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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SANTA CLARA**

THE PEOPLE OF THE STATE OF
CALIFORNIA on the RELATION of SAN
JOSE POLICE OFFICERS' ASSOCIATION,

Plaintiff,

v.

CITY OF SAN JOSE, and CITY COUNCIL OF
SAN JOSE,

Defendants.

CASE NO. 113-CV-245503

**SUPP. DECLARATION OF PETE
CONSTANT IN REPLY IN SUPPORT OF
APPLICATION TO INTERVENE (C.C.P. §
387)**

DATE: April 5, 2016
TIME: 9:00 A.M.
DEPT: 7
JUDGE: McGowen

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. My credentials for making this declaration are set forth in my first declaration in this
5 action filed on March 9, 2016.

6 3. On March 7, 2016, my attorneys reserved with the Court a hearing date for my
7 application to intervene in this action. (See Decl. of Carson, filed herewith.) A very short time later
8 the reservation appeared on the Court's On-line Case Information Page for this case. (*Id.*) That same
9 day, as a courtesy to San Jose's Mayor, I called him to advise that Proposed Intervenors were
10 preparing to file this application for intervention in this action.

11 4. The regular meeting of the San Jose City Council occurred on March 8, 2016. The
12 Council met in closed session twice that day, once in the morning, and then again in the afternoon
13 after giving notice there would be a break during the meeting to engage in a Closed Session regarding
14 labor negotiations. (See, City of San Jose's Synopsis of the March 8, 2016 City Council meeting, a
15 true and correct copy of which is attached hereto as Exhibit D to the Supplemental RJN filed herewith,
16 and accessible here: <http://sanjoseca.gov/DocumentCenter/View/54919>.)

17 5. I have reviewed a portion of the City's webpage containing documents pertaining to
18 these *quo warranto* proceedings, here: <http://sanjoseca.gov/index.aspx?NID=3182>. Posted there is a
19 document entitled "Stipulated Facts & Proposed findings, Judgment and Order." (See Supp. RJN,
20 Ex. C for true and correct copy.) The document was signed by the city on March 8, 2016. The PDF
21 format of the document that appears on the City's webpage, was created on March 9, 2016, the same
22 day I filed my application to intervene. (*Id.*, see "Document Properties" and Decl of Carson.) The
23 webpage includes a proposed Judgment and Order that is also part of Exhibit C to the Supplemental
24 Request for Judicial Notice, bearing the date on the webpage of March 2, 2016, but the document
25 properties reflect it was also created on March 9, 2016, the day I filed the application to intervene.

26 6. As a Council member for the City, I participated in Closed Sessions where direction
27 was given to the City's labor negotiators during collective bargaining. I was also on the City Council
28 for the meet and confer that preceded placing Measure B on the ballot and an active member of the
retirement board. In that capacity I was able to provide perspectives to available to the other Council

1 Members. In looking at any salary or benefit increase request made by the City's recognized
2 bargaining groups, the question was always how it affected the "total compensation" package of the
3 employee group. Retirement costs were only one element of "total compensation". For example, a
4 proposal that includes a lower retirement benefit could result in a higher "total compensation"
5 package depending on amount of salary or other benefits included in the overall proposal. Retirement
6 benefits are unique in that they are based on estimated long-term costs rather than salary or other
7 benefits usually paid out in a particular fiscal year. At the time the retirement benefit is granted, you
8 really do not know for certain how much it will cost in the long-run. One of the main purposes of
9 Measure B was to make sure that the voters had some control over the long-term costs of retirement
10 benefits to City government. The goal of Measure B was to ensure the City could live within its
11 means. As stated in the Argument in Favor of Measure B, without Measure B "(f)uture generations
12 of taxpayers will have to pay billions of dollars for unfunded liabilities created by the retirement
13 plans." A true and correct copy of the Argument in Favor of Measure B is attached hereto as Exhibit
14 1. Eliminating Measure B, however, allows current officials to pass along long-term costs without
15 voter oversight. By the time the voters find out that current estimates of future costs were understated,
16 it is too late to make retroactive adjustments. Measure B gives San Jose voters the right to control
17 these long-term costs and it is one of the reasons 69.5% of the voters approved it.

