

Proposition 33: The Justice for Renters Act

Initiative Statute

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I. EXECUTIVE SUMMARY

Proposition 33, the Justice for Renters Act, repeals the Costa-Hawkins Rental Housing Act (Costa-Hawkins) and removes sections 1954.50-1954.53 from the California Civil Code (the Code).¹ Proposition 33 does not impose or mandate any residential rental limits.² Instead, it adds section 1954.54 to the Code, which prohibits the state from limiting the right of “. . . any city, county, or city and county to maintain, enact or expand residential rent control.”³ By repealing Costa-Hawkins, Proposition 33 removes state-implemented restrictions on rent control and allows cities and counties to place their own limits on rental rates for residential properties.⁴

Supporters contend that the state’s housing affordability and homelessness crisis are being fueled by excessive rents.⁵ They argue that removing limits on rent control would help cities rein in predatory landlords, especially corporate landlords like Blackstone Group, Equity Residential, and Essex Property Trust.⁶ Proponents of the measure point out that millions of dollars have been raised to fight the measure and most of those funds were raised by corporate landlords who stand to further profit from the state’s rising rent prices.⁷ They argue that corporate landlords generate billions in revenue by charging “wildly inflated rents,” and that Proposition 33 will result in cities passing expanded rent controls, thus thwarting these massive profit intakes.⁸

Opponents, on the other hand, argue that overturning Costa-Hawkins is not the solution to California’s housing crisis and will in fact make the crisis worse. They say that the rising cost of rent is being driven by an increase in the state’s population coupled with a lack of housing. The lack of housing is being exacerbated by operating and building costs which are too high, and that “limiting rent” will make it impossible for owners to keep up with the rising cost of inflation.⁹ Further, those opposed to the measure assert that Proposition 33 is part of a broader, anti-housing agenda.¹⁰ They argue that it would drive the cost of housing up by “effectively overturn[ing] more than 100 state housing laws, including laws making it easier to build affordable housing . . .”¹¹

¹ Cal. Proposition 33 (2022), available at <https://oag.ca.gov/system/files/initiatives/pdfs/22-0008%20%28Renters%20Act%20%29.pdf> (last visited Sept. 21, 2024).

² *Id.*

³ *Id.* at 2

⁴ *Id.*

⁵ Patrick Range McDonald, Op-Ed, *Yes on Prop 33 Endorsed by Labor Unions, Activists, and Civic Leaders. Which Side Are You On?*, available at <https://yeson33.org/category/opinion/> (last visited Sept. 21, 2024).

⁶ *Id.*

⁷ “Corporate Landlords” mostly fall under the definition of “Investment Entity.” For purposes of this summary, “Investment Entity” is defined as: A real estate investment trust as defined in Section 23000 of the California Corporations Code.

⁸ Patrick Range McDonald, Op-Ed, *Corporate Landlords Are Overwhelmingly Funding No on Prop 33 and Yes on Prop 34 Campaigns*, available at <https://www.housingisahumanright.org/corporate-landlords-are-overwhelmingly-funding-no-on-prop-33-and-yes-on-prop-34-campaigns/> (last visited Sept. 20, 2024)

⁹ *Our Voices*, No on Prop 33, <https://stories.noonprop33.com/our-voices/> (last visited Sept. 20, 2024).

¹⁰ No on Prop 33, <https://noonprop33.com/> (last visited Sept. 21, 2024).

¹¹ *Id.*

A “YES” vote *supports* this initiative and means that state law would NOT limit the kinds of rent control laws cities and counties are allowed to implement.

A “NO” vote *opposes* this initiative and means that state law would continue to limit the kinds of rent control laws cities and counties may implement.

