

# CAPSule

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## CAPS Furlough Case Outcome Still Pending

In 2010 the State Supreme Court ruled, in a case brought by CAPS and other groups, that the Legislature could authorize furloughs. Following that decision, CAPS pursued a challenge to portions of the furlough program. In 2012, Alameda Superior Court Judge Steven Brick ruled that the furlough of rank-and-file scientists in March 2011 illegally exceeded the legislatively authorized furloughs by two days. He agreed with CAPS that two days of furlough imposed on Unit 10 employees in March 2011 were illegal and awarded back pay for those two days.



This case has taken years to wind its way through the legal system, which itself is overburdened with litigation. Yet here we are, with another opportunity to recoup a small portion of the losses suffered by **ALL** state scientists as a result of mandatory, unpaid furloughs, some of which were imposed beyond the authority granted to the Governor by the state legislature.

At least that is the theory under which CAPS brought the original litigation, and which CAPS won before Judge Brick.

CAPS also contended that certain state scientists working on military base remediation at DTSC and the Water Boards should not have been furloughed at all. CAPS legal counsel made that argument because of Assembly Bill 1700, added in 2003. It specifically exempted certain state scientist positions from future salary furloughs. Yet these positions were subjected to the mandatory furloughs like everyone else, in spite of the state law which, in CAPS view, specifically excluded them. Judge Brick agreed with CAPS and awarded those scientists up to **70 days of back pay**.

If that judgment is upheld, **ALL** rank-and-file scientists will be awarded back pay for two days of furlough served in March 2011. A smaller subset of state scientists stand to gain an **ADDITIONAL** 70 days of backpay. The time and expense needed to test this legal theory was a risk the CAPS leadership thought was worth it at the time. The trial court victory vindicated that decision. CAPS is confident that it remains the correct course.

Finally, Judge Brick also agreed with CAPS' remaining claim that scientists at the Prison Industries Authority and the California Earthquake Authority could not be furloughed at all. CAPS made that argument because those entities are "off budget" and not legally subject to the furlough program approved by the state Legislature. At least that was CAPS' argument. Judge Brick agreed and awarded those state scientists up to **70 days of backpay**.

CAPS leadership and staff has never been satisfied with blindly accepting unilateral decisions made by the Governor and state Legislature when they affect the pay and benefits of state scientists. This case is a good example.

CAPS would have preferred to settle the case on favorable terms at that point, and communicated that desire to the Administration. Nevertheless, the state appealed the trial court decision to the First District Court of Appeal. Briefing will be completed on January 6, 2014.

The Court recently asked for supplemental briefing from CAPS and from the State. Those briefs will address the impact of the military base remediation statutes on mandatory unpaid furloughs. CAPS expects oral argument to be held in early 2014. That oral argument—directly before a panel of appellate court justices and open to the public—will require CAPS legal counsel to staunchly defend all aspects of the trial court decision. CAPS is well prepared to do exactly that.

## Science Fair Judges Needed



CAPS needs additional judges for regional science fairs, and **YOU CAN HELP!** Most fairs need a team of five or six CAPS members to judge projects. It's fun and easy — a great way to spend some free time encouraging young people in the pursuit of independent learning. CAPS members independently judge the fairs and select a winner to receive a special award and a check for \$100. Volunteer judges have the option of evaluating each individual entry, or taking the more time efficient method of evaluating projects already selected as category winners by the Fair's judging process. Each regional winner is then eligible to compete for the CAPS Outstanding Young Scientist Award. Three finalists attend a luncheon in Sacramento during the Fall with CAPS leaders and other dignitaries where they explain their projects and receive additional prizes. The dates and locations of upcoming fairs can be found on the CAPS web page: **[www.capsscientists.org/judges.htm](http://www.capsscientists.org/judges.htm)**. If you can help, contact Bianca Gutierrez at [bgutierrez@capsscientists.org](mailto:bgutierrez@capsscientists.org), or 916-441-2629.

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# Five Public Pension Myths

Here are five myths about public pensions followed by the facts.

## 1 Pensions are going bankrupt.

The methods used to calculate a pension system's funding level are complicated. This has enabled detractors to point to the public pension funds in a few states — Illinois, Rhode Island, Connecticut and Kentucky — where funding shortfalls are notably higher. In 2010, when the recovery was not as far along as it is today, 16 states were above the economic threshold that many experts say is necessary to qualify for good fiscal health. The number of states meeting that threshold today is probably much higher. For example, in Wisconsin the primary pension fund is 99.8 percent funded today. In the state of Washington, pensions are 119 percent funded today. In North Carolina, pensions are 100 percent funded today. Perhaps most important, pensions will continue to recover steadily as markets rebound.