18 7. The Declarations of the City Manager Duenas (§13) and the Police Chief Garcia (§§6-
19 7), filed in support of the opposition to the Application for Intervention assert the City faces
20 "challenges" retaining and recruiting police officers. Both declarations speculate Measure B is a
21 "primary contributor" to the challenge, but there apparently are other unspoken "contributors" as well.
22 Police Chief Garcia states under oath there were contributing "outside factors". The "challenge" is
23 also a product of the City's current action or inaction to address "total compensation" issues within
24 its current budget. As Police Chief Garcia states in paragraph 8 of his declaration, "In 2009, the city
25 employed 1,395 police officers. Today, after budget cuts, the City is budgeted for 1109 sworn staff."
26 (Emphasis added.) Also, it is a reasonable inference the recruitment "challenges" are a by-product of
27 the ongoing litigation over Measure B between the City and its unions. Note that in the Declaration
28 of James Gonzalez, vice president of Relator, he confirms cooperative robust recruitment efforts by

1 Relator are contingent on the elimination of Measure B. (¶6:6-8: “Those recruitment efforts are
2 premised upon the implementation of the settlement, and they would be further delayed by an
3 extension of this litigation.”) The Police Chief and City Manager imply Measure B is responsible for
4 the decline in the size of the City’s police force from 2009 through present. However, before Measure
5 B was enacted, when I was on the City Council, it was required to eliminate approximately 350
6 positions from the police department specifically due to the rising cost of the pension contributions
7 paid by the City.

8 8. Police Chief Garcia and City Manager Duenas claim elimination of Measure B is
9 necessary to address the recruitment “challenge” and attract police officers to work for the City. This
10 is not accurate. There are other ways that the “total compensation” of the City’s police officers can
11 be adjusted to aid in recruitment efforts, if indeed compensation is the issue. For example, the City
12 could increase base pay or provide other current benefits. Surely these real time “total compensation”
13 elements require balancing current expenses of government, but they permit the City Council and the
14 voters to make current judgments about the City’s priorities and what it can afford. Those are political
15 judgments that are often difficult for elected officials to make, but Measure B requires the City
16 Council to make them. If it would prefer to “kick the can down the road” and let future generations
17 pay to eliminate the current “recruitment challenge”, the Council needs to get voter approval to do so
18 under Measure B.

19 9. I learned for the first time in the Declaration of City Manager Duenas that the City
20 has, as part of the settlement negotiations, reached tentative agreement on language for a ballot
21 measure with POA and San Jose Firefighters Association, IAFF Local 230. (Decl. of Duenas, ¶ 9 &
22 Exhibit 4.) The City’s other unions “have agreed to basic deal points on ballot language with the
23 remaining nine (9) labor organizations.” The ballot language, therefore, is not final. (Decl. of
24 Duenas, ¶¶ 9 & 14 [The City “is working with its non-sworn groups to complete the bargaining over
25 the new ballot measure.”].)

26 10. City Manager Garcia states in his declaration: “If the interveners are allowed to
27 prevent implementation of the Alternate Pension Reform Settlement Framework and the ballot
28 measure, the parties will have to begin negotiations over a new ballot measure to supersede Measure

Bin its entirety.” (¶15.) This is inaccurate and inconsistent with the express terms of the PF Settlement Framework, on which both the City and Relator have signed-off. If the Court refuses to wipe Measure B out of the Charter based on a stipulation (i.e. the so-called “Quo Warranto Strategy”), the language of the Parties’ executed agreement already provides for the PS Settlement Framework to be placed on the ballot. That language provides:

If agreements are not reached to end litigation with all plaintiffs in Measure B litigation, or if the process of quo warranto does not permit the replacement of Measure B with this or any other agreement, the City Council, Local 230 and the POA shall request a stay of all Measure B litigation to which they are involved in to permit this agreement to appear on a 2016 ballot as a measure to replace Measure B in its entirety with respect to police and fire participants of the Police & Fire Retirement Plan. If this ballot measure is enacted, all Measure B Litigation involving Local 230, the POA and the City would be terminated and dismissed.

(See Exhibit 1, hereto, which also includes as Exhibit 1 the PF Settlement Framework, page 2 of 16.)

