionment power from the Legislature to the California Supreme Court and provide for the compensation of state legislators and officers), the Supreme Court directed that the measure be kept off the ballot because it violated the single subject requirement of the California Constitution. The court stated that deferring the decision until after the election "may contribute to an increasing cynicism on the part of the electorate with respect to the efficacy of the initiative process." The court further stated that:

> "The presence of an invalid measure on the ballot steals attention, time, and money from the numerous valid propositions on the same ballot. It will confuse some voters and frustrate others, and an ultimate decision that the measure is invalid, coming after the voters have voted in favor of the measure, tends to denigrate the legitimate use of the initiative procedure. [Citation omitted.]
>
> "In our view, this state's experience with successful postelection challenges to initiative measures . . . amply confirms the accuracy of these observations. [citation omitted]. If an initiative measure is facially defective in its entirety, it is "wholly unjustified to allow voters to give their time, thought, and deliberation to the question of the desirability of the legislation as to which they are to cast their ballots, and thereafter, if their vote be in the affirmative, confront them with a judicial decree that their action was in vain." (*Id* at pp. 1154-1155.)

In *Citizens for Responsible Behavior v. Superior Court* (1991) 1 Cal.App.4th 1013, 1036 (involving a pre-election review of an initiative measure pertaining to

homosexuality and acquired immune deficiency syndrome), the court found the initiative was both substantively invalid and beyond the power of the electorate and did not require that it be placed on the ballot, because it would "constitute a fraud on the electorate if [the court] permitted the initiative to reach the ballot in its present form." The court further stated:

> "[I]f an initiative ordinance is invalid, no purpose is served by submitting it to the voters. The costs of an election-and of preparing the ballot materials necessary for each measure-are far from insignificant. Proponents and opponents of a measure may both expend large sums of money during the election campaign. Frequently, the heated rhetoric of an election campaign may open permanent rifts in a community.That the people's right to directly legislate through the initiative process is to be respected and cherished does not require the useless expenditure of money and creation of emotional community divisions concerning a measure which is for any reason legally invalid." (*Id* at p. 1023.)

Substantial questions have been raised concerning the measure, both as to the county electorate's power to adopt the measure as well as the legal validity of the measure if adopted. Under such circumstances, a trial court may well exercise its discretion to conduct pre-election judicial review of the measure and if it is demonstrated that the invalidity of the measure is clear beyond a doubt, the court may exclude the measure from the ballot.

LS:cn

OVERVIEW OF LAWSUIT AGAINST VENTURA COUNTY PENSION INITIATIVE

Ventura County has established a retirement system under California's County Employees Retirement Law, or "CERL." Under this system, the County provides certain benefits to employees according to terms set forth by State law. The proposed initiative would repeal the County's existing retirement system, create a new defined contribution plan, and limit County contributions to that plan. There are at least five arguments why it is unlawful.

1. Violation of State Law Governing County Employee Retirement Systems. Ventura County decided decades ago to opt into CERL, which provides a specific structure within which counties can establish, maintain, and modify their own retirement systems. The Initiative would repeal the County's participation in CERL without providing a legislatively approved alternative for existing employees and retirees, and would require that all new employees participate in a "Defined Contribution Plan." The Initiative violates State law because CERL does not permit the County to unilaterally repeal its existing retirement system, and the County has not received statutory authorization to impose a new retirement system.

2. Violation of State Law Governing Labor Negotiations. The Meyers-Milias Brown Act ("MMBA") requires the County to negotiate with its employees in good faith and prohibits a board of supervisors from determining policy before negotiations. The Initiative violates the MMBA and prevents the County from negotiating in good faith with its employees because it pre-determines the types and amounts of benefits, the County's contributions to pension benefits, and modifications to those benefits. It also effectively prohibits increases in compensation to some existing employees for five years. The Board cannot legally change these policies.

3. Violation of Exclusive Delegation of Authority to the County Board of Supervisors. State law expressly delegates the authority to establish the compensation of county employees to each county board of supervisors. There is a statewide interest in confining this authority to boards of supervisors, including maintaining stable labor relations and providing certainty that is needed to administer retirement systems and protect retirement system assets. The Initiative would violate this exclusive delegation of power.

4. Impairment of Essential Government Functions. An initiative may not impair essential government functions, including control of the county budget and the adoption of policies necessary to attract and retain qualified personnel, especially safety personnel. Adopting a budget entails a complex balancing of public needs with limited financial resources, and personnel costs are the largest share of county budgets. The Initiative would prevent the County from hiring and retaining qualified personnel, and will likely impose additional general fund costs to cover the absence of new employee contributions to the existing retirement system and a shortened horizon for payment of the unfunded liability.

