



**VOTE NOW TO PROTECT
YOUR PENSION!**

CalPERS
WATCHDOG

**MARGARET
BROWN**

September 22, 2017

Ms. Marcie Frost
Chief Executive Officer
California Public Employee Retirements System
400 Q Street
Sacramento, CA 95814

Subject: Ballot Secrecy and Voter Suppression in the CalPERS 2017 Member At Large Election

Dear Ms. Frost,

As a candidate in the CalPERS Member At Large election, I am writing to inform you of serious issues with ballot secrecy and voter suppression taking place in this current election cycle, September 1 to October 2, 2017. Several candidates met with CalPERS staff members and representatives of the two vendors handling the election for CalPERS, Integrity Voting Systems (IVS), a division of K&H Printing, and Everyone Counts on September 20. I am writing because the answers received during that meeting only increased concerns about how the election is being managed.

As you may know, CalPERS recently changed ballot procedures, turning a long standing secret voting process into one that makes voters' identities visible. These new procedures, implemented for the first time in the ongoing Member At Large CalPERS election require voters write their names directly on the voted ballot, which clearly contradicts the secrecy requirement contained in the California Constitution. Article II, section 7 of the California Constitution specifically states, in its entirety, that "Voting shall be secret."

At the September 20th meeting, the election contractors also acknowledged that the barcode on the ballot is associated with the name and address of each voter receiving a ballot. CalPERS' staff had advised the Board to the contrary, that the barcode contained only demographic data, which turns out to be untrue.

Envelopes containing the voted ballots are being unsealed and scanned, adjudicated and scanned, or out stacked (supposedly not counted) on a daily basis by IVS in Everett, Washington. IVS then turns the scanned ballots into a pdf-format file and sends the electronic file via Internet to another vendor, Everyone Counts in California. The voted, scanned ballot electronic files clearly identify the voter, since each record contains both the signature and barcode contained on the ballot, as well as the candidate selections of the voter. This process is performed daily. If the voter refuses or failed to sign the ballot, it is out-stacked, and not tabulated.

The scanned ballots and the out stacked ballots are stored in boxes in a small room with a glass storefront. The room is not secured, as I visited that room and found the door to it propped open. As a result, the ballots are not secure. Contrary to assurances from CalPERS staff and the board prior to its approval of the changes to the voting procedures, IVS is not certified by the Secretary of State to perform any of the election administration tasks state above.

Not only does this process violate the California constitution, it also violates CalPERS' regulations. CalPERS' regulations require that ballots be counted in public at the end of the voting period:

§ 554.8. Ballot Counting and Runoff Election

On the date specified in the Notice of Election at the location designated by CalPERS, the validated paper ballots shall be tabulated publicly by an independent, neutral agent appointed by CalPERS for that purpose. Online and telephone votes will be tabulated on the date specified in the Notice of Election and be auditable by an independent, neutral agent appointed by CalPERS for that purpose.



**VOTE NOW TO PROTECT
YOUR PENSION!**

**CalPERS
WATCHDOG**

**MARGARET
BROWN**

Based on the statements of CalPERS staff and the contractors at the September 20 meeting, it is clear that no public tabulation of votes is planned, or even provided for at the conclusion of the balloting process. Instead, the envelopes are being unsealed and the ballots handled and scanned into a database on an ongoing basis during the election period. There is also no mechanism nor is one contemplated for the votes to be counted publicly; the count will be made by computer in secret.

How will CalPERS quell the very real fears of members that others can find out how they voted? Will employers be able to find out how their workers voted? Will unions be able to find out how their members voted? Will an association be able to find out how its members voted? Will co-workers find out how each other voted?

Requiring voters to sign the actual cast ballot has a chilling effect on voter participation, which is down by 22.3% to-date. With two elections, one for an open board seat, and all the marketing being done by CalPERS, participation if anything should be higher than in the most recent Member At Large election. The lack of a secret ballot is likely causing this lower participation.

At the conclusion of the election, the voted ballots containing signatures and barcoded personal information are stored at the Secretary of State Archives, and the CalPERS general counsel stated at the September 20th meeting that he was not willing to rule out the possibility of providing public access to the voted ballots for anyone making a Public Records Act request. Therefore, CalPERS members have a well-founded basis for fearing that, employers, unions, or colleagues may have access to their ballots and know how they voted.