11. The City asserts that I offer “no evidence that the retirement system will be less able to ‘meet its future obligations’ under the Settlement Framework.” (Decl. of Duenas, ¶15-16.) A comparison of the facial provisions of Measure B and the Settlement Framework demonstrate the latter proposed changes to Measure B that have the potential to or actually will increase the cost of the City’s retirement system:

Measure B	PF Settlement Framework
§1504-A: Voters empowered in Charter to approve “any change” in matters related to pension & post-employment benefits	Addendum A: Voters’ broad Charter-based power eliminated.
§ 1508-A(a): City share of defined benefit plan for Tier 2 employees not to exceed 50% of total cost, including unfunded liabilities	Page 4 of 16: In the event of an unfunded liability, Tier 2 employees will contribute 0.33% per year until such time that liability is shared 50/50

1 2 3	§ 1508-A(b): For any defined benefit plan, service retirement age for police officers and firefighters shall be 60	Page 3 of 16: The eligible age for an unreduced pension benefit will be age 57
4 5 6 7	§ 1508-A(e): Defined plan benefits shall accrue at a rate not to exceed 2% per year of service, not to exceed 65% of final compensation, as defined.	Page 3 of 16: accrual rate starts at 2.4% and ramps up to 3.4% with maximum benefit of 80% of final average salary
8 9	§ 1508-A(g): Rehired former Tier 1 employees placed into second tier of benefits	Page 6 of 16: Rehired former Tier 1 employees placed back into Tier 1 for benefits
10 11 12	§ 1508-A(h): “No plan subject to this section shall create a vested right to any benefit.”	Page 4 of 16: “Removal of language limiting vesting of benefits from City Charter (§ 1508-A(h))”
13 14 15	§ 1509-A(b): New definition of “disabled” for purposes of qualifying for a disability retirement	Page 11 of 16: “Reinstate the previous City definition for disability for all sworn employees”
16 17 18	§ 1511-A: Supplemental Retiree Benefit Reserve discontinued	Page 14 of 16: “City will replace SRBR with guaranteed purchasing power (GPP) provision for all Tier 1 retirees, prospectively.”
19 20 21 22 23	§ 1513-A: Definition of “Actuarial Soundness”	Draft ballot measure (Decl. of Duenas, Ex. 4) eliminates key components of the actuarial soundness analysis, including, among others, requirement that rate-of-return assumptions meet the standard of a 50-50 probability.

24 12. In addition, the draft ballot measure language, Section 1(b)(1)(iii) and (iv), creates a
25 retroactive benefit increase which is not paid for, and immediately creates an unfunded liability. The
26 language in the PF Settlement Framework (page 6, section 16 (b)) takes this liability and amortizes it
27 over “a minimum of 16 years.” This is essentially a debt that will be incurred for 4 years of service
28 that will be repaid to the plan, with interest, over 16 or more years. This is exactly the type of

1 retroactive enhancements that the Reservation of Voter Authority (section 1504-A) in Measure B
2 forbade without voter approval.

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

7 Executed on March 28, 2016 at Roseville, California.

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11 Peter Constant

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EXHIBIT 1

MEASURE B

CITY CLERK'S IMPARTIAL ANALYSIS OF MEASURE B

Measure B would add Charter Article XV-A to establish additional controls over employee retirement contributions and benefits.

Background. The City administers "defined benefit" retirement plans for its employees. The City and employees each contribute to the plans. Employees who reach retirement age and complete sufficient years of service become eligible for monthly retirement benefit payments using a formula based on years of service and a percentage of salary.

Contributions. The Charter requires the City and employees to make contributions towards the "normal cost" of the City's retirement plans in a ratio of 8 (City) to 3 (employee). The City also makes contributions towards the "unfunded liabilities" that result from insufficient plan assets to pay projected retirement costs.

Beginning July 23, 2013, the Measure would require employees to make additional contributions to help pay the City plans' unfunded liabilities. Employees would contribute from 4% of pay, up to a maximum of 16% per year, but no more than half the yearly cost to pay retirement system unfunded liabilities. If a court determines this section to be unenforceable, equivalent savings would be obtained through compensation reductions.

Alternative Plan. The Measure would require the City Council to adopt a Voluntary Election Program ("VEP"), subject to IRS approval. Under the VEP, employees who "opt in" would not be required to make the additional contributions towards retirement plan unfunded liabilities. The VEP retains some existing benefits and reduces others. If the VEP has not been implemented, or employees do not elect to participate, employees would make additional contributions.

New Employees. The Measure would require the City to adopt a retirement plan for new employees that could include social security, a defined benefit plan and/or a defined contribution plan. The measure would limit City costs and retiree benefits.

Disability Retirement. The Measure would limit disability retirements to cases where the employee could not perform the work the employee did before or any other work in the City's classification plan (or in the case of safety employees, in the employee's department).

COLA. The Measure would authorize the City Council to temporarily suspend cost of living adjustments paid to retirees for up to five years if the Council adopts a resolution declaring a fiscal and service level emergency.