5. Failure to Enact Legislation. The power to adopt legislation by initiative is limited to the declaration of a purpose and making provisions for the ways and means of accomplishing that purpose. The Initiative purports to "phase out" the existing retirement system and allow the Board to develop new death and disability benefits but does provide any guidance or standards on how to accomplish either goal and is therefore legally deficient.

INVESTMENT TRENDS SUMMIT

SEPTEMBER 8-10, 2014
THE FOUR SEASONS, THE BILTMORE, SANTA BARBARA, CA

Opal Financial Group
Your Link to Investment Education

Day 1: Monday September 8th

7:00 am	**Golf Tournament** **Sponsored by:**
10:00 am	**Exhibit Setup**
11:00 am	**Registration Opens**
12:00 pm – 12:10 pm	**Opening remarks**
12:10 pm – 1:00 pm	**Conference workshop** **Boxed Lunch will be served.**
1:00 pm – 1:20 pm	**TBA, INVESCO POWERSHARES**
1:20 pm – 2:20 pm	**Challenges Investors are Facing** Moderator: **Jay Rogers, Executive Director, BERGENDAHL HOLDINGS (SFO)** Panelists: **Mustafa Saiyid, Director, THE INTERNATIONAL MONETARY FUND (IMF)**
2:20 pm – 3:20 pm	**Investment styles & Strategies: What Should Investors be looking out for?** Moderator: **Bobby Deal, Trustee and Board Chairman, JACKSONVILLE POLICE AND FIRE PENSION FUND** Panelists:
3:20 pm – 4:20 pm	**Absolute Returns: The Role of Hedge Funds** • Customized HF Replication: Fee Reduction is the Purest Form of Alpha • Moderator: Role of fees • Trends in Hedge Fund Industry • What should investors be looking for? Moderator: **Brad Miller, President/CEO, PENINSULA FAMILY OFFICE (MFO)**

	Panelists:
4:20 pm –4:40 pm	**REFRESHMENT BREAK**
4:40 pm – 5:20 pm	**What Asset Allocation Strategies work best?** Moderator: **George Isaac, President, GEORGE ISAAC CONSULTING** Panelists:
5:20 pm – 6:00 pm	**Exciting opportunities in Co Investing** Moderator: **Jay Gould, Partner, PILLSBURY WINTHROP** Panelists:
6:00 pm – 7:00 pm	**Cocktail Reception** **Sponsored by**

Day 2: Tuesday September 9th

8:00 am	**Continental Breakfast Served** **Sponsored by** **DOUBLELINE**
8:00 am – 9: 00 am	**Private Closed Door Breakfast for Investors** **Moderated by:** **Skip Coomber, President, COOMBER FAMILY ESTATES FAMILY OFFICE (SFO)**
9:00 am – 9:10 am	**Opening Remarks**
9:10 am – 9:30 am	**TBA, DOUBLELINE**
9:30 am – 9:50 am	**Joseph Stechler, Managing Partner, STEELCORE CAPITAL LP**
9:50 am – 10:50 am	**The Emergence of the: "Manager of Managers" Model of Consultant/Investment Management in Public Pension Plans** Moderator: **Bill Rubin, First Deputy City Controller, OFFICE OF THE CONTROLLER PHILADELPHIA** Panelists **Kathleen Dunlap, Partner, Chief Business Strategy Officer, FIDUCIARY RESEARCH**
10:50 am – 11:50	**Trends in Real Estate**

am	• Trends in Real Estate for 2014 • Real Estate Crowdfunding • Marketplace/P2P Lending • Opportunities for Investors to generate Alpha Moderator: **Renato Alessandro Iregui, Principal, RAIRE FAMILY OFFICE (SFO)** Panelists: **TBA, FUNDRISE**
11:50 am – 12:35 pm	**Investing Globally – What changes to expect?** Moderator: **Marina Batliwalla, Principal & Investment Consultant, MERCER** Panelists
12:35 pm – 2:00 pm	**Luncheon** **Sponsored by:**
2:00 pm – 2:45 pm	**Real Asset Investing** Moderator: **Justin Rodriguez, Member, TEXAS HOUSE OF REPRESENTATIVES** Panelists **TBA, TORTOISE CAPITAL ADVISORS** **Prof. Rodrigo Alexandre Gomes de Oliveira, M.Sc., President & CEO, TOCANTINS STATE DEVELOPMENT BANK**
2:45 pm – 3:30 pm	**Finding the right managers** Moderator: **Harry Griffin, Trustee, SAN ANTONIO FIRE AND POLICE PENSION FUND** Panelists
3:30 pm – 3:45 pm	**Refreshment Break**
3:45 pm – 4:30 pm	**Alternative Investing – Where are the real opportunities for alpha?** Moderator: **Tim Ng, Managing Director, CLEARBROOK INVESTMENT CONSULTING** Panelists
4:30 pm – 5:15 pm	**Volatility and how investors can approach it** Moderator: **Charlie Harrison III, Chairman, CITY OF PONTIAC GENERAL EMPLOYEES RETIREMENT SYSTEM**

