For Immediate
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Taxpayers Advocate Calls for City Attorney Elliott to Disavow $83,600 pension increase

Asks all City Candidates to Refuse Pension Spiking if Elected

Union-Tribune Article & City Attorney Candidate suit sparked Taxpayers Inquiry

A recent lawsuit by City Attorney Cori Briggs and a November 2018 article by Union-Tribune reporter Jeff McDonald, and its resulting unresolved pension policy issues has sparked San Diego Taxpayers Advocate to ask candidate's for San Diego for City Offices, to publicly pledge that they will NOT take advantage of "pension spiking" if they are elected on November 3, 2020.

"We are asking Mayoral, City Attorney and City Council candidates to pledge NOT to take this huge windfall if elected," said Scott Barnett, President of San Diego Taxpayers Advocate.

Press Release from City Attorney Candidate Cori Briggs On Pension Lawsuit

"On August 24, 2020, California Taxpayers Action Network filed suit against the City of San Diego, the San Diego City Employees' Retirement System, and City Attorney Mara Elliott for the purpose of enforcing the 2012 voter-approved pension reform known as Proposition B.

Among other things, Prop. B eliminated pensions for elected officials who assumed office after July 2012 and prohibited pension-spiking. While Prop. B was previously challenged in court by municipal-employee unions, the portion of Prop. B that applies to elected officials and un-represented employees has never been questioned.

However, elected officials who assumed office after Prop. B took effect have been spiking their pensions. That includes City Attorney Mara Elliott.

CTAN's president, Kevin O'Neill, issued this statement: "San Diego's voters ended pension-spiking and pensions generally for elected officials back in 2012, but today's politicians have ignored and continue to defy the will of the voters. CTAN is confident that the courts will make sure the voters' will is honored in letter and spirit."

CTAN's lawsuit does not address Prop. B's applicability to city employees who are members of municipal unions. It applies only to un-represented employees and elected officials."

A copy of this release and CTAN's complaint is available at:
www.taxpayersadvocate.org

In referring to the City Attorney Incumbent Mara Elliott and Challenger Cori Briggs, Barnett said, "regardless of the legal argument two people running for one office should not make disproportionate benefits."

Union-Tribune Raised Pension issue in 2018 Article

(Excerpt From Union-Tribune Article)

"San Diego Union-Tribune
JEFF MCDONALD
NOV. 13, 2018

When voters considered whether to approve Measure L, an amendment to the San Diego city charter to redefine how public officials are paid, they were presented a single question in three parts.

Should the rules be changed to restrict benefits for elected officers? Should their lobbying and campaign activities be restricted? And should voters do away with the requirement that council members set their own pay and the mayor's, instead linking the salaries to state judges?

The measure passed overwhelmingly, winning 77 percent approval from almost 250,000 votes.

But nowhere on the ballot were voters told the measure would more than double compensation for council members and the mayor within four years.

. ... City Attorney Mara Elliott, whose office crafted the ballot language that appeared before voters, will see her pay rise from $194,000 to $206,000, the amount a state Superior Court judge is expected to be paid by 2022."

Analysis

When Jeff McDonald wrote this story in 2018 he was very close to breaking a big story. But while he was focused on pay raises, a very small group of elected politicians have been focused for years on pensions – their own pensions.

Mara Elliott's $8,000 per year pay increase seemed reasonable. But what Mr. McDonald missed was her approximately $60,000 per-year pension spike (plus cost of living adjustments for life).

This pension spike was worth more than $2 million to her assuming she is re-elected in November, retires at 55, and lives to age 75.

In McDonald's defense, he was only looking at Measure L of 2018. To understand just how outrageous this pension-spiking scam is you have to go back to 2014, two years after San Diego voters overwhelming supported Proposition B that ended defined benefit (DB) plans for all City employees except police officers.

