**Bankruptcy Talk is Nonsense**

By: San Diego City Attorney Jan Goldsmith

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San Diego's pension problem must be fixed. Otherwise, we face annual pension payments that will grow from $229 million today to $500 million in 15 years, tightening a financial albatross around our neck.

The City is not powerless to address this problem. In fact, there are many options short of illegally abrogating vested pension rights. For example, Councilman Carl DeMaio's fiscal plan includes some of those options such as increasing employee contributions, adjusting "pensionable pay", outsourcing services, cutting spending and restructuring debt.

Labor unions do not have a legal veto to stop reforms. We must negotiate in good faith, but the ultimate decision lies with the City Council upon impasse. The City is empowered to face this problem with tough medicine, but it would not be easy.

It is human nature to avoid tough decisions while seeking easy solutions. Over the years, denial and hope for miraculous investment gains failed. Lately, Chapter 9 bankruptcy has become popular among easy fix advocates. File bankruptcy, they say, and pensions will vanish.

That's nonsense. Bankruptcy talk is just a distraction from the serious business of addressing the problem.

First, the City is not insolvent or qualified to file.

Second, consider the cost. Orange County's bankruptcy cost $100 million 16 years ago when lawyers' hourly rates were much lower. Although it is hard to estimate the full cost of a San Diego bankruptcy, a battery of lawyers would enjoy a nice stimulus package, probably costing taxpayers far more than $100 million.

Third, there has never been a reported case in our nation's history where public sector pensions were changed through bankruptcy. That would be new law to, ultimately, be decided by the U.S. Supreme Court after years of court decisions and appeals, during which pension payments would likely continue.

Bankruptcy advocates like to cite Vallejo's municipal bankruptcy where the judge abrogated current labor contracts, requiring the parties to renegotiate. But, as with Orange County's bankruptcy, vested pension benefits were not touched.

Prichard, Alabama gave hope to the easy fix crowd. The small suburb of Mobile filed bankruptcy last year and stopped making pension payments. The bankruptcy judge ordered Prichard to develop a plan to pay retirees. The case was worth watching until the judge literally threw Prichard out of court, dismissing the case ostensibly for other reasons. The city is now facing lawsuits from pensioners.

Chapter 9 differs from Chapter 11 bankruptcy, which allowed United Airlines to abrogate its pension obligations. Chapter 9 was drafted during the Depression to allow municipal bankruptcies, but also honor states' rights under the 10th Amendment to the U.S. Constitution. The original version of Chapter 9 was held unconstitutional because it did not respect states' rights.

Under California's Constitution vested pension benefits cannot be seized by government. Additionally, San Diego's Charter (our constitution) bars changes affecting benefits without approval of employees and retirees. Although a court might decide that Chapter 9 preempts these state and local constitutional rights, I believe that would be inconsistent with several Chapter 9 statutory provisions and legislative intent.

Such a decision would open flood gates to potentially thousands of bankruptcies by local governments facing similar problems. With few exceptions, judges leave such profound changes to Congress rather than legislate from the bench.

I would be firmly on the states' rights side of this argument. If Chapter 9 preempts state and local constitutional protections of vested pension rights, what other constitutional protections are at risk? What if a city wants to increase taxes to pay debts? Could a bankruptcy judge waive the requirement of voter approval? Although that, too, would be inconsistent with Chapter 9's statutory provisions, in a 1994 reported decision the judge dismissed a local government bankruptcy because it refused to increase taxes. Be careful when you ask "big brother" to bail you out.

Our City would not benefit. The likely result would be hundreds of millions of dollars paid to an army of lawyers and many years of legal haggling and public acrimony, while services deteriorate and the City is barred from equity markets. In the end, following an expensive quagmire the pension problem would likely worsen.

Privately, bankruptcy advocates say we should use Chapter 9 as "leverage" in labor negotiations, but never really do it. That's silly. San Diego doesn't need Chapter 9 for leverage. We have enough power if we're willing to use it. What we really need is a carefully designed plan to address deficits and ballooning pension payments, honest negotiations and, ultimately, the willingness to administer tough medicine.