

Fred Buenrostro, CEO  
California Public Employees' Retirement System  
P.O. Box 942707  
Sacramento, CA 94229-2707

May 26, 2006

Dear Mr. Buenrostro:

This is to request formal reconsideration of your decision to deny my petition to amend CalPERS regulations, specifically California Code of Regulations, title 2, sections 554 and 554.6 pertaining to elections. (Reference your letter dated March 29, 2006 in response to my petition dated March 1, 2006)

My original petition was aimed at preventing CalPERS employees from using the prestige or influence of their office with CalPERS to the benefit of one candidate over another. Additionally, I suggested that by adopting "instant run-off" voting, CalPERS would save the substantial cost of a second ballot, where no candidate receives a majority vote.

In my request for reconsideration, attached, I have broadened my previous petition to include the need for CalPERS to address existing underground regulations concerning elections. These underground regulations expose CalPERS members who sign nomination petitions to increased risk of identity theft. Additionally, they facilitate potential abuse by incumbents who can change the number of signatures required, the election schedule, or other procedures to their own advantage, without the benefit of public input, the protections of the Administrative Procedure Act (APA), or review by the Office of Administrative Law (OAL).

If CalPERS denies the petition for reconsideration, I will be forced to seek a determination from OAL concerning compliance by CalPERS with California Code of Regulations, title 1, section 11340.5. That section requires that "no state agency shall issue, utilize, enforce, or attempt to enforce any guideline, criterion, bulletin, manual, instruction, order, standard or general application, or other rule which is a regulation as defined in Section 11342.600, unless the guideline, criterion, bulletin, manual instruction, order, standard of general application, or other rule has been adopted as a regulation and filed with the Secretary of State pursuant to this chapter." I've also attached a draft petition to OAL to challenge the underground regulations, and the names and addresses of more than 75 other CalPERS members joining in my petition (with more to come).

As you may recall, in the past CalPERS has asserted that its unique status exempts it from the APA by virtue of passage of Proposition 162, which amended Article 16 of the Constitution. That assertion was found invalid by OAL in their response to my March 23, 1998 request (1999 OAL Determination No. 18), as well as by the courts in Kathleen Connell for Controller v. CalPERS (September 28, 1998).

Although I am encouraged by the Mr. Shimada's instruction to staff to reexamine the need to require continued use the last six digits of the Social Security Number on candidate petitions and the agreement to create an ad hoc committee to examine streamlining the balloting process, I remain concerned that these issues be addressed in a rulemaking quickly so that changes apply to all future elections. If you have any questions concerning my request for reconsideration, please do not hesitate to call me at 916-869-2402.

Sincerely,

James McRitchie

cc via e-mail:

Senator Nell Soto, Chair, Public Employment and Retirement Committee  
Assemblymember Alberto Torrico, Chair, Public Employees, Retirement and Social Security Committee  
Senator Michael Machado  
Assemblyman Alan Nakanishi

Gilbert Chan, Sacramento Bee  
Craig Copelan, President, PECG  
Tim Behrens, President, ACSS  
Pat Gantt, President, CSUEU  
Jim Hard, President, SEIU Local 1000  
J.J. Jelincic, President, CSEA  
Barbara LaPlante, President, CSEA Retired Division  
Honey Lum, President, APSEA  
David Miller, President, CAPS