II. THE LAW

A. Existing Law

1. *The Costa-Hawkins Rental Housing Act*

Enacted in 1995, Costa-Hawkins prohibits rent control on single-family homes, and houses that were completed after February 1, 1995.¹² More specifically, it exempts dwelling units which are “alienable separate[ly] from the title to any other dwelling unit.”¹³ It also prohibits rent control laws that mandate the amount of rent a landlord may charge a new tenant when they first move into a housing unit.¹⁴ In 1980, fifteen years before its passage, fourteen cities in California had some form of rent control in place.¹⁵ Today, twenty-four cities and counties in the state have enacted some form of localized rent control.¹⁶ While permitted to implement their own rent control, cities and counties must nonetheless follow the regulations contained in Costa-Hawkins.¹⁷ Any housing that was exempt from localized rent control regulations at the time Costa-Hawkins passed remains exempt.¹⁸

Prior to the passage of Costa-Hawkins, there had been ten attempts by the California State Legislature to impose limitations on locally enacted rent control.¹⁹ By 1995, the political landscape in California had shifted. A Republican-controlled Assembly, and the election of Republican Governor Pete Wilson allowed for the easy passage of Costa-Hawkins through the legislature.²⁰ The bill passed the Senate Judiciary Committee 5-2 in April 1995; in May, the bill passed out the Senate 22-14; in June 1995, it passed the Assembly Housing Community Development Committee by a vote of 6-2, and the Assembly Appropriations Committee by a vote of 10-7.²¹ On July 24,

¹² *California Proposition 33, Prohibit State Limitations on Local Rent Control Initiative (2024)*, BALLOTPEdia, [https://ballotpedia.org/California_Proposition_33,_Prohibit_State_Limitations_on_Local_Rent_Control_Initiative_\(2024\)](https://ballotpedia.org/California_Proposition_33,_Prohibit_State_Limitations_on_Local_Rent_Control_Initiative_(2024)), [“BALLOTPEdia Proposition 33”] (last visited Oct. 8, 2024).

¹³ *What is Costa-Hawkins?*, Costa-Hawkins, <http://costa-hawkins.com/what-is-costa-hawkins/> (last visited, Oct. 8, 2024).

¹⁴ *Id.*

¹⁵ Kenneth H. Carlson, *Cities with Rent Control*, The Renters’ Rights Online Legal Help Clinic (2024), available at <https://caltenantlaw.com/cities-with-rent-control/> (last visited Sept. 21, 2024).

¹⁶ *Id.*

¹⁷ Letter from Ashley Johansson, to Xavier Becerra, Attorney General, State of California (December 12, 2017), available at <https://lao.ca.gov/ballot/2017/170629.pdf> (last visited Sept. 21, 2024).

¹⁸ *Id.*

¹⁹ Gavin, Jacob and Mendez, Michael (2020) “Proposition 21: Rental Affordability Act,” *California Initiative Review (CIR)*: Vol. 2020, Article 9, available at <https://scholarlycommons.pacific.edu/california-initiative-review/vol2020/iss1/9/> (last visited, Sept. 21, 2024).

²⁰ *Id.*

²¹ *Id.*

1995, both the Senate and Assembly passed Assembly Bill 1164 by a vote of 24-11 and 45-18, respectively.²² In early August, then-Governor Pete Wilson signed the Costa-Hawkins Act into law, and on January 1, 1996, it went into effect.²³

The full text of the Costa-Hawkins Rental Housing Act is contained in the California Civil Code, at §§ 1954.50-1954.53.²⁴ Costa-Hawkins creates three main limitations on local rent control laws.²⁵ First, rent control may not be applied to any single-family homes.²⁶ Second, rent control may never be applied to any newly built housing completed on or after February 1, 1995.²⁷ Third, rent control laws may not mandate the amount of rent landlords may charge new renters when they are first moving into a unit.²⁸

2. *Assembly Bill 1482: The Tenant Protection Act*

In 2019, the California Legislature passed Assembly Bill 1482 (AB 1482). Signed into law by Governor Gavin Newsom on October 8, 2019, The Tenant Protection Act (TPA) limits annual rent increases to 5 percent plus the rate of inflation, which at the time was typically between 2 and 3 percent.²⁹ The law impacts landlords and tenants of residential property in two fundamental ways: (1) it imposes a percentage limit on annual rent increases of no more than 10 percent total, or 5 percent plus the percentage change in the cost of living, whichever is lower, in a twelve-month period;³⁰ (2) it mandates that tenants may only be evicted for “just cause” if they have occupied a property for at least twelve months.³¹

