

July has the FDSA keeping close watch on a heated battle that is becoming very concerning. The results could have a very serious effect here in Fresno County, since we are a 1937 Act County.

Other California counties are facing precedent setting battles right now, that could very well affect every one of us. The war is over pension- the driving force behind securing the workplace of police and fire. Many of those who work in these career fields believe a stable workforce is secured by offering a rich defined benefit system to those who have spent 30 plus years serving the public. As you know, our jobs are risky and include long nights, lots of overtime and putting your life on the line each day. The return is that, upon retirement, you can relax and be part of the public you spent decades serving.

No matter what rank each person holds in this department- at the end of the day we share one common thread- we will rely on this pension for survival.

I deal with many complaints about how people feel they are treated in this department. The interference that happens on a daily basis is extremely frustrating - because in a sense it is self-destructive. Recently, I heard a quote that is simple, but true. **Complaining does not make things better, it only makes you bitter.**

We operate as a paramilitary organization that works on a rank structure. However, we all have to remember, the rank structure is for operations only – and how can we better respond to the public's needs. Unfortunately, from time to time, personalities, ego, and discontent get in the way. Then, our attention is focused on internally imploding issues, instead of battling a giant issue that *every single one of us* stands to lose from.

We need to show a united front in taking on people like Peter Foy and the Koch brotherswho thrive off weakness and are waiting to take a shot when we are distracted. In other words, do not get so entangled in the small, minor issues, when huge issues, that could be devastating, are looming.

One truth we all face here- in the end, we all get the same.

I wanted to share two articles of interest with you this month. I talk a lot about pensions, and how much we work, as public employees, to protect and preserve these benefits- for those who have retired before us, and for each of us, when we reach that retirement point.

The first is article out of the City of Stockton, where in 2012 the city filed bankruptcy. The question has always been, can pensions be affected? Up until this point, the answer has always been no. Read this and it seems clear, there appears to be some grounds, based on the statement given by the Judge, cited in this article.

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The last two articles are an update to the Ventura County Retirement ballot initiative. I wrote about this topic two months ago. This issue is moving very quickly. The results could be a pivotal point that has major ripple effects and damage here.

City of Stockton

Judge suggests Stockton worker pensions could be reduced in city's bankruptcy case

By <u>Dale Kasler</u> The Sacramento Bee Wednesday, Jul. 9, 2014

Government pensions were once considered untouchable, ironclad, off limits even if the employer went bankrupt.

On Tuesday, a federal bankruptcy judge in Sacramento inched closer to changing all that. Commenting during a hearing on Stockton's bankruptcy case, U.S. Bankruptcy Judge Christopher Klein suggested that employees and retirees could have their pensions reduced to facilitate the city's financial reorganization.

"I might be persuaded that ... the pensions can be adjusted," Klein said.

The judge stressed he hasn't made a ruling yet, and said "I've been sharing with you my thinking." Nonetheless, his remarks could have broad implications for public pensions and bankruptcy law in California and beyond.

Klein acknowledged that Stockton's retirees are facing "a haircut" if he rules that pensions can be reduced. His comments sparked concern from Steven Felderstein, a Sacramento lawyer representing Stockton retirees in the bankruptcy.

"It's very troubling, but he does recognize that the retirees are the ones who are going to suffer," Felderstein said.

In a prepared statement, CalPERS said it "will continue to protect the benefits promised to our members. We welcome the opportunity to respond to the questions Judge Klein raised in court (Tuesday), to discuss the implications of the California laws that govern pensions

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and that create a stable retirement system that provides significant value to cities and their employees."

The dispute over pensions stems from Stockton's plan to exit bankruptcy protection. The city reached agreement with most of its creditors last fall to restructure about \$200 million in debts. Many creditors accepted around 50 cents on the dollar. But negotiations fell apart with Franklin Templeton Investments of San Mateo, and the city told the court it would give the firm barely a penny on the dollar on a \$36 million debt.

Franklin went to war, launching a full-scale legal challenge to the city's plan. At a trial last month, Franklin suggested that Stockton scale back its \$29 million-a-year pension contribution to CalPERS.

CalPERS said that could not happen. The powerful California Public Employees' Retirement System has long stood as a defender of government pensions in court, and said Stockton had to keep paying in full to remain in good standing.