Prop B specifically eliminated defined benefit pensions for elected officials. Yet in 2014, with Todd Gloria serving as Council President, the City revisited and amended Municipal Code Article 4 Division 17: **Elected Officer's Retirement Plan** (this can be reviewed at www.taxpayersadvocate.org)

The 2014 actions reserved a very special status for a small number of politicians (those already in elected office "before July 20, 2012" or city employees employed "before July 20, 2012" who might later run for office). This meant that this small group of politicians was given lifetime "permission" under Section 24.1702 to elect to benefit from Section 24.1705

Computation of Service Retirement Benefits:

The annual service retirement benefit payable to eligible Elected Officer Members is an amount sufficient, when added to the annuity that is derived from the Member's Accumulated Normal Contributions, to equal 3.5% of his or her Final Compensation for each year of Service Credit. Elected Officers and former Elected Officers who are either Members or Deferred Members of the System will receive the service retirement allowance provided for in this section.

So, what does that mean? Simple:

Any ordinary citizen who runs for City Council, City Attorney, or Mayor will be paid $150,000, $206,000, or 206,000 respectively. None would be eligible for a taxpayer-paid Defined Benefit (DB) pension plan.

For the select few insider politicians, they get paid the same salary **PLUS** they can elect to participate in the Elected Officers' Retirement Plan which guarantees a retirement payout at age 55 equal to 3.5% per year served times the highest pay received during the period of employment. (City employees' retirement is calculated at 2.5% per year).

For an eligible Mayor or City Attorney earning $206,000 per year, serving for eight years, and retiring at 55, this amounts to a taxpayer-guaranteed annual pension of $57,680 plus cost-of-living adjustments. This lifetime benefit to the eligible elected official will cost taxpayers well over $1.5 million including cost-of-living increases.

This is bad enough. However, public records show that taxpayers are currently being charged even more for City Attorney Mara Elliott's benefits:

Calendar Year	Pay	Pension Cost	% of Pay	Deferred Comp.	% of Pay	Health Benefits	% of Pay	Total Benefits Cost	% of Pay
2010	$ 52,736.00	$ 0.00	0.00%	$ 0.00	0.00%	$ 5,424.00	10.29%	$ 5,424.00	10.29%
2011	$ 115,867.20	$ 12,870.00	11.11%	$ 3,340.76	2.88%	$ 10,798.84	9.32%	$ 27,009.60	23.31%
2012	$ 119,528.00	$ 13,195.00	11.04%	$ 3,586.00	3.00%	$ 10,799.00	9.03%	$ 27,580.00	23.07%
2013	$ 122,798.00	$ 11,980.00	9.76%	$ 3,684.00	3.00%	$ 10,904.00	8.88%	$ 26,568.00	21.64%
2014	$ 137,315.08	$ 13,044.00	9.50%	$ 4,215.65	3.07%	$ 11,685.68	8.51%	$ 28,945.33	21.08%
2015	$ 142,974.00	$ 13,220.00	9.25%	$ 4,145.00	2.90%	$ 13,108.00	9.17%	$ 30,473.00	21.31%
2016	$ 150,000.00	$ 13,418.00	8.95%	$ 4,420.00	2.95%	$ 14,650.00	9.77%	$ 32,488.00	21.66%
2017	$ 184,718.00	$ 55,697.00	30.15%	$ 9,110.00	4.93%	$ 16,826.00	9.11%	$ 81,633.00	44.19%
2018	$ 193,648.00	$ 52,304.00	27.01%	$ 11,285.00	5.83%	$ 17,771.00	9.18%	$ 81,360.00	42.01%
2019	$ 193,648.00	$ 55,925.00	28.88%	$ 11,355.00	5.86%	$ 17,771.00	9.18%	$ 85,051.00	43.92%

The annual taxpayer costs shown in red above are well above the cost necessary to produce the benefit level discussed. In fact, Elliott's costs are easily the highest cost of any city employee.

How can this be? It's called "pension spiking."

It turns out that Elliott, in addition to electing to participate in the Elected Officers' Retirement Plan (a choice of questionable legality given that she wasn't sworn in until after the passage of Prop B), also directed SDCERS to recalculate her prior years of service with the City at 3.5% per year rather than her deputy city attorney rate of 2.5% rate (before she became the elected City Attorney).

The bloated payments in red in the chart above reflect the annual taxpayer burden of Elliott's decision to "spike" her previous (non-elected) years of service time with the higher (elected) benefit.

