

“The McCauley Public-Employee Pension Reform Act”

Comments by Lance Kjeldgaard, SBCERA’s Chief Counsel

Background:

The proposed initiative measure, called “The McCauley Public-Employee Pension Reform Act,” has been approved for circulation for signatures for possible qualification for the California ballot in 2009. The proposed initiative would amend the CALIFORNIA CONSTITUTION, ARTICLE 1, SEC. 9, to read:

SEC. 9. A bill of attainder, ex post facto law, or law impairing the obligation of contracts may not be passed, *except that public-employee pension contracts may be renegotiated, including reducing vested benefits for existing and prospective retirees, for the limited purposes enumerated hereinafter.*

1. *To enable the State government, local governments and taxing districts to meet the essential public services of fire and police protection, public health, education and prisons.*
2. *To enable California and its political subdivisions to meet long-term public investment needs to provide for fire and police protection, public health, education, prisons, transportation and energy needs, as well as to make urgent response to global warming effects on the environment.*

Analysis:

This initiative would amend the Contracts Clause of the California Constitution to provide that public-employee pension contracts may be re-negotiated to include reductions of vested benefits of existing and future retirees. This amendment would effectively eliminate the Contracts Clause of the California Constitution as a protector of the vested pension benefits of public employees.

However, this proposed amendment of the California Constitution, if passed, would most certainly be held unconstitutional under the *federal* Contracts Clause. The Contracts Clause of the United States Constitution is found in Article I, section 10, clause 1, of the U.S. Constitution. The Contracts Clause states:

“No State shall. . . pass any. . . law impairing the obligation of contracts. . . .”

The framers of the Constitution wrote a Contracts Clause into our United States Constitution in order to prevent states like California from enacting laws that would impair the contract obligations of anyone, including their own contract obligations to public employees. Consequently, the vested pension rights of all

state and local California public employees are protected by the federal Contracts Clause, and tinkering with the California Constitution by means of a ballot initiative will not change those rights under the federal Contracts Clause.

Both Federal and State courts have ruled against any state attempt to impair the Contracts Clause in the U.S. Constitution. The U.S. Supreme Court noted in *United States Trust Co. v. New Jersey*, 431 U.S. 1, 26, 52 L.Ed.2d 92, 97 S.Ct. 1505 (1977), "[i]f a State could reduce its financial obligations whenever it wanted to spend the money for what it regarded as an important public purpose, the Contracts Clause would provide no protection at all." The California Supreme Court stated in *Legislature v. Eu*, (1991) 54 Cal.3d 492, 534, that California courts have consistently extended the federal Contracts Clause protection to state public officers and that it was simply too late to allow legislators to infringe on the vested pension rights of state employees.

Summary:

Your pension benefits are safe. "The McCauley Public-Employee Pension Reform Act" will most certainly fail. It is an ill-conceived ballot initiative that will not survive challenge in the courts. Sadly, much money will be spent in a futile effort to prove otherwise.