Not paying in full, according to CalPERS and city officials, would lead to chaos. If Stockton defaulted on its obligations to CalPERS, pension benefits could be slashed by 60 percent, according to trial testimony last month. City officials say that would lead to a mass exodus of police, firefighters and other municipal employees, making the city essentially ungovernable.

City officials said it's far from certain that the judge will force a cutback in pensions.

"He's thinking about it; I don't believe he's made up his mind," said one of the city's bankruptcy lawyers, Marc Levinson.

Even if Klein does rule that pensions can be reduced, that doesn't necessarily mean Stockton's retirees will get hit. He could conceivably decide that the Stockton reorganization plan is fine even if it leaves pensions unaffected.

The legal turmoil over public pensions has been building for some time. Last fall, the judge overseeing Detroit's bankruptcy said pensions could be scaled back to conserve money. CalPERS has argued that the Detroit case is irrelevant and California public pensions have broader legal protections.

In court Tuesday, the judge seemed to chip away at some of CalPERS' defenses. For instance, CalPERS has said that it could place a lien on some of Stockton's municipal assets to cover nonpayment of pension contributions. Klein indicated he doesn't think CalPERS has that power.

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"Why should I take that lien seriously?" he said.

The city did raise its offer to Franklin. The judge ruled Tuesday that Franklin's collateral on its debt – a couple of golf courses and a city park – were worth \$4 million. Levinson said the city would pay Franklin that amount in cash.

But that still amounts to a little more than 10 cents on the dollar, and it was uncertain if that would appease Franklin. The firm's lawyer, James Johnston, referred a reporter to a company spokeswoman, who couldn't be reached for comment.

A formal decision is months away; Klein scheduled a hearing on the pension issue for Oct. 1 in U.S. Bankruptcy Court in Sacramento.

In the meantime, CalPERS has been making peace with California's other bankrupt city, San Bernardino, which had threatened to tackle the issue of pension costs. Last month the two sides reached an "interim agreement" that could stave off a separate legal battle over pensions in that city. No details have been released, but city attorneys have indicated that San Bernardino will repay CalPERS for overdue pension contributions.

After filing for bankruptcy protection in 2012, the city withheld payments from CalPERS for several months and still owes \$13.5 million plus interest.

Lately, I have been approached by about a half dozen FDSA members asking questions about pension. I am glad you are paying attention to what is transpiring in Ventura County, as it could very well have a trickle effect in Fresno County.

Below are two articles that give a better update about where we are currently in regards to Ventura County's system, and what could be the fallout from something this devastating.

Ventura County Pension Battle

Can local voters phase out county pensions?

An initiative that would phase out Ventura County employee pensions is headed for a court test, challenged by a union lawsuit contending the change requires state legislation.

Ventura County supervisors put the initiative on the November ballot after the required number of voter signatures were submitted. Then a board majority, who oppose the initiative, told the county counsel to back the suit to keep the initiative off the ballot.

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The maneuver earlier this month sets up a court test, presumably before ballots are printed, of whether local voters can phase out the 20 county retirement systems, ranging in size from Los Angeles to Mendocino, that operate under a 1937 act.

Like an initiative approved by San Diego voters two years ago, the Ventura initiative gives new county hires a 401(k)-style individual investment plan, instead of a pension, and reduces current worker costs with a five-year freeze on pensionable pay.

The San Diego initiative exempted police, allowing new officers to receive pensions. The Ventura County initiative, backed by the county taxpayers association and others, has no exemption and would give new deputy sheriffs a 401(k)-style plan.

In the legal challenge, the key difference is that the San Diego pension plan operates under the city's laws while the Ventura County pension plan operates under a state law.

"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," Leroy Smith, the Ventura County counsel, said in a 21-page analysis.

"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."

The 1937 act provides no authority or process to withdraw from the system, Smith wrote, so the proper method to "repeal or amend a state law such as the 1937 act" is through state legislation or a statewide initiative.

David Grau, chairman of the Ventura County Taxpayers Association, said he is confident the initiative will withstand the legal challenge. "We got a legal opinion first," he said. "That was the basic question: Can the voters change the system."

Attorneys for the initiative backers said in a letter to Smith, responding to a union threat of a lawsuit if supervisors put the measure on the ballot, that voters can legally repeal the pension plan and replace it with a 401(k)-style plan.