	Panelists **Roberto Hamilton, Founder & CIO, CAPITAL MIGRATION MANAGEMENT LLC**
5:15 pm – 6:15 pm	**Cocktail Reception** **Sponsored By:**

Day 3: Wednesday September 10th

8:00 am	**Breakfast Served**
8:50 am – 9:00 am	**Opening Remarks**
9:00 am – 9:45 am	**Legal and Compliance trends and Changes** Moderator: **Mark Flaherty, General Counsel, PENNSYLVANIA STATE ASSOCIATION OF COUNTY CONTROLLERS** Panelists **Harvey A. Gordon, General Counsel, NEW YORK CITY BOARD OF EDUCATION** **Gary Amelio, CEO, SAN BERNARDINO COUNTY EMPLOYEES' RETIREMENT ASSOCIATION**
9:45 am – 10:30 am	**Risk Management Trends** Moderator: Panelists
10:30 am – 11:15 am	**INVESTOR/CONSULTANTS ROUNDTABLE Q & A:** Moderator: **James Maloney, Trustee, CHICAGO POLICEMEN'S ANNUITY AND BENEFIT FUND** Panelists **Martha Spano, Principal, BUCK CONSULTING** **Don Stracke, Senior Consultant, NEPC** **Peter Gerlings, Senior Vice President, Implemented Investment Consulting, SEGAL ROGERSCASEY**
11:15 am – 12:00 pm	**Ongoing Education for Plan Fiduciaries** Moderator: **James Love, Assistant City Attorney, CITY OF BIRMINGHAM, AL** Panelists **David McConico, Trustee, CITY OF AURORA (CO) GENERAL EMPLOYEES' RETIREMENT PLAN**
12:00 pm	**Conference Concludes**

Investors Attending

Public Pensions

Gary Amelio, CEO, SAN BERNANDINO COUNTY
Dave Underwood, Assistant Chief Investment Officer, ARIZONA STATE RETIREMENT SYSTEM
James Maloney, Trustee, CHICAGO POLICEMEN'S ANNUITY AND BENEFIT FUND
David McConico, Trustee, CITY OF AURORA (CO) GENERAL EMPLOYEES' RETIREMENT PLAN
Lily Cavanagh, Treasurer, REDFORD (MI) POLICE & FIREMEN RETIREMENT
Michal Settles, Trustee, SAN MATEO COUNTY EMPLOYEES' RETIREMENT ASSOCIATION (SAMCERA)
Carroll Robinson, Trustee, HOUSTON FIREFIGHTERS RELIEF & RETIREMENT FUND
James Love, Assistant City Attorney, CITY OF BIRMINGHAM, AL
Gerald Garrett, Trustee, TULSA FIREFIGHTERS HEALTH AND WELFARE TRUST
Harry Griffin, Trustee, SAN ANTONIO FIRE AND POLICE PENSION FUND
Mark Flaherty, General Counsel, PENNSYLVANIA STATE ASSOCIATION OF COUNTY CONTROLLERS
Dan Owens, Trustee, HOLYOKE CONTRIBUTORY RETIREMENT
Harvey A. Gordon, General Counsel, NEW YORK CITY BOARD OF EDUCATION
Kathy Singleton, Trustee, LOUISIANA STATE EMPLOYEES' RETIREMENT SYSTEM
Charlie Harrison III, Chairman, CITY OF PONTIAC GENERAL EMPLOYEES RETIREMENT SYSTEM
Jim Strouse, Chairman, BURLINGTON (VT) EMPLOYEES' RETIREMENT SYSTEM
Adam Frankel, Vice Chairman, DELRAY BEACH POLICE & FIRE RETIREMENT
Bobby Deal, Trustee and Board Chairman, JACKSONVILLE POLICE AND FIRE PENSION FUND
Doug Watler, Board Member & Trustee, DEERFIELD BEACH FIRE PENSION
Will Buividas, Trustee, CITY OF PHOENIX POLICE PENSION BOARD
Sunil Pandya, Trustee, MONTGOMERY COUNTY EMPLOYEES RETIREMENT SYSTEM
John H. Agenbroad, President, INTER-LOCAL PENSION FUND
Bill Rubin, First Deputy City Controller, OFFICE OF THE CONTROLLER PHILADELPHIA
Prof. Rodrigo Alexandre Gomes de Oliveira, M.Sc., President & CEO, TOCANTINS STATE DEVELOPMENT BANK
James Kottage, Chairman, NEW HAVEN POLICE AND FIRE RETIREMENT
Dale Neibert, Investment Officer & Analyst, H-E-B BRAND SAVINGS & RETIREMENT PLAN
Dean Crombie, Senior Trustee, NEW HAMPSHIRE RETIREMENT SYSTEM
Kelen Evans, Chairman, ATLANTA FIREFIGHTERS PENSION FUND
Justin Rodriguez, Member, TEXAS HOUSE OF REPRESENTATIVES
David Vargas, Trustee, NEW HAVEN POLICE AND FIRE RETIREMENT
Steve Hubka, Finance Director, CITY OF LINCOLN (NE)
Brian Tobin, Chairman, ARIZONA PUBLIC SAFETY PERSONNEL RETIREMENT SYSTEM BOARD OF TRUSTEES

