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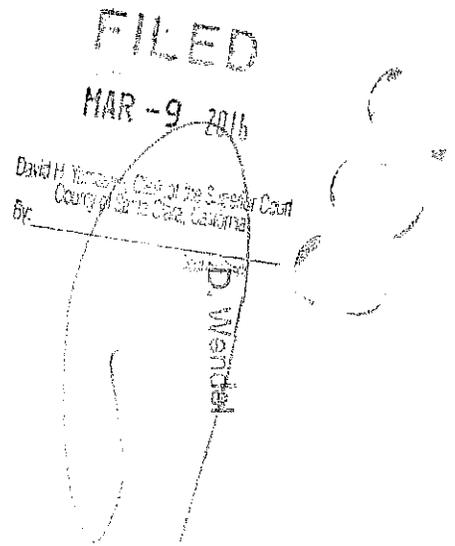
Attorneys for [Proposed] Intervenors, Steven Haug and Silicon Valley Taxpayers Association, a California non-profit corporation.

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

19 THE PEOPLE OF THE STATE OF)
20 CALIFORNIA on the RELATION of SAN)
21 JOSE POLICE OFFICERS' ASSOCIATION,)
Plaintiff,)

22 v.)
23 CITY OF SAN JOSE, and CITY COUNCIL OF)
24 SAN JOSE,)
Defendants.)

Case No.: 113-CV-245503
**DECLARATION OF PETER
CONSTANT IN SUPPORT OF
APPLICATION TO INTERVENE**
DATE: April 12, 2016
TIME: 9:00 A.M.
DEPT: 7
JUDGE: McGowen **BY FAX**



1 PETER CONSTANT declares under penalty of perjury as follows:

2 1. I make this declaration of my personal knowledge. If called as a witness, I could testify
3 competently thereto.

4 2. I am currently a Senior Fellow and Director of the Pension Integrity Project at the
5 Reason Foundation. I am a member of the Board of Directors of the Silicon Valley Taxpayers'
6 Association. I am also an adjunct professor of public policy and leadership at St. Mary's College in
7 California, where I earned a Bachelor of Arts degree in management and Master of Arts degree in
8 leadership. I am currently a doctoral candidate in Organizational Leadership at the University of La
9 Verne in California, where my dissertation is focused on public pension systems. I have also received
10 extensive training and earned certifications on pensions, benefits, hedge funds, investments, and
11 management programs from the University of Pennsylvania, Wharton School of Business, the
12 California Associations of Public Retirement Systems, and the International Foundation of Employee
13 Benefits Plans. **Exhibit A** hereto is a true and correct copy of my professional biography published
14 by the Reason Foundation, also available online at: <<http://reason.org/experts/show/pete-constant>>.

15 3. I was a sworn police officer in the City of San Jose from 1989 to 2000.

16 4. I was a member of the San Jose Police Officers' Association ("SJPOA"), the Relator
17 in this case, from 1989 to 2012. I served as a board member of the SJPOA in 1992. I retired from the
18 San Jose Police Department in 2000 after being injured in the line of duty.

19 5. I currently receive a pension and health benefits from the City of San Jose with a
20 service-connected disability for my service as a police officer. As a current recipient of a pension
21 from the City of San Jose, I have a direct and personal interest in ensuring the long-term fiscal stability
22 of the City's pension fund.

23 6. I was elected as a member of the City of San Jose City Council for District 1 and
24 served two full terms as a City Councilmember from January 2007 to December 2014. I ran on a
25 platform of fiscal reform for the City of San Jose, which included reforming the City's rapidly
26 increasing pension obligations.

27 7. As a City Councilmember, from 2007 to 2010 I served as a Board Member on the San
28 Jose Federated City Employees' Retirement System Board, which administers the retirement plan for
all city employees who do not hold positions in the police or fire departments. I served as a non-

1 voting Member of the Board from 2011 to 2014. I served as a non-voting Board member of the San
2 Jose Police and Fire Retirement Plan from 2011 to 2014.

3 8. I was appointed in 2007 to serve on Mayor Chuck Reed's Budget Shortfall Advisory
4 Group ("BSAG") to recommend strategies to solve the City of San Jose general fund structural budget
5 deficit. The BSAG worked closely with the City Manager and community stakeholders to develop a
6 Three-Year General Fund Structural Deficit Elimination Plan to address the structural budget deficit,
7 which was transmitted to the City Council in 2008.

8 9. In 2008, I was appointed to serve as Chair of the Structural Deficit Elimination Plan
9 Stakeholder Group. The group included representatives of labor organizations, city employees,
10 businesses, non-profits, taxpayers, and neighborhoods to provide feedback to the City Council
11 regarding the Three-Year General Fund Structural Deficit Elimination Plan and to develop
12 alternatives and options for the City Council's consideration.