"This measure amends Ventura County Ordinance Number 401 which established the pension program in 1946 by a vote of the people," wrote attorneys Kenneth Lounsbery and James Lough. "The power of the people to adopt a measure carries with it the power to repeal by the same means."

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The lawsuit filed by the public employee union coalition said the initiative is unlawful for several other reasons, including a violation of state labor law requiring good faith negotiations with unions before determining types and amounts of benefits.

In San Diego, the state Public Employment Relations Board unsuccessfully tried to get a court to block a vote on the pension initiative, prompting the city attorney, Jan Goldsmith, to say in one interview, "They are owned and operated by labor unions."

The San Diego pension initiative was approved by 66 percent of the voters. In the same election in June 2012, a San Jose reform giving employees a choice between higher pension contributions or a lower pension was approved by 70 percent of voters.

Last January, a statewide poll issued by the Public Policy Institute of California found that switching new state and local government hires to a defined contribution system similar to a 401(k) plan was supported by 73 percent of likely voters.

"They know the only hope they have is to keep it off the ballot," Grau said of union opposition to the Ventura County initiative. "They know it is going to win by a big margin."

Four of the five members of the Ventura County board of supervisors, including Chairman Steve Bennett, oppose the pension initiative. The lone supervisor supporting the initiative is Peter Foy.

At a board meeting this month, Bennett said he thinks voters are likely to approve the initiative. He said a 4-to-1 decision to back the union lawsuit is an attempt not to block a vote on the initiative, but to ensure that the law is being followed.

"The public's understandable and appropriate frustration" with high pensions, some paying \$250,000 a year, is "driving people to say they would accept almost any measure that would attack the pension system," Bennett said.

Ventura County is associated with "spiking," the manipulation of final pay to boost pensions. In what became known as the "Ventura decision," a 1997 state Supreme Court decision in a deputy sheriffs suit expanded pensionable pay for county systems.

An analysis done by the Los Angeles Times two years ago found that 84 percent of the Ventura County retirees with pensions greater than \$100,000 had pensions that paid them more each year than their salary while working.

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The Ventura County pension initiative prompted a proposal that an association of the 20 county systems operating under the 1973 act hire a public relations firm to educate the public about the benefits of pensions.

Robert Palmer, executive director of the State Association of County Retirement Systems, said attorneys told SACRS that it can "educate" but not "advocate," an important legal distinction.

Four years ago the California State Teachers Retirement System issued a \$600,000 contract to two public affairs firms to tell members of the system and legislators about the need to close a huge funding shortfall.

Last week Gov. Brown signed full-funding legislation that will gradually increase CalSTRS funding by more than \$5 billion over the next seven years, nearly doubling the current \$5.8 billion a year contribution.

The new SACRS president, Yves Chery, said in a memo this month that the public relations proposal produced "very little formal feedback" from the county systems, but a variety of comments from SACRS staff.

"Some have said that trustees are fiduciaries, not proponents of DB (defined benefit pensions)," Chery wrote. "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."

Chery said he appointed a five-member committee to study the educational campaign issue and make a recommendation. Among the questions his memo said the committee may try to answer:

"Does SACRS have an obligation to become involved with initiatives, such as Ventura? If so, to what level?

Below is an article that was shared with me by Rick Shimmel. He is the Executive Director of Ventura County DSA. I have highlighted and underlined some very good points and key components of what is really going on and some fallouts. Please take the time to read it.

All of this pension initiative and reform posturing is very alarming for us. There is a reason why we have a rich retirement system as safety and government employees.

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Domino Effect: Pension Cutters Gamble on a California Ballot Measure

By Gary Cohn

July 23, 2014in California Expose, Lalo Alcaraz

Jon Coupal is nothing if not blunt when he describes one motive behind a Ventura County ballot measure that would replace the "defined benefit" pensions currently enjoyed by county employees and replace them with 401(k)-type plans for all future hires.

"This is meant to be a template for other counties," Coupal tells <u>Capital & Main</u>. By that, the Howard Jarvis Taxpayers Association's president means the measure's conservative and libertarian backers see the "<u>Sustainable Retirement System Initiative</u>" as the newest and most promising weapon in their assault on California's public employee retirement plans. Having failed to place similar measures on state ballots in 2012 and 2014, a coalition of wealthy individuals, anti-tax activists and government privatizers has seized on an aspect of California law that allows 20 counties to fashion their own public employee retirement policies apart from the <u>CalPERS</u> system that administers such policies for nearly all of the state's remaining 38 counties.