Assuming re-election, Elliot has spiked her pension windfall to at least $111,755. This was accomplished by folding her 7.5 years of non-elected City service (2.5% at top pay of $150,000) into her Elected Officer Plan (combined calculation: 15.5 x 3.5 x $206,000).

Simply put: If Elliott retires at 55 and lives to 75, she will receive well over $2 million more in pension payments than she was previously eligible to receive as a deputy city attorney.

Prior to her election, Elliott had earned a City pension of approximately $28,125 per year. After eight years as City Attorney, her pension will be no less than $111,755 per year (she also has additional pension benefits for previous work outside the City) – a taxpayer-funded windfall of more than $80,000 per year.

Elliott could have chosen not to join the Elected Officials system. She could have chosen not to apply the 3.5% "special" rate to her prior service. But she also made a third disturbing choice.

Remember, this all starts in 2014, before Elliott is elected and while Todd Gloria is leading the City Council. Proposition B had just passed in 2012. Gloria and the Council choose to maintain the "Elected Officers' Retirement Plan" for the small group of people already in the system. At the same time, the Municipal Employee Association and other municipal unions are challenging Prop B at the State Labor Board. This challenge leads eventually to a court ruling that found Prop B inapplicable to union members, with no impact whatsoever on Prop B's applicability to Elected Officials.

Prop B, like most initiatives, contains a severance clause. Severance clauses simply ensure that if one part of an initiative is ruled illegal, the other parts still remain in the law.

The City "lost" the issue in court with respect to union members on grounds not even remotely related to the Elected Officers' Retirement Plan. Yet Elliott chose not to preserve the will of the voters when they eliminated defined-benefit pensions for Elected Officials.

Her choice conveniently leaves her and Mayoral candidate Todd Gloria, who is also in the system due to his "prior to July 20, 2012" service, as the two largest personal beneficiaries of this pension-spiking scheme.

On July 30, 2020, the California Supreme Court ruled in favor of a 2013 State Pension Reform law targeted at "...closing loopholes and preventing abuse of the pension system." In its ruling, the Court specifically cited pension spiking and other abusive acts that endanger a system's fiscal integrity.

The Supreme Court has made it clear. There is a remedy against pension spiking.

San Diego Taxpayers Advocate is formally asking candidates for San Diego City Offices to make the following commitments:

1) Support repeal of the Elected Officers' Retirement Plan.

2) Pledge in writing that they will NOT personally elect to participate in the Elected Officers' Retirement Plan. (In the cases of Elliott and Mayoral candidate Todd Gloria, we also request that they discontinue participation in the Plan; and in Elliott's case, we ask that she reimburse the City for all monies it has paid toward her pension since she was sworn in as City Attorney.)

"Participation in the City Elected Officers' Retirement Plan is pension spiking at its worst. Each politician electing to participate could cost taxpayers millions of dollars," said Scott Barnett, President of San Diego Taxpayers Advocate." We are simply asking Mayoral, City Attorney, and City Council candidates to close the loophole and pledge NOT to take personal advantage of this huge windfall even if the law is not repealed."

Barnett also emphasized that this issue has nothing to do with whether a candidate supported or opposed Prop B as it relates to City employees. Voters eliminated pensions for state elected officials more than two decades ago. Adding insult to injury, as noted by McDonald in 2018, the voters agreed to Measure L, which raised elected official pay, while being told that "benefits would be eliminated."

"This is precisely the kind of pension spiking that the Supreme Court targeted in its recent decision," Barnett noted. "Not to mention the ridiculous circumstance in which we now see a massive million-dollar disparity in compensation between two candidates for the same office."

The following candidates are being asked to respond by Labor Day. San Diego Taxpayers Advocate will publish their responses on our web site. The failure to respond will be noted as a refusal to take either pledge.

Mayor
Barbara Bry
Todd Gloria

City Attorney
Cory Briggs
Mara Elliott

Council District 1
Joe LaCava
Will Moore

CD3
Stephen Whitburn
Toni Duran

CD5
Marni Von Wilpert
Joe Leventhal

CD7
Noli Zosa
Raul Campillo

CD9
Kelvin Barrios
Sean Elo

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