13 10. As a City Councilmember who was deeply involved in working to find solutions to
14 the City's structural budget deficit, I recognized expanding pension costs as a key driver of San Jose's
15 rising debt obligations. Beginning in 2011, I worked closely with Mayor Reed and the San Jose City
16 Attorney to design and draft Measure B.

17 11. As a principle architect and drafter of Measure B, I publicly supported the measure
18 and campaigned vigorously for its passage. I conducted a number of town halls, community meetings,
19 debates, and media interviews in support of Measure B.

20 12. On June 5, 2012, San Jose voters—including the voters of District 1 whom I
21 represented—overwhelmingly approved Measure B.

22 13. The development and passage of Measure B was one of my key achievements as a
23 City Councilmember. I believe Measure B provides the reforms necessary to ensure the City of San
24 Jose can meet its future pension obligations, including obligations to me personally as a former San
25 Jose police officer, by providing for the long term stability of the retirement fund. For example,
26 Section 1511-A of Measure B discontinues the Supplemental Retiree Benefit Reserve ("SRBR"), and
27 returns its assets "to the appropriate retirement trust fund." It further provides that "[a]ny supplemental
28 payments to retirees in addition to the benefits authorized herein shall not be funded from plan assets."

1 The SRBR was designed to allow the retirees to benefit when the money in the fund of the retirement
2 system grows because of superior investment performance. However, as recognized by all parties in
3 *San Jose Police Officers' Association v. City of San Jose*, excess earnings are not "free". "Skimming"
4 excess assets when earnings are high and not returning funds in years in which the system has losses,
5 does in fact have a cost to the system. (Statement of Decision in *San Jose Police Officers' Association*
6 *v. City of San Jose* (and Consolidated Actions and Related Cross-Complaint), Santa Clara Superior
7 Court No. 1-12-CV 225296, pp. 24-25 ("Consolidated Cases").) I believe Section 1511-A increases
8 the long term stability of the retirement fund. Nullification of Measure B would result in
9 reinstatement of the SRBR, in my view, to the long term detriment of the retirement fund. I am
10 informed and believe that the City proposes in its settlement discussions with Relator that the SRBR
11 will be replaced with a Guaranteed Purchasing Power provision ("GPP") for all current and future
12 Tier 1 retirees. The GPP is designed to maintain the monthly allowance for Tier 1 retirees at 75% of
13 purchasing power effective the date of the retiree's retirement. The GPP has the potential to eliminate
14 the savings realized from the elimination of the SRBR as it has the potential to drain the retirement
15 fund as inflation rises. The City's own experts concluded the cost of the GPP would be significant if
16 inflation returns at high levels. Unlike SRBR, under the proposed Settlement Framework, the City
17 apparently could not choose to not pay the GPP as inflation rises and the retirement fund suffers the
18 negative impacts. (City of San Jose Memorandum to the Honorable Mayor and City Council from
19 Jennifer Schembri and Jennifer A. Maguire, dated July 24, 2015, p. 39, Ex. 2 to RJN.)

20 14. San Jose's regularly scheduled general municipal election occurred in November
21 2014. I initiated a campaign to run for the office of Mayor in August of 2013, but because of a death
22 in my family, could not continue the campaign and closed my committee in March
23 2014. Nevertheless, I followed the 2014 Mayoral and City Council campaigns closely. Arguably,
24 the dominant election issue in the mayoral race was pension reform. San Jose's mayoral candidates
25 were sharply divided on the issue. Candidate Dave Cortese, backed by the City's unions, campaigned
26 against Measure B. Conversely, then-city council member and current Mayor, Sam Liccardo,
27 campaigned in favor of the measure, thereby earning him the support of much of the local business
28 community. Sam Liccardo was elected Mayor. I watched Mayor Liccardo's March 5, 2016 State of

1 the City address online here: <http://sanjose.granicus.com/ViewPublisher.php?view_id=51> in
2 which Mayor Liccardo states at 22:03: ". . . and in November I will ask you to approve a ballot
3 measure to secure the three billion dollars of savings in future pension and retiree medical costs that
4 we were able to reach through negotiations with our employees. Together we can conclude the most
5 extensive pension reform negotiated in any city in this state."