Ventura, with its postcard shoreline, rugged mountains and groves of avocado and lemon trees, is one of the 20 so-called '37 Act counties whose retirement systems operate under the County Employees Retirement Law of 1937. These range from Los Angeles County, the most populous in the nation with nearly 10 million people, to sparsely populated Mendocino County along California's northern coast. Few people doubt that Ventura, which borders Los Angeles County, potentially represents the first domino in a series of future measures targeting public employee pensions.

"I guarantee you that when this passes," Ventura County Supervisor Peter Foy has said, "in 2016 every '37 Act county will have this on their ballot." Foy, who was addressing a supervisor's meeting, is a strong advocate for the county ballot initiative. He also happens to have served as chairman of the state chapter of Americans for Prosperity, the radical corporatist group funded by billionaire David Koch. (Foy, who has in the past denied such a connection with Koch, did not return multiple requests for an interview.)

County employees are generally paid less than their private sector counterparts and have long counted on traditional defined benefit plans as a kind of economic equalizer. The Ventura measure would phase out these retirement plans for anyone hired after July 1, 2015 and throw future retirees' pensions into the riptides of Wall Street trading. (During the last stock market crash and resulting recession, an estimated \$16 trillion in household wealth was lost in America.) Furthermore, new employees would be ineligible for the county's existing death and disability plan. Although the initiative states a new death and

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disability plan "shall be established by the Board of Supervisors," it provides no details about its terms.

"Ending the defined benefit plan is a time-bomb disaster for lower income people," cautions Steve Bennett, chairman of the Ventura County Board of Supervisors. "It's very difficult for them to save and they won't be able to maneuver the 401(k) [system] to appropriately invest their savings," Bennett told Capital & Main.

Proponents argue that the current system is not financially sustainable and is forcing Ventura County further into debt. Critics, however, say the claims of financial doom are greatly exaggerated and they counter that if the measure is adopted it will be harder to attract and retain good employees, particularly in the area of public safety

At 43, Virginia Tinoco has worked as a public employee in Ventura County for more than two decades — as a canine handler, jailer and, for the last 18 years, as

a deputy sheriff who's been forced to pull her gun far more often than she's been comfortable with. She will not be affected by the measure's passage, but worries about future generations of law enforcement officers, firefighters and other county employees whose retirements will be at the mercy of the New York Stock Exchange.

"Why would I risk my life day in and day out, without knowing I had a secure retirement?" asks Tinoco. "If we don't have a promising future and retirement, why would anyone want to come here?"

Peter Botz agrees. The 34-year-old firefighter has worked in Ventura County's Simi Valley for the past six years after previously working as a project manager for Amgen, a biotech company.

"Our job is hazardous," he says. "If we get hurt on the job, we have a benefit. If we make the ultimate sacrifice and die on the job, the pension system takes care of our families. But the ballot measure doesn't provide a defined death and disability benefit."

Unless it is blocked by a pending legal challenge filed by public employee unions, the pension measure will appear on the November ballot. A Superior Court hearing on the matter is scheduled for August 4. The measure's importance goes well beyond the borders of a single county.

"Everybody is carefully watching what happens in Ventura," says Robert Palmer, executive director of the Sacramento-based State Association of County Retirement Systems, which represents the retirement systems in 20 California counties, including Ventura. "If Ventura passes the initiative, it likely will spread to other counties."

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"I do see something like this having a domino effect," agrees Peter Botz. "One of the big points about working here is that people know they have a secure retirement and benefits. If you take that away, a lot of very qualified people are going to leave our department."

In addition to Foy and Coupal, the measure has been endorsed across the conservative bandwidth, from the local Lincoln Club to some of the same people and groups that are working to cut public employee pensions statewide and nationally. For example, sponsors of the initiative have declared they have received \$150,000 from the Action Now Initiative, a Houston-based organization founded by hedge-fund billionaire John Arnold, a leader of nationwide efforts to limit pensions for state and municipal workers. He and his wife Laura disclosed the contribution to the Committee for Pension Fairness, which filed the Ventura initiative, on the couple's website page dealing with personal advocacy and political contributions. The \$150,000 is a significant contribution for a ballot measure in a single county and approaches Action Now Initiative's \$200,000 contribution supporting San Jose Mayor Chuck Reed's failed 2014 statewide initiative effort.

