CALPERS Lawsuit Proposal

Many private corporations have chosen to "freeze" their pension plans and move employees to 401k-style retirement benefits. The City of San Diego, which is not a CALPERS city, also did this 2012 with its voter approved Proposition B, which passed with a robust 66% of the vote. Why is it that 450 CALPERS cities like Del Mar cannot?

Through an investment rationale that is fundamentally incorrect, contrary to what the vast majority of other frozen pensions have done, and a violation of its fiduciary responsibility, CALPERS effectively prohibits participating California cities from freezing pensions. Del Mar's current pension liability is approximately $20 million. In part, this amount is determined by what CALPERS claims it can earn annually on its investment assets. In aggregate, CALPERS manages approximately $380 billion in assets, and its stated return assumption on those assets is currently 7.00%. If Del Mar wants to freeze its portion of the CALPERS assets, in a bizarre twist of economic logic, CALPERS would put Del Mar's $20 million into a much more conservative "termination" pool of low risk investments such as 30-year Treasury bonds. Because the rate of return on Treasury bonds is near 3%, much lower than CALPERS' assumed 7% rate of return for its "normal" portfolio, this math effectively doubles Del Mar's $20 million liability to $40 million. Del Mar and most other cities do not have the financial capacity to cover that type of increase, which is why very few cities have been able to freeze their pensions and exit CALPERS.

So what should a CALPERS city that wants to freeze do?

If we use Del Mar as an example, Del Mar should instruct CALPERS to <u>not move</u> its $20 million in investments into this lower returning "termination" Treasury portfolio. Del Mar wants to stay in the "normal" portfolio with the stated 7% return. of And if CALPERS won't do as Del Mar instructs, Del Mar should file a technically focused lawsuit to challenge them on this point. There is no economic reason for CALPERS to do this, and there is very little precedent. Of the many private company pensions that have frozen, as well as the City of San Diego, virtually none of them have done it this way. The investment allocation for the City of San Diego is publicly available, and a quick search shows it still has approximately 78% of its investment portfolio invested in higher yielding assets such as stocks. Just because San Diego froze in 2012, it did not shift its investment portfolio from stocks to 100% Treasury bonds. Given the higher long term return of investments like stocks, this would be very expensive and highly counterproductive, which is why virtually no pension fund does it this way. CALPERS is also an investment fiduciary. Its investment approach regarding frozen plans is a clear violation of its requirements and responsibilities as a fiduciary. See Article XVI Public Finance [Section 1 - Sec. 23} of the California Constitution for more information.

A frozen plan still makes good on all promised benefits to employees up the freeze date

Any entity that has frozen its pension, such as the City of San Diego, is still required to pay any promised benefits to employees up to the date of freezing. In the event of some sort of recession where investment assets such as stocks decline in value, the sponsoring entity is still responsible for making up any shortfalls through additional contributions. However, this is always the case whether or not a pension has been frozen. This is what will allow CALPERS to keep frozen assets invested in the "normal" portfolio.

It's about local control

This idea is about giving cities local control over their budgets and how they decide to compensate municipal employees. If the people of one city vote to freeze, but the people of another city vote to not freeze, that is fine. What matters is that these cities should have a choice. Currently, that choice has been unjustly take away.

Likely class action status, strong indication that most cities would choose to freeze

Given strong general interest in pensions and the 66% popularity of San Diego's 2012 Measure B as a litmus test, many cities would likely choose to freeze, possibly all of them over the long run. As such, any lawsuit filed against CALPERS would likely attract substantial class action status and/or potential donations in terms of a legal fees or representation.

City of San Diego precedent – 2012 Proposition B

The City of San Diego is not part of CALPERS. It has its own pension program. In 2012, voters passed Proposition B with a substantial 65.8% majority, eliminating pensions for all new employees except police and fire.