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July 28, 2015

Assemblymember Rob Bonta
Chair, Committee on Public Employees, Retirement, and Social Security
State Capitol
P.O. Box 942849
Sacramento, CA 94249-0018

Dear Assemblymember Bonta:

I write in response to your July 22, 2015 letter requesting a legal analysis of the impacts of The Voter Empowerment Act of 2016, as that initiative was submitted to the California Attorney General for title and summary on June 5, 2015 (the "Initiative").

The Initiative raises complex legal and administrative issues. Its imprecise language increases that complexity, and calls for a comprehensive analysis. This is not that analysis. However, we have preliminarily identified the following key issues with the Initiative:

- The Initiative would abolish "the California Rule" for new employees. (The California Rule basically provides that employees are entitled to roughly the same set of benefits for future work performed as were in place on the day they started working.) In addition, the Initiative would arguably curtail the California Rule for existing employees. (While the Initiative's intent appears to be to allow voters to cut *future* (but not accrued) benefits to existing employees – and thus alter the California Rule – it is not clear whether such a retroactive impact would be legal.)
- Due to its complexities and the patchwork of CalPERS-administered pension plans that could ensue, the Initiative could create issues with the Internal Revenue Service, and those issues could threaten the system's tax exempt status.
- Although the Initiative states that it does not limit or impact death or disability benefits, its elimination of defined benefit retirement plans (at least without voter approval) would almost certainly make providing death or disability benefits extremely impracticable.
- The most immediate administrative impact of the Initiative would be the closing of all CalPERS defined benefit plans to new employees as of January 1, 2019. Closing these plans would present huge administrative challenges, requiring new investment strategies and actuarial assumptions. CalPERS described the challenges of closing a defined benefit plan in depth in a 2011 white paper, which may be found at <https://www.calpers.ca.gov/docs/defined-benefit-plan.pdf>.

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As stated above, these are just some of the legal and administrative issues created by the Initiative.
Please let me know if you would like to meet to discuss these further.

Sincerely,

A handwritten signature in cursive script that reads "Anne Stausboll". The signature is written in dark ink and is positioned above the printed name and title.

ANNE STAUSBOLL
Chief Executive Officer