

## **THE PROPOSED MCCAULEY INITIATIVE MEASURE**

### **Much Ado About Nothing**

L. Douglas Pipes  
January 23, 2009

The purpose of this paper is to allay fears of retirees regarding a proposed initiative measure, called "The McCauley Public-Employee Pension Reform Act" (08-0018), which has been approved for circulation for signatures for possible qualification for the California ballot in 2009. The initiative is named after Paul McCauley, a certified public accountant in Santa Monica, California, who is the proponent of the initiative.

In order for this initiative measure to appear on the California ballot it must obtain the signatures of 8% of the number of California voters who voted in the last election for California's governor. In 2008 the number needed to qualify a constitutional amendment initiative was 694,354 valid signatures. Due to duplicate signings and invalid signatures, usually at least 50% more than the legal minimum number of signatures are collected to compensate for possible invalidated signatures. This means that the proponents will have to obtain more than 1 million signatures of registered California voters to qualify the McCauley initiative for the ballot.

Collecting signatures for initiatives is costly. Because no one can obtain these signatures using volunteers, initiative proponents hire firms to obtain signatures on the initiative petitions. The cost to the proponents to obtain the million plus signatures needed to qualify the McCauley initiative would be in excess of \$2 million.

If despite this cost this initiative measure were to qualify for the ballot and then be enacted by the electorate, the 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 Contract Clause of the California Constitution as a protector of vested pension benefits.

The good news is that even if passed by the electorate, the McCauley initiative would not take away vested pension benefits of California's public employee retirees. There will always be people, such as Mr. McCauley, who believe that they have the right to take away the property of others under the authority of enacting legislation or amendments to the state Constitution. We cannot stop these (mostly ignorant) people from rabble rousing the electorate with these kinds of proposals. But we can stop such proposals from going into effect. Even if the electorate passes it, the courts would stop the McCauley initiative from allowing California governmental agencies to strip away your vested pension benefits.

The reason is simple: The McCauley initiative would constitute an unlawful taking of private property without due process of law in violation of the California Constitution, and it would also violate the Contracts Clause of the United States Constitution.

No matter what this initiative might attempt to do, the Contract Clause of the California Constitution and the Contract Clause of the United States Constitution will remain intact and unaffected by this initiative. Let me explain why this is true.

The Contract Clause of the United States Constitution is found in Article I, section 10, clause 1, of the U.S. Constitution. The Contract Clause states: "No State shall . . . pass any . . . Law impairing the Obligation of Contracts. . . ."

The framers of the United States Constitution added this clause to the Constitution because of their fear that states would continue a practice that had been widespread under the Articles of Confederation prior to the adoption of our Constitution in 1787, that of granting "private relief." Under the Articles of Confederation, state legislatures passed bills relieving particular persons (usually influential persons) of their obligations to pay their debts. The framers of the Constitution wrote a Contracts Clause into our United States Constitution to prevent states like California from enacting laws that would impair the obligations of anyone, including the state or local governments, to honor their contracts.

Our pensions are contracts between government and retirees (pensioners), which have vested. Thus, no amendment of the California State Constitution can impair the obligation of the State of California, or any political subdivision of the State (such as Contra Costa County), to honor its contractual pension obligations to its retirees. It is inconceivable to me that the United States Constitution would ever be amended to remove the Contracts Clause from the United States Constitution. Amending our federal constitution is a difficult and long process. A proposed amendment to the Constitution must first be passed by a 2/3 vote of the Congress. If passed by a 2/3 vote of the Congress, the proposed amendment must then be submitted to the 50 states for ratification. The amendment would not go into effect until 3/4 of the states had ratified it. Usually Congress prescribes a seven-year period for the amendment to be ratified by the requisite 3/4 of the states. If 3/4 of the states do not ratify it within that time period, the amendment dies.

The result of this process is that amendments to the United States Constitution are rare, and only amendments that are overwhelmingly supported by a large percentage of the citizenry get enacted.

I trust that this explanation will give you (and the other persons who received the alert from Louie Kroll) freedom from any lingering fear that the enactment of the proposed McCauley initiative in California would constitute a serious danger to our retirement allowances. It won't.

You can sleep well at night without worrying about the McCauley initiative. Let us instead focus our concerns and actions on our fight to protect our vested health insurance benefits from the "slash and burn" actions of Contra Costa County.