The bill was supposed to protect tenants statewide, but AB 1482 does not apply to units built with federal tax credits. This loophole in the bill has left hundreds of thousands of units reserved for the state’s lowest-income renters exempt from the state’s rent cap.³² This includes more than 350,000 privately owned low-income units built with the help of federal tax credits.³³ AB 1482 does not apply to any of the following: (1) apartments built in the past 15 years, (2) deed-restricted affordable housing for persons and families of very low, low, or moderate income as defined in Section 50093 of the Health and Safety Code, (3) tax credit-funded properties, (4) new tenancies where no tenants from the prior lease remain an occupant in lawful possession of the

²² *Id.*

²³ *Id.*

²⁴ Cal. Civ. Code §§ 1954.50-1954.535.

²⁵ Cal. Legislative Analyst’s Office. *Proposition 10 Expands Local Governments’ Authority to Enact Rent Control on Residential Property. Initiative Statute.* (Nov. 6, 2018), available at <https://lao.ca.gov/ballot/2018/prop10-110618.pdf> (last visited, Sept. 21, 2024).

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

²⁹ Matt Levin, *Big rent hikes are about to be illegal in California. Here’s what you should know*, CAL MATTERS (Sept. 11, 2019), <https://calmatters.org/housing/2019/09/big-rent-hikes-illegal-in-california-heres-what-to-know/> (last visited, Sept 21, 2024).

³⁰ Cal. Civ. Code. § 1947.12.

³¹ *Id.*

³² Jeanne Kuang, *These Californians live in affordable housing. Why did their rent skyrocket?*, CAL MATTERS (Sept. 11, 2023), <https://calmatters.org/housing/2023/12/affordable-housing-rent-spikes/> (last visited Sept. 22, 2024).

³³ *Id.*

property, (5) single-family residences.³⁴ The TPA is not permanent, and is only in effect until January 1, 2030.³⁵

B. Past Attempts to Pass Similar Ballot Measure Initiatives

Attempts have been made to implement state-wide rent control via California's ballot measure initiative process, but those attempts have failed. In 2018 Proposition 10, which would have allowed local governments to adopt rent control on any type of rental housing failed to pass with 59% of voters rejecting the initiative.³⁶ The November 3, 2020 election saw Proposition 21 on the ballot. The Local Rent Control Initiative would have allowed local "governments to enact rent control on housing that was first occupied over 15 years ago, with an exception for landlords who own no more than two homes with distinct titles or subdivided interests."³⁷ This initiative too failed to pass and was rejected by almost the exact percentage of voters who rejected Proposition 10, 59.85%.³⁸ Both the 2018 and 2020 elections saw millions of dollars spent to defeat these initiatives.

1. *Proposition 10 (2018): Affordable Housing Act*

Proposition 10 (2018) was placed on the November ballot and put before California voters. Just like Proposition 33, Proposition 10 sought to repeal Costa-Hawkins.³⁹ It sought to allow cities and counties to impose rent restrictions on any residential properties within their jurisdiction.⁴⁰ Further, it allowed cities and counties to impose limits on the amount a landlord could increase a unit's rent when a new tenant moved in.⁴¹ The measure made no changes to local rent control laws already in place.⁴²

Proposition 10 differed from Proposition 33 in that it would have added language to the California Civil Code. If it had passed, Proposition 10 would have added the following language to section 1954.54 of the Code:

- (a) A city, county, or city and county shall have the authority to adopt a local charter provision, ordinance or regulation that governs a landlord's right to establish and increase rental rates on a dwelling or housing unit.
- (b) In accordance with California law, a landlord's right to a fair rate of return on a property shall not be abridged by a city, county, or city and county.⁴³

³⁴ Assembly Committee on Housing and Community Development, Analysis of AB 1482, April 25, 2019, https://ahcd.assembly.ca.gov/sites/ahcd.assembly.ca.gov/files/AB%201482__Chiu_AHCD_ABPCA.pdf (last visited Oct. 16, 2024).

³⁵ *Id.*

³⁶ *California Proposition 21, Local Rent Control Initiative (2020)*, BALLOTPEDIA, [https://ballotpedia.org/California_Proposition_21,_Local_Rent_Control_Initiative_\(2020\)](https://ballotpedia.org/California_Proposition_21,_Local_Rent_Control_Initiative_(2020)) (last visited Oct. 8, 2024).