6 15. In 2015, after my service as a City Councilmember ended, I became a Senior Fellow
7 at the Reason Foundation and Director of the Pension Integrity Project. The Reason Foundation
8 produces public policy research that advances a free society. The Pension Integrity Project provides
9 education, policy options, and actuarial analysis for stakeholders to design pension reform proposals.
10 My credentials and effectiveness as a Senior Fellow and Director at the Reason Foundation are based
11 in part on my key role in leading the reforms adopted by Measure B. I have traveled throughout the
12 country in my capacity as a City Councilmember and now as a Senior Fellow and Director at the
13 Reason Foundation discussing my experience in San Jose regarding Measure B and providing
14 expertise, guidance, education, and recommendations to state and local jurisdictions regarding
15 pension reform. Attached hereto as **Exhibit B** is a true and correct copy of the list of my speaking
16 engagements related to Measure B and/or pension reform issues from 2011 to present.

17 16. I have been directly involved in designing, drafting, and negotiating a pension reform
18 plan for the state of Arizona, which was passed with strong bipartisan support in both the Arizona
19 Senate and House of Representatives and was signed by Arizona Governor Doug Ducey on February
20 16, 2016. The plan will now go before Arizona voters on May 17, 2016. Attached hereto as **Exhibit**
21 **C** is a true and correct copy of a newspaper article from the *Arizona Republic* published on February
22 17, 2016 discussing the passage of the pension reform proposal and identifying me as a "key
23 participant in the negotiations." The article is also available online at:
24 <[http://www.azcentral.com/story/news/arizona/politics/2016/02/16/arizona-pension-reform-signed-](http://www.azcentral.com/story/news/arizona/politics/2016/02/16/arizona-pension-reform-signed-gov-doug-ducey-but-voters-have-say/80471656/#)
25 [gov-doug-ducey-but-voters-have-say/80471656/#](http://www.azcentral.com/story/news/arizona/politics/2016/02/16/arizona-pension-reform-signed-gov-doug-ducey-but-voters-have-say/80471656/#)>.

26 17. My credentials based on my involvement with Measure B and its viability after being
27 mostly sustained in the Consolidated Cases were important to my credibility and effective work in
28 Arizona. In fact, Measure B was so important that I am informed and believe the current president

1 of the SJPOA communicated with key Arizona stakeholders in an attempt to undermine my
2 negotiation efforts claiming Measure B had been a debacle rather than a successful reform campaign.

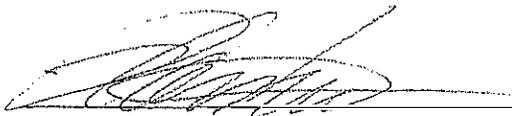
3 18. I believe there is a substantial probability a court-imposed nullification of Measure B
4 would harm my reputation and integrity as a successful pension reform professional advocate.

5 19. While I was aware the City was discussing a settlement with the SJPOA regarding the
6 implementation of Measure B, it was uncertain whether that would occur because other unions and
7 retirees affected by Measure B needed to agree to a settlement as well. I am informed and believe
8 that the City Council approved the terms of a settlement with the Federated unions at its December
9 15, 2015 meeting and authorized the City Manager to negotiate and execute a Retirement
10 Memorandum of Agreement between the City and Federated Bargaining Units. (City of San Jose,
11 City Council Agenda, December 15, 2015 Synopsis, p. 13, Ex. 8 to RJN.) In the Federated Alternative
12 Pension Reform Settlement Framework summary, the City disclosed that once a global settlement is
13 reached, the quo warranto process would begin in court, which the City characterized as “a legal
14 proceeding used to overturn a ballot measure post-election”. (Federated Alternative Pension Reform
15 Settlement Framework – Executive Summary, dated February 24, 2016 (City of San Jose), p. 1, Ex.
16 9 to RJN.) The summary indicates the quo warranto process has not yet begun pending ongoing
17 negotiations, and further states, “The parties will agree upon and submit a factual stipulation and
18 stipulated judgment in the quo warranto case finding that Measure B is invalid.” (*Ibid.*) To my
19 knowledge, and based on the public representations of the City, the quo warranto process has not yet
20 begun, and the proposed stipulation and proposed judgment have not yet been finalized or made
21 public, as was represented to this Court at the Case Management Conference in this matter on
22 February 18, 2016. I am also informed and believe the City and SJPOA are planning for the
23 intervention of the Local 230 union in this action. (Addendum #2 to July 15, 2015 Alternative
24 Pension Reform Settlement Framework Between the City of San Jose and the San Jose Police
25 Officers' Association (POA), The International Association of Firefighters, Local 230 (IAFF);
26 Proposed Quo Warranto Implementation Plan, August 14, 2015 (Attachment B to the August 17,
27 2015 Supplemental Memorandum), p. 1, Ex. 4 to RJN). When I became aware that the quo warranto
28