For its part, the Committee for Pension Fairness commissioned a report from the Reason Foundation, a Los Angeles-based conservative and libertarian public policy group that advocates privatizing government functions and cutting public employee pensions. That report claimed the initiative would save Ventura County taxpayers \$460 million over 15 years and eliminate the county's pension debt. (Coincidentally, the Arnolds' foundation has given \$1,013,000 in grants to the Reason Foundation, according to the former's website.)

Steve Bennett, the Board of Supervisors chairman, is highly skeptical of the Reason Foundation and its white paper.

"It's not an objective evaluation of our pension system," Bennett says in an interview. "I didn't expect much else. I'm familiar with their biases. The Reason Foundation supports policies that lead to greater income inequality in the United States."

Last year Capital & Main revealed that the Reason Foundation hosted a secret "pension summit" in Sacramento in May, 2013. The foundation's most prominent trustee is David Koch, a longtime advocate of reducing pensions for public employees. The foundation is also allied with the Koch-funded American Legislative Exchange Council (ALEC).

None of these connections surprises Jordan Marks, executive director of the Washington, D.C.-based National Public Pension Coalition.

"What we're seeing in Ventura County is what we're seeing all over the country," says Marks. "Out-of-state, dark money forces — often with the assistance of John Arnold — are dropping in and creating poorly written, ideological ballot initiatives that will rob workers of

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their modest retirements . . . In the last year alone we've witnessed similar efforts in Cincinnati, Tucson and Phoenix, and only expect that number to grow.

"Arnold's work on gutting pensions doesn't stop at ballot initiatives," Marks continues. "His billions finance tainted research, anti-pension journalism and the careers of politicians who make pension-gutting the centerpiece of their issue platform."

Both its proponents and opponents believe the Ventura County measure has a good chance of being approved by the voters if it remains on the ballot. Supporters collected more than 40,000 signatures, considerably more than the 26,000 required to get the initiative on the ballot. To a large extent, the drive has been fueled by publicity about instances of excessive pensions paid to a handful of Ventura County officials.

In one well-publicized instance, former Ventura County Sheriff Bob Brooks' annual pension totaled \$283,000 after a longevity bonus and other items were factored in. When Brooks filed a claim in 2013 seeking to increase his pension by \$75,000 a year, the resulting furor powered calls for pension reforms and helped set the stage for the current ballot initiative.

"This stoked a lot of public anger and rightly so," says Rick Shimmel, executive director of the Ventura County Deputy Sheriff's Association and a leading voice in the fight against the pension ballot initiative. "Unfortunately, the proponents capitalized on what appears to be overly generous pension benefits to vilify the system."

Shimmel says that the average annual pension for public employees in Ventura County is \$34,344. Generally deputy sheriffs and firefighters make higher pensions because on average they have longer service records and higher pay than most other county workers. Safety members make up 18.6 percent of all employees who work for Ventura County.

Besides focusing on selective abuses, advocates of reducing public employee pensions argue that public sector pensions are out of line with those in the private sector. But Jean-Pierre Aubry, assistant director of state and local research for the Center for Retirement Research at Boston College, says it is important to examine the total compensation picture, not just pensions.

"On the whole, there is basic parity between public employees and those in the private sector," says Aubry, co-author of a 2011 study that compared the compensation of state and local public employees with that of private sector workers. "In the private sector, there are better wages and lesser pensions. In the public sector, there are less wages and better pensions. The total compensation is about the same."

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"Any honest effort for reform should begin with that question," he says, referring to the total compensation picture. "If you just cut pensions, you are saying to public sector workers, 'I'm offering you less.' Public sector employers should be cautious in just cutting benefits because you'll get a lower quality workforce going forward. We think that's conspicuously absent from the conversation."

If any of you have questions regarding this, or want to get involved more with helping combat and guarding against something like this happening here in Fresno County, please reach out to me. You can also reach out to anyone on the FDSA Board. Each of us works for all of you- to protect your hours, wages and working conditions.

Be safe and always watch out for one another.

-Eric

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