Supplemental Payments. The Measure would discontinue the Supplemental Retiree Benefit Reserve, which permits the allocation of excess plan investment income to fund supplemental benefits for retirees.

Retiree Healthcare. The Measure would require employee contributions to fund a minimum of 50% of the cost of retiree healthcare, including both normal cost and unfunded liabilities.

**CITY CLERK'S IMPARTIAL ANALYSIS
OF MEASURE B - Continued**

Oversight. The Measure reserves to the voters any future change in post employment benefits. Neither the City Council nor any arbitrator under Charter Section 1111 would have authority to provide for increases. The Measure sets retirement plan actuarial and investment standards.

A "yes" vote is a vote to approve the changes described above.

A "no" vote means that no changes would be made to the Charter's retirement provisions.

/s/ Dennis D. Hawkins
City Clerk
City of San Jose

The above statement is an impartial analysis of Measure B. If you would like to read the full text of the measure, see <http://www.sanjoseca.gov/clerk/elections/2012Election/measures.pdf> or call 408-535-1252 and a copy will be sent at no cost to you.

ARGUMENT IN FAVOR OF MEASURE B

Annual retirement costs skyrocketed from \$73 million to \$245 million over the last decade, causing service cuts throughout the city. The City's share of retirement costs exceeds 50% of payroll, far more than the 6.2% of payroll private employers pay for social security. Retirement costs consume more than 20% of the general fund and are projected by independent actuaries to increase for years. This is unsustainable.

Many city retirees receive more than \$100,000 per year, plus healthcare benefits.

Future generations of taxpayers will have to pay billions of dollars for unfunded liabilities created by the retirement plans.

Measure B would protect retirement benefits already earned by current employees but would reduce the cost to the city by making changes going forward. It would not cut current payments to retirees. It would prohibit spiking of pension benefits.

Current city employees will pay a larger share of the cost of retirement benefits, a step already taken by over 200 California cities. New employees and the city would share the cost of retirement benefits with a 50/50 match in a new lower-cost plan. Over 100 California cities have adopted lower-cost plans for new employees.

City employees are presently paying less than 1/4 of the cost of their retirement benefits. Private sector employees usually pay 1/2 of the cost. Measure B will require current city employees to pay more than 1/3 of the cost of their retirement benefits and new city employees to pay 1/2 of the cost of their retirement benefits.

The City Charter gives the voters the right to change retirement benefits. The city will seek judicial review before changes are implemented to minimize legal disputes.

Mayor Reed, Vice Mayor Nguyen, and Councilmembers Constant, Herrera, Liccardo, and Oliverio support Measure B.

Vote yes on Measure B for pension reform.

www.sanjosefiscalreforms.com

/s/ Chuck Reed
Mayor of San Jose

/s/ Matthew Mahood
President & CEO, San Jose Silicon Valley Chamber of Commerce

/s/ John Roeder
President, Silicon Valley Taxpayers Association

/s/ Suzanne Salata
San Jose Small Business Owner

/s/ Fernando R. Zazueta
Attorney at Law

REBUTTAL TO ARGUMENT IN FAVOR OF MEASURE B

City politicians distorted San Jose's budget and pension issues and now they've put a pension measure on the ballot that their own attorneys have declared "risky." Measure B won't open a single library, hire a single cop, or pave a single street. San Jose can do better, Vote No on Measure B.

City employees don't receive Social Security and the average federated pension is \$37,885; employees rely on their pension for retirement security. How would you feel if Congress slashed your Social Security? It's just not right.

Recently, city employees took pay cuts of 10% to 18%. They contribute up to 17% of pay toward retirement and Measure B could boost that to 33%. When combined, about half an employee's paycheck evaporates before paying for taxes, groceries, rent, mortgage or gas. That's not fair and that's not what was promised.

City politicians tried to declare a "fiscal emergency" even though there's now a budget surplus and made up pension projections that were inflated by hundreds of millions over actual costs. Politicians continue to recklessly spend on fixing roads near a proposed sports stadium and on supporting the Downtown Association.

The California State Auditor has been ordered to get to the bottom of San Jose's fiscal shenanigans in an attempt to bring sanity to local budgeting.

Tell the City to negotiate legal pension reform - **Vote No on B!**

www.sanjosecandobetter.com

/s/ Helen Chapman
Former Chair, San Jose Parks Commission

/s/ Pattie Cortese
San Jose Taxpayer

/s/ James M. Spence
President, Association of Retired San Jose Police Officers & Firefighters

/s/ John S. DiQuisto
Retired Captain, San Jose Fire Dept.