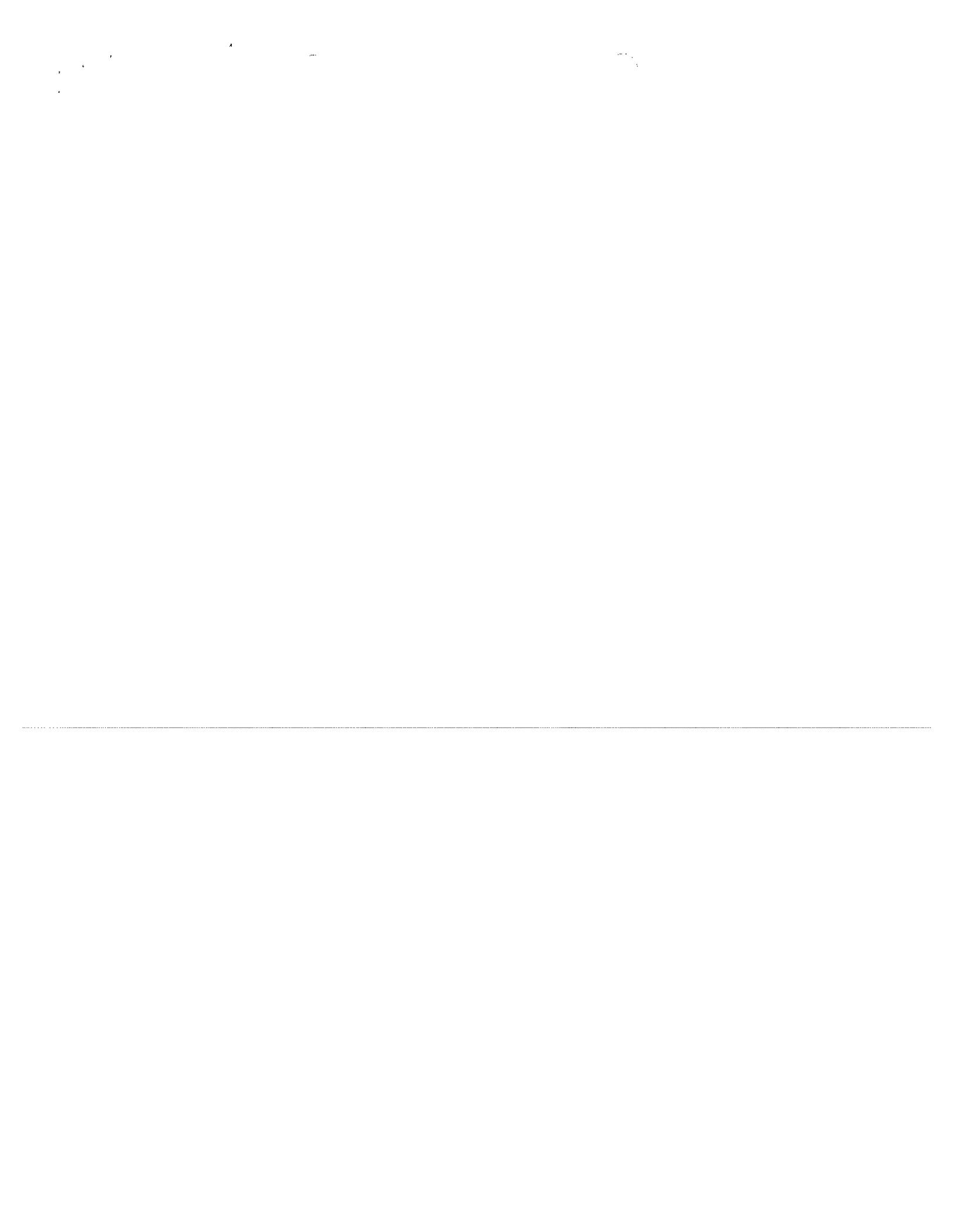
1 process had not yet begun, but certain contingencies have been eliminated, I secured and met with
2 legal counsel in January and February 2016 to likewise seek intervention in support of the City of San
3 Jose's defense of Measure B.

4
5 I declare under penalty of perjury under the laws of the State of California that the foregoing
6 is true and correct and of my own personal knowledge except for those matters stated on information
7 and belief and, as to those matters, I believe them to be true. If called as a witness, I could competently
8 testify thereto.

9 Executed on 3/7/2016 at Roseville, California.

10
11 
12 Peter Constant

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Reason Foundation Experts

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Bio

Pete Constant is a senior fellow at Reason Foundation, where he works on the Pension Reform Project.

