

ATTACHMENT C
RESPONDENT'S ARGUMENT

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Date: March 4, 2016

Cover +2 Pages

To: Cheree Swedensky, Assistant to the Board Fax No: (916) 795-3972

CalPERS Executive Office

From: Daniel Kessler, Deputy Legislative Counsel Phone: (916) 341-8362

Note: Respondent's Argument for In the Matter of the Optional Membership Election and Mandatory Arreas for Calvin Sung, Respondent, and California State Assembly Committee on Rules, Respondent (Ref. No. 2014-1171).

If pages are missing, please call: Mr. Kessler Phone: (916) 341-8362

Sung

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Subject: In the Matter of the Optional Membership Election and Mandatory Arrears for Calvin Sung, Respondent, and California State Assembly Committee on Rules, Respondent. Ref No. 2014-1171

Dear Board of Directors:

On behalf of my client, Respondent California Assembly Committee on Rules, I respectfully request that the Board adopt the proposed decision prepared by Administrative Law Judge Karen J. Brandt in this matter. Judge Brandt correctly applies the plain language of Government Code section 20324 to the facts of this case in determining that mandatory arrears are not owed by Respondent California Assembly Committee on Rules.

If the Board adopts the proposed decision in this matter, I request that the proposed decision, or the proposed decision in the matter it was consolidated with for purposes of the administrative hearing, *In re the Matter of the Optional Membership Election and Mandatory Arrears for Andrea F. Graham, Respondent, and California State Assembly Committee on Rules, Respondent* (Ref. No. 2014-1253), be designated as precedent. The proposed decision in this matter contains a significant legal determination of general application that is likely to recur. Specifically, the proposed decision makes a clear and unambiguous determination of the term "files with the board," as used in Government Code section 20324, for purposes of determining the enrollment date of legislative employees who are optional CalPERS members. Government Code section 20324 applies to employees of both houses of the California State Legislature. Consequently, designating the proposed decision as precedent would promote a clear and consistent application of Government Code section 20324 to all legislative employees of the Assembly and the Senate.

Another benefit of designating the proposed decision as precedent is that the term "files with the board," or a close variation of that term, appears in other statutes offering individuals optional CalPERS membership (Secs. 20320, 20322, and 20326, Gov. C.). By designating the proposed decision as precedent, disputes regarding the enrollment date for

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efficiently resolved by referring to the proposed decision. Thus, designating the proposed decision as precedent would have a general application beyond Government Code section 20324 because it would apply to all similarly-phrased optional membership statutes.

Finally, the need to determine the proper enrollment date of legislative employees under Government Code section 20324 is likely to recur. There is constant turnover in the legislative workforce. New legislative employees may enroll in CalPERS at any time after being hired. Legislative employees work in all regions of the state, in both the Capitol and the district offices of Assembly Members and Senators. Due to the optional nature of CalPERS membership and the fact that legislative employees work all over the state, there may often be differences between the date a legislative employee signs the CalPERS enrollment form and the date he or she turns in the CalPERS enrollment form to the Assembly Committee on Rules or the Senate Committee on Rules. Therefore, the need to determine the proper enrollment date of legislative employees under Government Code section 20324 is likely to recur.

This conclusion is bolstered by the fact that the issue resolved by the proposed decision has recurred. The issue recurred in the matter involving Andrea F. Graham, as referenced above. The two matters were consolidated for purposes of the hearing because they presented the same issue regarding the interpretation of Government Code section 20324. The issue recurred again in a matter involving a Mr. Austin Edward Heyworth in January 2016. While the matter involving Mr. Heyworth was informally resolved, these two matters, by presenting the same issue resolved by the proposed decision, demonstrate the likelihood of recurrence.

In sum, the Board should both adopt the proposed decision and designate it, or the proposed decision in the related matter referenced above, as precedent. Designating the proposed decision as precedent would establish a clear rule on a significant legal issue that generally applies and that is likely to recur. Designating the proposed decision as precedent would also preserve the limited resources of CalPERS and the California State Legislature by preventing any future disputes over the proper enrollment date of legislative employees under Government Code section 20324.

Very truly yours,



Daniel J. Kessler
Deputy Legislative Counsel

cc: Lynda Roper

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Graham

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individuals choosing to enroll in CalPERS under those statutes could be quickly and efficiently resolved by referring to the proposed decision. Thus, designating the proposed decision as precedent would have a general application beyond Government Code section 20324 because it would apply to all similarly-phrased optional membership statutes.

Finally, the need to determine the proper enrollment date of legislative employees under Government Code section 20324 is likely to recur. There is constant turnover in the legislative workforce. New legislative employees may enroll in CalPERS at any time after being hired. Legislative employees work in all regions of the state, in both the Capitol and the district offices of Assembly Members and Senators. Due to the optional nature of CalPERS membership and the fact that legislative employees work all over the state, there may often be differences between the date a legislative employee signs the CalPERS enrollment form and the date he or she turns in the CalPERS enrollment form to the Assembly Committee on Rules or the Senate Committee on Rules. Therefore, the need to determine the proper enrollment date of legislative employees under Government Code section 20324 is likely to recur.

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