/s/ Cay Denise MacKenzie
San Jose City Analyst

ARGUMENT AGAINST MEASURE B

Here's what Measure B backers aren't telling you: It could eliminate disability retirements for police and firefighters injured on the job and unable to perform their previous duties, it increases by thousands of dollars the amount widows and seniors pay for promised health care, and the City admitted that Measure B may not be constitutional because it violates employees' vested rights.

Measure B is riddled with legal risks. Read what City Hall told Wall Street bond investors about its pension scheme: "Finally, existing law regarding vested rights and impairment of contracts may limit the City's ability to change retirement benefits for current employees and retirees...". But city officials never even tried to offer taxpayers a way to achieve any savings that would stand up in court.

Legal pension reform is important, but so are facts. City workers recently took 10%-18% pay cuts and don't receive Social Security. The average federated pension is approximately \$37,885.

Employees proposed dozens of legal pension reforms that would have increased retirement ages, reduced benefit levels, and lowered COLA's. Police and fire even proposed to cut pensions back to 1972 levels. Putting politics above policy, politicians said "NO". Now, these same politicians want you to gamble with our City's financial future.

In December, as an excuse for putting this measure on the ballot, politicians unsuccessfully tried to declare a fiscal emergency and described catastrophic cuts to city services. Now, all of a sudden, there's a \$10 million budget surplus and millions to improve roads near a proposed sports stadium and to subsidize the Downtown Association. This pattern of inaccurate financial projections, meant to scare voters, helped convince the State's Joint Legislative Audit Committee to audit the City of San Jose's finances.

Tell the city to negotiate legal pension reform, **Vote No on Measure B!**

www.sanjosecandobetter.com

/s/ Helen Chapman
Former Chair, San Jose Parks Commission

/s/ Pattie Cortese
San Jose Taxpayer

/s/ James M. Spence
President, Association of Retired San Jose Police Officers & Firefighters

/s/ John S. DiQuisto
Retired Captain, San Jose Fire Dept.

/s/ Cay Denise MacKenzie
San Jose City Analyst

REBUTTAL TO ARGUMENT AGAINST MEASURE B

Measure B follows California law. The California Constitution grants the City authority to change employee compensation. The City Charter gives voters the right to change retirement benefits. The Municipal Code allows the City to require employees to pay more for retirement benefits, which is an element of Governor Brown's pension reforms and was recommended by the Santa Clara County Grand Jury.

Governor's Proposal:

<http://gov.ca.gov/docs/Twelve Point Pension Reform 10.27.11.pdf>

Grand Jury Report:

http://www.scscourt.org/court_divisions/civil/cgj/2010/CitiesMustReinInUnsustainableEmployeeCosts.pdf

Measure B would also allow employees who wish to pay less for retirement benefits to choose a lower cost optional plan that saves them and the City money.

Upon voter approval of Measure B, the city will immediately seek a judicial review to minimize the cost of legal disputes. See the legal opinion of outside counsel: <http://www.sanjoseca.gov/mayor/goals/budget/PDF/MeyersNavePublicLegalOpinion.pdf>

A Stanford report found that San Jose public safety retirees' average annual pension benefit (\$90,612) is the highest of any independent pension system in California. <http://siepr.stanford.edu/system/files/shared/pubs/papers/pdf/Nation More Pension.pdf>

The City Auditor found that disability retirements among San Jose's sworn employees are considerably higher than other jurisdictions and 67% of fire retirees were receiving disability retirement payments. Some employees granted disability retirements were working full time in their regular job right up to when they separated from the City. The Auditor recommended the City Charter be amended to reform the system. <http://www.sanjoseca.gov/auditor/AuditReports/1102/1102.pdf>

The City engaged in hundreds of hours of negotiations with 11 employee unions, including 20 sessions with state mediators, but was unable to reach agreement on language for Measure B.

Vote yes on Measure B.

www.sanjosefiscalreforms.com

/s/ Marcia Fritz
President, California Foundation for Fiscal Responsibility

/s/ Dakin Sloss
Director, California Common Sense

/s/ James Duran
Chair, Hispanic Chamber of Commerce, Silicon Valley

/s/ Brian J. Blach
Pension Consultant

/s/ Donald P. Gagliardi
Attorney at Law