³⁷ *Id.*

³⁸ *Id.*

³⁹ Mantel, Henry and Silvera, Sebastian (2018) "Proposition 10: Affordable Housing Act," *California Initiative Review (CIR)*: Vol. 2018, Article 10, available at <https://scholarlycommons.pacific.edu/california-initiative-review/vol2018/iss1/10/> (last visited, Sept. 22, 2024).

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.*

2. Proposition 21 (2020): Rental Affordability Act

Proposition 21 (2020) presented voters with an option different from that of Proposition 10. While Proposition 10 sought to repeal Costa-Hawkins, Proposition 21 would have amended it. First, it would have changed the title of California Code §§1954.50-1954.535 from the “Costa-Hawkins Rental Control Act” to the “Rental Affordability Act.”⁴⁴ Second, it would have changed the parameters for housing exempt from Costa-Hawkins. Instead of housing built or first occupied after February 1, 1995, only housing first occupied within the last fifteen years of the date from which the owner sought to set the rate of rent would have been exempt.⁴⁵ Proposition 21 would have eliminated the blanket exemption for property that was already exempt from rent control regulations on or before February 1, 1995.⁴⁶ The exemption for single-family homes and condominiums would have remained in place but would only have been effective if the owner was a natural person who owned no more than two residential dwelling or housing units.⁴⁷

Additionally, Proposition 21 aimed to codify language to be consistent with California court holdings: that a landlord’s right of fair return on a property should not be infringed upon by any local charter provision, ordinance, or regulation enacted by a city or county.⁴⁸ If passed, it would have capped the increase in rent for new tenants of rent-controlled properties at fifteen percent over the course of the first three years of the tenancy. This was calculated in addition to an increase permitted by local charter provision, ordinance, or regulation.⁴⁹ This permissible increase directly contrasted with the ten percent annual increase permitted under the TPA.

Proposition 21 did not make any changes to local rent control laws already in place. Rather it would have allowed cities and counties to dictate rent control at the local level with less interference from state law. Per its proposed changes to the language in California Civil Code § 1954.53, it would have allowed a city or county to control initial and subsequent rental rates for residential properties by way of local charter provision, ordinance or regulation.⁵⁰ This would have resulted in the elimination of many of the specific exemptions listed in existing law under § 1954.53, leaving only those listed under § 1954.52.⁵¹

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Id.*

3. *Assembly Bill 1506*

Assembly Bill 1506 was introduced by then Assemblymember David Chui on February 17, 2017.⁵² The bill was the legislature’s attempt to repeal Costa-Hawkins and would not have added any new language to the California Civil Code.⁵³ The fiscal effect of the bill was listed as “None.”⁵⁴ According to an analysis by the Assembly Committee on Housing and Community Development from January 9, 2018, the bill would not have required local governments to enact new rent control laws, nor amend any that were already in place.⁵⁵ Instead, it would have allowed local governments more flexibility in shaping rent control policies had they chosen to implement them.⁵⁶ Comments from Assemblymember Chui’s staff about the bill stated that without Costa-Hawkins’ limitations, “local governments would be authorized to . . . adopt rent control protections that apply to single family homes, include vacancy control, and/or apply to structures built after 1995.”⁵⁷ Additionally, the comments pointed out that there would be no requirement that a local government take any action as a result of AB 1506.⁵⁸

C. Proposed Law

1. *Portions of the California Civil Code to be Repealed*

Proposition 33 would repeal sections 1954.01-1954.53 of Chapter 2.7 of Title 5 of Part 4 of Division 3 of the California Civil Code. The section is called the Costa-Hawkins Rental Housing Act.⁵⁹ Costa-Hawkins largely prevents cities and counties from implementing rent control on single-family homes, houses, singular units of housing, and housing that was completed after February 1, 1995.⁶⁰ It also prohibits rent control laws that mandate the amount of rent a landlord may charge a new tenant when they first move into a housing unit.⁶¹

2. *Portions of the California Civil Code to be Added*

Proposition 33 would add section 1954.40 to the California Civil Code.⁶² Section 1954.40 would state that “the state may not limit the right of any city, county, or city and county to maintain,

⁵² Current Bill Text of AB 1506,

https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201720180AB1506 (last visited, Oct. 9, 2024).