Before joining Reason Foundation, Constant served two terms as a city council representing the 100,000 residents of District 1 in San Jose, California. As a councilmember, Constant led a number of reform initiatives, including the city's Fiscal Reform Plan, retirement board governance reform, and a comprehensive pension reform initiative, Measure B. Constant also held positions as a trustee and board member on public pension plan boards for both public safety and non-public safety employees of the city.

Prior to being elected to the city council, Constant served for 14 years as a San Jose Police Officer. After suffering a career-ending injury, he continued his public service on the San Jose Appeals Hearing Board. He was also a board member for the San Jose Police Officers' Association.

Constant is an adjunct professor of public policy and leadership at St. Mary's College, where he earned his Bachelor of Arts degree in management and his Master of Arts degree in leadership. Constant is currently a doctoral candidate at the University of La Verne. Additionally, Constant has earned certifications on pensions, benefits, hedge funds, investments, and management programs from University of Pennsylvania, Wharton School of Business and Stanford Law School, as well as Certificates of Achievement in Public Plan Policy, Employee Pensions I & II from the International Foundation of Employee Benefit Plans.

Constant is based in Sacramento, California.

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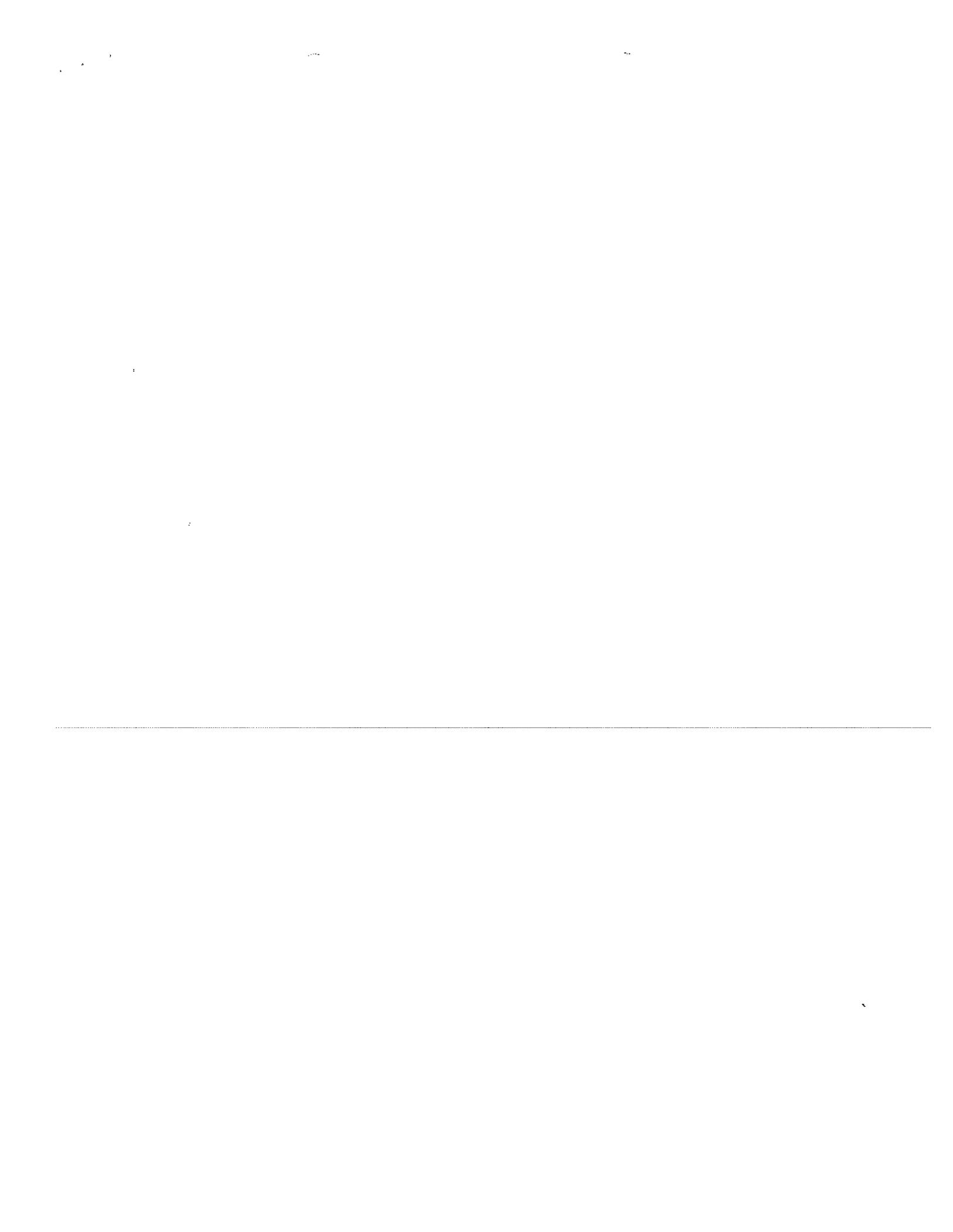
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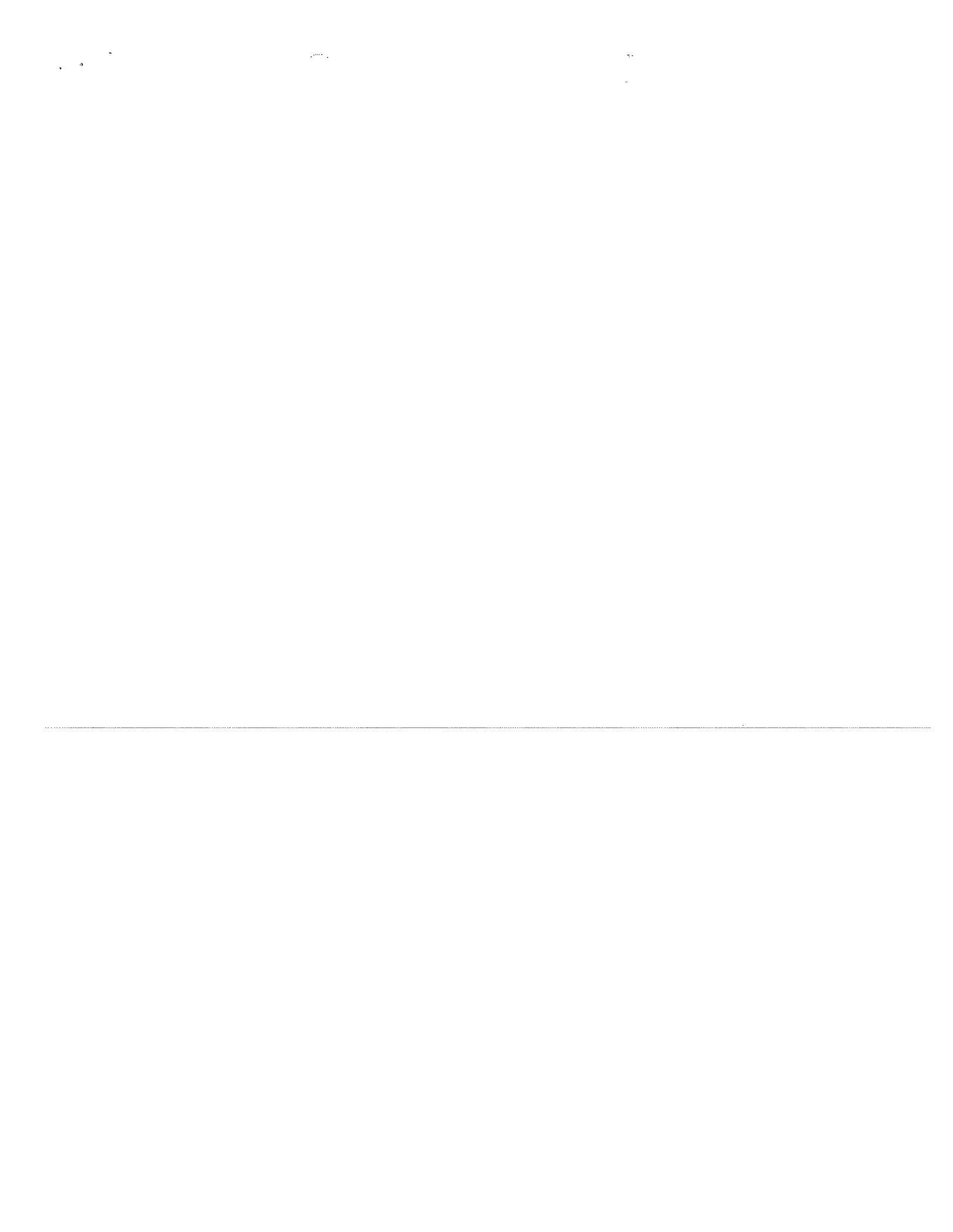
PETE CONSTANT