## 2 States are facing an “unfunded liability” in excess of anywhere from \$757 billion to \$3 trillion.

The concept of an “unfunded liability” is misleading. Pension benefits are paid out over decades. Imagine newlyweds, both of whom work, buying a \$300,000 home and putting \$20,000 down. The \$280,000 they owe represents an “unfunded liability,” but like pensions, that money is not due all at once. It is due over 30 years, under the terms of a typical loan agreement. Opponents of public employee pensions have portrayed public pension liabilities as a bill that is due today. If homeowners had to pay the full cost of their home at the time of purchase, 99 percent of us would be renting. Homeowners don't have to pay their mortgage all at once, so it's very misleading to portray pension funds as due and payable up front. In fact, they are funded over decades and paid to retirees over their life during retirement, be it one month or 30 years.

## 3 States can no longer afford to pay benefits.

Payments to pension systems account for less than three percent of state budgets. Most of the funds in pension plans are not even provided by taxpayers — two-thirds of all pension assets are contributed by employees or earned on investments. Where pensions are underfunded, it's primarily because of the recession and because states took “pension holidays.” Politicians declined to make their state or locality's annual contribution — breaking a promise to the public servants of that state and

in a bad faith effort as the fiscal stewards of taxpayer dollars. Had they simply honored their commitments when times were good, virtually no state pension system would have unfunded pension liabilities that raise concerns. Claiming that public pensions are “unsustainable” has worked for opponents of pensions because it allows them to shift blame to workers. They advocate allowing states to ignore their responsibility to provide pensions to the people who perform the work to protect the public.

## 4 Public employee benefits are overly generous.

Pensions are now virtually non-existent in the private sector. The recession decimated the nest eggs of everyone with money in the stock market. So opponents of defined benefit pensions have gained traction with the argument that public pensions are too generous. After all, most private sector employees don't have a guaranteed pension; why should public employees? The untold story is that for many public employees, their public pension is their **only** source of income in retirement. Most aren't allowed to collect Social Security. The median benefit of public employee pension nationwide is \$23,407 according to the National Institute for Retirement Security. The hope is that their pension gives the average public worker the ability to pay their basic bills, but they definitely aren't getting rich in their old age.

## 5 We can fix the pension system by converting to 401(k)-style defined contribution plans.

There is a well-financed effort to make 401(k) plans the retirement solution for everyone. That's in part because Wall Street firms stand to earn billions of dollars in fees if pensions are converted to 401(k)s. That momentum has been blunted because 401(k)s have provided investors with a paltry return over time. Most such plans have plummeted in value since the 2008 market crash. 401(k) plans were always intended to supplement — not replace — retirement income. About 10,000 Americans are turning 65 years old *every day*, according to the Pew Center for the States. Wall Street's 401(k) plans have done far too little to help retirees enjoy their golden years. Defined benefit plans are the best way to support retirees and allow them to contribute to their local economies.

**Californians for Retirement Security**  
[www.letstalkpensions.org](http://www.letstalkpensions.org)



# DISASTER in Detroit

By David Miller, President

There's no shortage of pundits who want to see pensions reduced for **current** public employees in California. One such prominent voice recently said this: ***"the pension decision in Detroit will now become front and center as city officials sit down with union leaders to discuss resolutions to budget problems. The decision also gives a boost to San Jose Mayor Chuck Reed's effort to find resolution on the pension issues that are threatening the budget in his city and cities across the state."***

Here's the *San Diego Union Tribune's* take: ***"Obviously, the Detroit ruling has vast resonance in California, where many local governments can barely make ends meet because of the high cost of retirement benefits, and where Stockton and San Bernardino have declared bankruptcy... once union members internalize the fact that their pensions are no longer sacrosanct, they will understand the importance of working with local governments to keep pensions affordable in the long term."***

Fact is, there's a huge difference between Detroit and California. And not just the weather or the driving distance. Detroit has a rather unique set of circumstances involving a long history of urban flight and gross financial mismanagement. Unless and until a large California city blows it that badly, Detroit is unique.

Saying this, we should all FIRST and FOREMOST recognize and sympathize with Detroit's current and future retirees. What a TRAGEDY! We should ALL feel their pain. Can you imagine working a long career, planning your retirement — or worse yet — living your retirement, and having your pension reduced substantially, perhaps by more than half? It's simply incomprehensible!

It's also something that CAPS and other responsible individuals and organizations are working hard to prevent here in California. Yes, San Bernardino and Stockton are in bankruptcy. They have serious financial challenges. These were caused by poor planning and poor decisions by inept city leaders. Employee pensions represent a substantial ongoing financial

obligation of both cities, and THAT'S what makes them a target. When times get tough, look for big ticket items, so cut pay, cut pensions. As a state employee, I have heard that tune repeatedly in recent years.

