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CalPERS Board Member Calls for Release of Secret, Illegal "Investigation" of Board

August 18, 2019 (Sacramento) - CalPERS board member Margaret Brown today called for the organization to release what her fellow board member, Theresa Taylor, recently described in the press as an "internal investigation" that indicates information relayed "to the press in past months seem to be coming from board members."¹ Brown says the publication of the investigation, along with the transcripts, will contradict Taylor's claims.

Brown also noted that the CalPERS board has pursued the "internal investigation" in a series of secret, closed board meetings, justified publicly with phony legal rationales. "California statute makes it a criminal offense for board members to participate knowingly in a meeting that has been closed to the public without proper legal justification,"² Brown said.

Margaret Brown also categorically denies having any role in purported disclosures that were the subject of the investigation and decries Taylor's attempt to damage other board members' reputations by Taylor lobbing public accusations while offering no supporting evidence. "Let the public see what Ms. Taylor considers evidence," Brown demanded.

In the absence of evidence, Brown noted, "Unfortunately, some of my colleagues have made it clear that they will smear fellow board members when they seek to hold the board accountable. Even though the information documenting misconduct was not confidential, Taylor has falsely accused board members of disclosing secrets. Ironically, in doing so, she herself made supposedly secret closed session information public," Brown said.

In the same CIO Magazine article where Taylor attacked her colleagues, Taylor revealed her true motive: **to muzzle pro-transparency board members like Brown**. The article quotes Taylor saying, "If we [the board] use the press to air grievances then I do believe we have a problem."

As a trustee of approximately \$350 billion in assets, Brown emphasized that California law charges her with an explicit legal duty to challenge her cotrustees (fellow board members) when they act contrary to their duty to retirement system beneficiaries.³

"The law makes each CalPERS board member financially liable for any mismanagement of the retirement system, even if other board members are the cause. Unlike almost all other government officials, CalPERS board members have no legal immunity. Trust law, which binds the board, is designed to discourage a go-along-to-get-along mentality," Brown said.

Since she ran for the board two years ago, Margaret Brown's disclosures have forced the board to abandon numerous illegal activities, including violation of the California constitution's guarantee of secret ballot voting in board elections, the signing in-blank of expense reimbursements by board members, and the withholding of U.S. mail sent from CalPERS members to board members, in violation of those CalPERS members' First Amendment right to petition the government. In each case, Brown first raised the issue internally and only disclosed the issue publicly, when the organization persisted in the illegal activity.

The same CIO Magazine article nevertheless indicates that other board members share Taylor's anti-transparency sentiments. It cited CalPERS board president Henry Jones seeking just last month to bar board member criticism of CalPERS decisions: "Jones said he favored the [proposed] clause that called on CalPERS board members to support investment policy decisions of the entire board, even if they had opposed the action."

The anti-transparency posture of Taylor and Jones is also evident in their public acquiescence to the CalPERS board's numerous, illegal closed session meetings about this investigation. California state bodies are required to provide a public notice that cites the legal justification for confining a matter to closed session rather than holding the discussion in public.

The notice for these illegal discussions of board member behavior claimed it could be held in closed session because, supposedly, it related to personnel issues and "pending litigation."

However, the California attorney general has opined that disputes among board members are not personnel matters: "There exists no personnel exception [under law] or other closed session vehicle for board members to deal with issues that may arise between them."⁴

Moreover, if CalPERS were contemplating actual litigation against board members, Matthew Jacobs, the CalPERS general counsel, would have a specific, affirmative obligation under the California Bar Rules of Professional Conduct, to resolve, via written notice to the affected parties, his conflict of interest in representing both parties in the dispute.⁵ Ms. Brown is highly confident that Jacobs has provided no such notice to-date.

Ms. Brown also noted the irony of Theresa Taylor commenting in the press about the supposedly secret investigation "findings," since these have only been presented in closed session. Taylor has a history of speaking to the press about the contents of closed session meetings, having previously described closed session statements made by the current CalPERS CEO when she was a job candidate.⁶

According to Brown, "There is a glaring double standard at CalPERS, where board members who are part of the power faction are afforded impunity to comment publicly on closed session matters, while the rest of the board is smeared with innuendo and threatened with punishment for speaking publicly about matters that are part of the public record. The press investigation should never have been discussed in closed session in the first place, so I just want the same right that Theresa has to discuss it publicly."

More information about the CalPERS media investigation is available at:
<https://www.nakedcapitalism.com/2019/04/calpers-wastes-fund-assets-on-a-sham-investigation-to-intimidate-board-members.html>

Brown concluded by declaring that, "CalPERS beneficiaries and all the people of California deserve better than these childish attacks by state officials who make no secret of their anti-transparency agenda and want to punish colleagues seeking to honor both the letter and the spirit of California's sunshine laws. Now that they have made accusations publicly, they need to either show their evidence or withdraw the allegations."

Margaret Brown is available for interviews at (949)616-6150.

NOTES:

1. See <https://www.ai-cio.com/news/proposed-calpers-board-code-conduct-still-generating-controversy>
2. Government Code § 11130.7
3. The principle is embodied in California statute (Probate Code), where it states: §16402(b) A trustee is liable to the beneficiary for a breach committed by a cotrustee under any of the following circumstances: ... (5) Where the trustee neglects to take reasonable steps to compel the cotrustee to redress a breach of trust in a case where the trustee knows or has information from which the trustee reasonably should have known of the breach.
4. "A Handy Guide to The Bagley-Keene Open Meeting Act 2004" published by the California Office of the Attorney General, p. 11.
5. State Bar of California Rules of Professional Conduct, Rule 1.7
6. "Theresa Taylor, another CalPERS board member, said Frost closed her [closed session] interview by reminding board members that she did not have a degree." found at: <https://www.sacbee.com/news/politics-government/the-state-worker/article230641039.html>

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