(408) 649-9500 | pete@peteconstant.com

SPEAKING ENGAGEMENTS

- 2016-02-06, Libertarian Party of Santa Clara County, *Reason Foundation's Pension Integrity Project*, Annual Meeting, The Fish Market, San Jose, CA.
- 2016-01-10, Arizona Fire Chiefs Association, *Public Safety Retirement Reform in Arizona*, 2016 Presidential Forum, Harrah's Casino, Laughlin, NV.
- 2015-11-05, California Society of Municipal Analysts Conference, *Public Pensions & OPEBs – Insights from the Field*, Annual Conference, 2015, Silverado Report, Napa, CA.
- 2015-10-29, Platte Institute, *Why Omaha Pension Reform Matters for Nebraska*, Economic Research Economic Summit 2015, Embassy Suites Hotel, Lincoln, NE.
- 2015-09-18, California GOP, *Pensions: The Need for Reform in California*, Annual Convention 2015, Marriott Hotel, Anaheim, CA.
- 2015-07-18, California GOP Reformers Weekend, *Pension Reform in California Panel Discussion*, Bi-Annual Meeting 2015, Firestone Ranch, Los Olivos, CA.
- 2015-04-14, Nevada State Assembly Committee Testimony, *The Impacts of AB 190 Pension Reform Legislation*, Ways and Means Committee, Carson City, NV.
- 2015-04-08, SVGOP, *Update: Local Pension Reform Efforts*, Membership meeting, San Jose, CA.
- 2015-04-02, Citizens for Fiscal Responsibility, *Pension Reform Legal Challenges & The Initiative Process*, Membership meeting, San Jose, CA.
- 2015-04-02, West Valley Republican Women Federated, *National Pension Reform Efforts & Effecting Policy Change*, The Blue Pheasant Restaurant, Cupertino, CA.
- 2015-01-30, Florida Tax Watch, *Building the Political and Fiscal Case for Reform, Engaging Outside Groups As Elected Officials and Responding to Arguments Against Reform*, Pension Reform Summit: How to Navigate Local Pension Reform, Ft. Lauderdale, FL.
- 2014-12-02, American Legislative Exchange Council, *State and Municipal Pension Reform*, Annual Tax and Fiscal Policy Academy, Hyatt Regency Hotel, Washington, DC.
- 2014-06-04, Greater Houston Partnership, *How do we Analyze the Region's Fiscal Health? Retirement Systems & Reform*, State of the Region, Federal Reserve Bank, Houston, TX.
- 2014-05-08, JP Morgan Chase Bank, N.A., *Municipal Finance: Fiscal/Pension Reform*, Webinar training session for in-house municipal bond underwriters.
- 2014-04-10, State Government Affairs Council, *Impacting at the Local Level*, Annual Meeting 2014, The Palace Hotel, San Francisco, CA.
- 2014-04-10, Reason Foundation, *Pension Reform Case Study: City of San José*, Annual CA Pension Reform Summit, The Sterling Hotel, Sacramento, CA.
- 2014-03-19, Reason Foundation, *Pension Reform Case Study: City of San José*, 2nd Annual CA Pension Reform Summit, The Sterling Hotel, Sacramento, CA.
- 2013-11-22, Reason Foundation, *Analysis: San José's Pension Reform*, Pension Reform Boot Camp, Loews Coronado Bay Resort, San Diego, CA.
- 2013-10-21, Ballotpedia, *Nationwide Efforts for Pension Reform*, Pension Reform Webinar.
- 2013-09-18, Governing Magazine, *Relieving Pension Pressure: So Much Reform and So Little Change*, GOVERNING Summit: Cost of Government, Newseum, Washington, D.C.
- 2013-05-22, Reason Foundation, *Pension Reform Case Study: City of San José*, 1st Annual CA Pension Reform Summit, The Citizen Hotel, Sacramento, CA.

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- 2013-04-11, Santa Cruz County Business Council, *Pension Reform: San José's Measure B*, Breakfast Meeting, Crow's Nest Restaurant, Santa Cruz, CA.
- 2013-03-14, San Diego County Tax Payers Association, *The Future of Pension Reform: San José's Measure B*, Breakfast Club Meeting, Wyndham Hotel, San Diego, CA.
- 2013-01-11, Texas Policy Foundation, *San José as a Case Study: Pension Reform*, 10th Annual Policy Orientation, Hilton Austin Hotel, Austin, TX.
- 2012-12-01, National League of Cities, *Retooling Public Pensions and the Future of Public Work*, 2012 Congress of Cities and Exposition, Boston Convention & Exposition Center, Boston, MA.
- 2012-09-27, Citizens against Government Waste, *Press Conference: Public Servants or Privileged Class: How State Government Employees are Paid Better than Their Private-Sector Counterparts*, National Press Club, Washington D.C.
- 2012-07-26, American Legislative Exchange Council, *Municipal Pension Reform- Using San Jose as a Case Study*, 39th Annual Meeting, The Grand America Hotel, Salt Lake City, UT.
- 2012-04-24, Campbell-West San José Rotary, *San José's Pension Reform*, Campbell Rotary Luncheon, EMQ-FamiliesFirst, Campbell, CA.
- 2012-04-20, The California Senior Alliance, *Keynote Speech: San José's Pension Reform*, Annual Meeting, Coconut Grove, Santa Cruz, CA.
- 2011-04-18, American Leadership Forum, *Fiscal Reform at the State Level*, Common Good Collaborative, CreaTV Studio, San José, CA.