Why did CalPERS switch to a non-secret vote? The use of a non-secret ballot is simply unheard of in functional democracies and its use here raises the prospect that the ballot change was an effort at vote suppression intended to favor incumbents and union-backed candidates. Union members concerned about their privacy would be deterred from voting if they did not back union-endorsed candidates.

It would have been simple for CalPERS to have kept the process it had previously used, which is the procedure utilized throughout California, and essentially everywhere in the democratic world, for mailing paper ballots. The signature of the voter and the barcode identifying the voter were on the envelope. On Election Day, the envelope was unsealed and separated from the voted ballot, keeping the ballot card from containing any voter information. And all of this was done in public, where candidates and interested bystanders could monitor compliance.

There are also potentially grave problems with online voting especially with data integrity controls. The entire CalPERS member database has been transferred to one of the online vendors, Everyone Counts. There are reasons to be concerned about whether Everyone Counts has adequate controls. Everyone Counts acknowledged in the September 20th meeting that there is no paper audit trail generated for on line and phone votes. This seems to be a grave breach of controls, which is made even worse in light of the lack of third-party verification. A strong audit function is necessary and should be backed up and validated by truly independent external audits (a separate entity contracted by CalPERS, not one that Everyone Counts hires). If this is not taking place, how can anyone be assured their vote was recorded correctly? These concerns are not idle. Everyone Counts ran the recent online election for Neighborhood Councils in Los Angeles, which was widely described as a fiasco.¹

I would also note that Everyone Counts has no certifications from the California Secretary of State.

I would also like to point out that, at the September 20th meeting, when asked about the legal entity and organizational structure of the vendors, Everyone Counts was untruthful. They claimed to only have employees working for them. But

¹ See for instance "Hot Damn! An Old Fashioned Down 'n Dirty Board Election for CalPERS," **Tony Butka, LA Citywatch** (accessed at <http://www.citywatchla.com/index.php/los-angeles-for-rss/14050-hot-damn-an-old-fashioned-down-n-dirty-board-election-for-calpers>): "Here in LA we recently went through a round of Neighborhood Council elections, and the "new experiment" of online voting proved to be a total disaster with mass confusion, verification nightmares, limitations in actually getting online to vote, you name it. The City had to shut the idea down. "



**VOTE NOW TO PROTECT
YOUR PENSION!**

**CalPERS
WATCHDOG**

**MARGARET
BROWN**

Everyone Counts representatives who are tasked to the CalPERS election have told me they are contractors working from their home, and others have gotten the same information when they asked the person who answered the phone on the number provided by CalPERS.

This independent contractor structure raises questions of who really has access to the data base. How are these Independent Contractors trained and supervised? How can Everyone Counts and CalPERS be certain that others in their homes do not have access to computers, passwords and logins? What type of controls are in place?

Immediate Corrective Action is Needed for Election Integrity. The following steps should be taken:

1. Halt the opening and scanning of ballots.
2. At the end of the election period, open all remaining unopened ballots and tabulate them in public.
3. The existing opened and scanned ballots should be held in a truly secure location. At the end of the election period, the opened ballot should be unboxed, scanned and tabulated in public.
4. After the vote is certified, redact the signature and barcode from all paper ballots
5. Hire an independent auditing firm to ensure that every online vote and telephone vote was counted correctly. An independent audit may not be possible given that Everyone Counts said it keeps no paper trail, which is the process recommended by experts for independent verification.
6. For the runoff election from October 10 to November 11, remove the signature and barcode from the voted ballot and require them to be on the envelope.
7. Create processes that allow for a 100% audit of online and phone votes. Or eliminate online and phone voting.

I hope you agree that voter secrecy and election integrity is vital for our democratic institutions to function. CalPERS has an opportunity to solve these identified issues and take corrective action now. This will ensure the integrity of the results of this election, and the elections in the near future.

Sincerely,

Margaret Brown
Candidate for CalPERS Board 2017

Copies to: CalPERS Board

John Chiang, California State Treasurer
Betty Yee, California State Controller
Michael Bilbrey
Richard Costigan
Rob Feckner
Richard Gillihan
Dana Hollinger
JJ Jelincic
Henry Jones
Ron Lind
Priya Mathur
Bill Slaton
Theresa Taylor

Alex Padilla, California Secretary of State
Xavier Becerra, California Attorney General
Assembly Member Freddie Rodriguez
Assembly Member Travis Allen
Senator Richard Pan
Senator Mike Morrell