Family Offices

Skip Coomber, President, COOMBER FAMILY ESTATES FAMILY OFFICE (SFO)
George Isaac, President, GEORGE ISAAC CONSULTING
Jay Rogers, Executive Director, BERGENDAHL HOLDINGS (SFO)

Brad Miller, President/CEO, PENINSULA FAMILY OFFICE (MFO)
Ronald Macleod, President, BACIU FAMILY OFFICE (SFO)
Martha Fling, Founder, DRAKE LIBBY LLC (MFO)
Adrian Fairbourn, Managing Partner, EXCEPTION CAPITAL (SFO)
Stephen Lack, President/Chief Investment Officer, GALAPAGOS PARTNERS (MFO)
Renato Alessandro Iregui, Principal, RAIRE FAMILY OFFICE (SFO)
Anthony Ritossa, Chairman, RITOSSA OLIVE OIL & FAMILY OFFICE
Howard Freedland, Managing Partner, HARPER FOSTER FAMILY OFFICE (SFO)
Annie Foster Freedland, Principal, HARPER, FOSTER FAMILY ADVISORY (SFO)
Stephen Braun, Senior Vice President, J.I KISLAK INC. (SFO)
Mikel Mahjobi, Chairman, AMG FAMILY TRUST (MFO)
Chris Brown, Portfolio Manager, VERITABLE LP (MFO)
Janet Corpus, President, GRAVESTAR INC. (SFO)
Richard Bird, President, BIRD CAPITAL GROUP

Endowments/Foundations
Mustafa Saiyid, Director, THE INTERNATIONAL MONETARY FUND (IMF)
Robert Letteau, Director, INGLEWOOD PARK CEMETERY ENDOWMENT CARE FUNDS
Prakash Dheeriya, Professor of Finance, CAL STATE DOMINGUEZ HILLS
Belita Ong, Investment Committee Member, VISITING NURSE & HOSPICE CARE OF SANTA BARBARA
Roy Allen, Chief Investment Officer, MEREDITH FAMILY FOUNDATION
Louis DiRosa, Professor, DELGADO COMMUNITY COLLEGE
Jol Manilay, Assistant Vice President/CIO, UNIVERSITY OF THE PACIFIC
Len Rogozinski, Finance Director, SCRIPPS HEALTH

Consultants
Martha Spano, Principal, BUCK CONSULTING
Don Stracke, Senior Consultant, NEPC
Peter Gerlings, Senior Vice President, Implemented Investment Consulting, SEGAL ROGERSCASEY
Daniel Gimbel, Director/Senior Consultant, CTC CONSULTING INC.
Roberto Hamilton, Founder & CIO, CAPITAL MIGRATION MANAGEMENT LLC
Nick Riso, Manager, RISO INVESTMENTS LLC (SFO)
Marcelo Wekser, CFO, PINFORD
Hilaire Atlee, Director Alternative Investments, MATRIX CAPITAL GROUP, INC.
Victoria Vysotina, Founder, VV STRATEGIC GROUP
Anthony Lombardi, Associate Partner, Institutional Advisory Solutions, HEWITT ENNISKNUPP, INC., AN AON COMPANY
Marina Batliwalla, Principal & Investment Consultant, MERCER
Elliott Wislar, CEO, CLEARBROOK
Michael Mahoney, Managing Director, CLEARBROOK
Tim Ng, Managing Director, CLEARBROOK INVESTMENT CONSULTING
Kathleen Dunlap, Partner, Chief Business Strategy Officer, FIDUCIARY RESEARCH