Arizona pension reform is signed by Gov. Doug Ducey, but voters will have a say

Crain Harris, The Republic | azcentral.com 12:03 p.m. MST February 17, 2016

Arizona voters will be asked May 17 to help repair the financially fragile PSPRS by changing benefit increases for retirees. Gov. Ducey also signed legislation that makes changes for new hires.



(Photo: Mark Hentz, Mark Hentz/The Republic)

Arizona voters will be asked on the May 17 ballot to help repair the financially fragile pension system for public safety workers by changing the way benefit increases are paid to retirees.

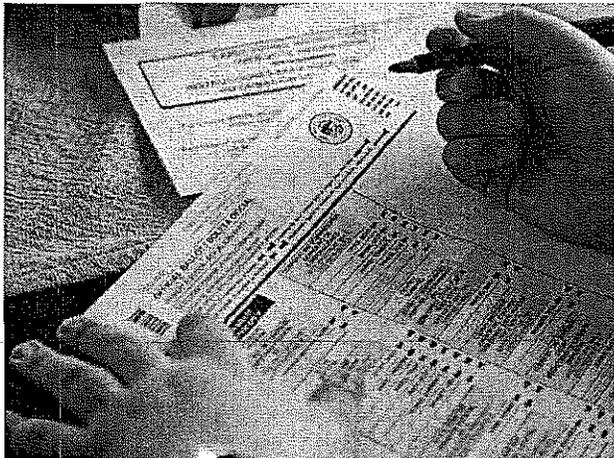
Gov. Doug Ducey on Tuesday signed legislation that puts that issue before voters. He also signed a separate bill that makes significant changes to pensions for new police officers and firefighters.

The reform package, pushed through the Arizona Legislature by Sen. Debbie Lesko, R-Peoria, is projected to save the Public Safety Personnel Retirement System \$1.5 billion over 30 years, according to a consultant of the Pension Integrity Project.

However, all of the savings are backloaded. Changes apply only to new hires who start their jobs after July 1, 2017, said Pele Constant, director of the integrity project. There are no changes for current employees because Arizona's Constitution does not allow for any "impairment" of pension benefits for public workers.

RELATED: Brand-new state Supreme Court justice has no business deciding pension issues, says Laurie Roberts. (<http://story/opinion/op-ed/laurieroberts/2016/02/16/roberts-back-off-justice-bo/80465156/>)

"With every employee hired after the effective date, then you will start to accumulate savings," said Constant, a former California police officer and a key participant in the negotiations.



There are more risks than gains from teaming pension reform with additional education funding. (Photo: Patrick Breen, Patrick Breen/The Republic)

Constant, also a former San Jose City Council member, acknowledged that there are no immediate savings in Arizona, as critics have contended. But he said the package is a major step to fix the roughly \$6.3 billion PSPRS, which has roughly half the money needed to fully fund all pension benefits for current and future retirees.

Bryan Jeffries, a Mesa firefighter and president of the Professional Fire Fighters of Arizona, said his group is "all in" to support the package. The group is likely to help with voter turnout to support the measure.

Part of the intended fix requires voter approval in May because it would change the way benefits are increased for retirees. Voters will be asked to link retirees' pension cost-of-living adjustments to the regional Consumer Price Index, with an annual cap of 2 percent. A 4 percent compounded increase has been paid out for the past two decades, significantly cutting into the trust's money.

Legislation signed by Ducey would offer new workers a choice between a full-defined contribution plan and a traditional pension plan. It also would require new employees and their employers to split the cost of a pension. Currently, employees pay 11.65 percent of their salary toward pension benefits, but there is no cap on contributions by employers. On average, employers pay an amount equivalent to nearly 43 percent of each employee's salary for retirement benefits.

The new law also would cap pension benefits for new employees by limiting the maximum salary on which it is calculated to \$110,000 a year. The current cap is \$265,000 a year. This would lower pension benefits and limit "pension spiking," a method of enhancing retirement benefits by artificially increasing salary and other payments to employees during their last few years before retirement.

It also would raise the number of the PSPRS governing board from seven to nine, with the majority of the board being independent and not members of the plan. The governor, speaker of the House and Senate president each will appoint members, who are now all appointed by the governor. The new board will take over Jan. 1.