But, I'm realistic. It's not a matter of whether to address pensions as part of a comprehensive budget solution. It's a question of HOW. Hundreds of California cities, counties and special districts have already adjusted their pension programs for future employees through collective bargaining. They recognize that bargaining gives a meaningful voice to affected employees through their union representative. It helps prevent disastrous events like the one in Detroit.

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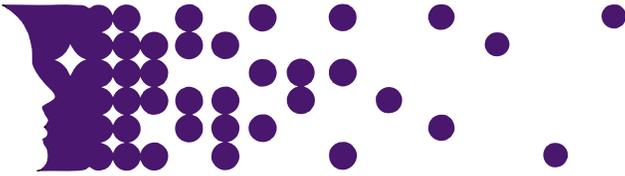
But that's not good enough for Mayor Reed and his minions. They want the legal authority to make changes unilaterally. Reduce benefits for current employees. Force employees to pay more. Ultimately, to convert pensions to a 401(k)-type savings plan.

Somewhat muted in all of this was action by the Illinois State Legislature on December 3 that cuts benefits for current and future retirees, all due to a huge shortfall in that state's retirement plan. That resulted from years of mismanagement and underfunding

by the state of Illinois. Illinois Governor Pat Quinn has pledged to sign the bill. It will be challenged in court by employee representatives, and rightly so.

In the private sector, these plans have proven totally inadequate. *Forbes* magazine recently found that the United States is now in *"the greatest retirement crisis in the history of the world. It has many causes: the demographic bulge of baby boomers leaving the full time workforce; greater worker longevity; the disastrous, 30-year shift from traditional defined benefit pensions to costly 401(k)-style plans."* In fact *Forbes* concludes an estimated 75 percent of Americans who are nearing retirement age have less than \$27,000 in their retirement accounts!

We WON'T let that happen in California state service. Yes, CalPERS has made its share of financial miscalculations. But it is essentially a sound system that is sustainable for generations to come. With your support, we will keep it that way!



**CALIFORNIA ASSOCIATION OF  
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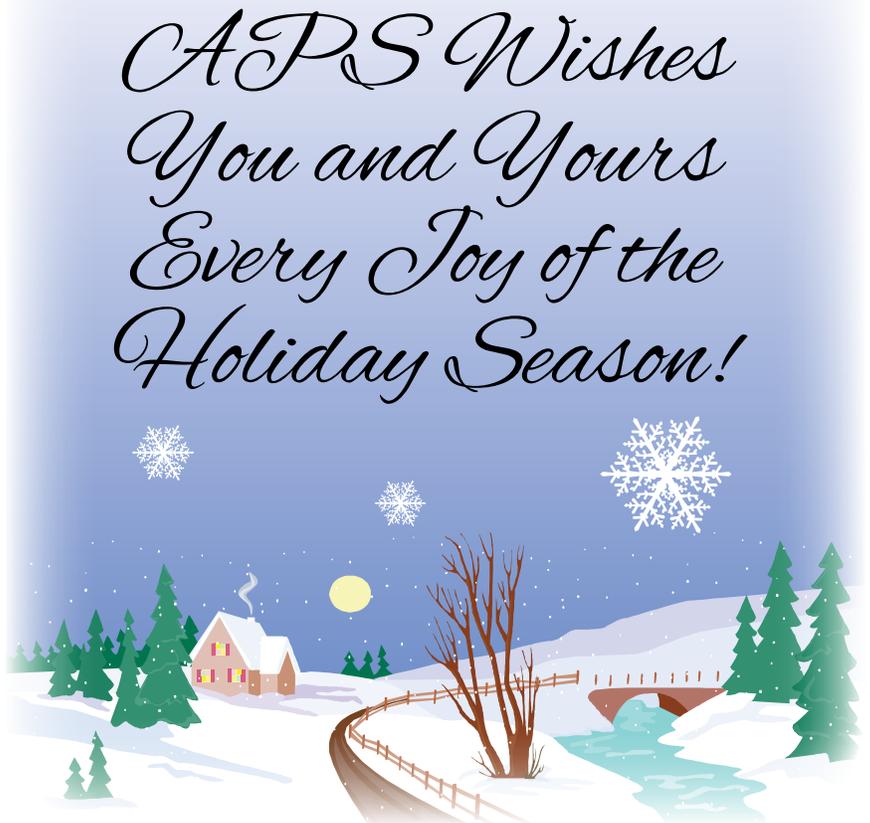
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*APS Wishes  
You and Yours  
Every Joy of the  
Holiday Season!*