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ ASSEMBLY COMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT, COMMITTEE ANALYSIS OF AB 1506, at 4 (January 9, 2018).

⁵⁶ *Id.*

⁵⁷ *Id.* at 7.

⁵⁸ *Id.* at 7.

⁵⁹ CAL. SEC’Y OF STATE, OFFICIAL VOTER INFORMATION GUIDE: CALIFORNIA GENERAL ELECTION, TUESDAY NOVEMBER 5, 2024, at 42, available at, <https://vig.cdn.sos.ca.gov/2024/general/pdf/complete-vig.pdf> [NOVEMBER 2024 VOTER GUIDE].

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² CAL. SEC’Y OF STATE, OFFICIAL VOTER INFORMATION GUIDE: PROPOSITION 33, TUESDAY NOVEMBER 5, 2024, at 42, available at, <https://vig.cdn.sos.ca.gov/2024/general/pdf/prop33-text-proposed-laws.pdf>.

enact, or expand residential rent control.”⁶³ Proposition 33 does not mandate that a city, county or city and county implement rent control regulations. Rather it allows local governments to “maintain, enact, or expand” residential rent control should they so choose.

III. DRAFTING ISSUES: SEVERABILITY

If parts of an initiative are challenged, and the court strikes them down, severability allows for those provisions which were not struck down to remain in effect.⁶⁴ A severability clause is typically a provision in a ballot measure which states that, if some parts of the initiative are held to be illegal or otherwise unenforceable, the rest of the provisions may remain in effect.⁶⁵ California courts generally apply three criteria when determining severability.⁶⁶ First, the sections at issue must be grammatically distinct and complete. Second, the sections must be capable of independent application. Third, there must be some indication that the enacting body would want the remaining provisions to stand on their own and be enforced absent the rest of the law.⁶⁷ If all three of these criteria are not met, then a court may invalidate the entire measure and render it unenforceable.

The severability clause for Proposition 33 is contained in Section 4 and states that: “If any provision of this Act or the application thereof to any person or circumstance is held invalid, that invalidity shall not affect other provisions or applications of the Act which can be given effect with the invalid provision or application, and to this end the provisions of this Act are severable.”⁶⁸

IV. CONSTITUTIONAL ISSUES

A. Fourteenth Amendment Due Process Clause

The Due Process Clause of the United States Constitution’s Fourteenth Amendment provides that “no state shall make or enforce any law which shall abridge the privileges of immunities of the citizens of the United States; nor shall any state deprive any person of . . . property without due process of law. . . .”⁶⁹ The California Supreme Court has previously applied this Clause to rent control measures. It has held that rent control ordinances must be “reasonably calculated to . . . provide landlords with a just and reasonable return on their property.”⁷⁰ And that so long as the laws passed “have a reasonable relation to a proper legislative purpose, and are

⁶³ *Id.*

⁶⁴ Chris Micheli, *Standard Feature of Initiative Measures: Does the Initiative Allow Amendments by the Legislature?*, CALIFORNIA GLOBE (November 25 2019, 2:33AM), <https://californiaglobe.com/fr/standard-features-of-initiative-measures/>.

⁶⁵ *Id.*

⁶⁶ *People's Advocate Inc. v. Super. Ct.*, 181 Cal. App. 3d 316, 330 (3rd Dist. 1986).

⁶⁷ *Id.*

⁶⁸ Cal. Proposition 33 (2022), available at <https://oag.ca.gov/system/files/initiatives/pdfs/22-0008%20%28Renters%20Act%20%29.pdf> (last visited Sept. 22, 2024).

⁶⁹ U.S. Const. amend XIV, § 1

⁷⁰ *Birkenfeld v. City of Berkeley*, 17 Cal.3d 129 (1976).

neither arbitrary nor discriminatory, the requirements of due process are satisfied . . .”⁷¹ Thus, if a rent control ordinance is found not to be a “just and reasonable return” on the property of a landlord, then the court may deem it unconstitutional.

Because Proposition 33 puts rent control ordinances in the hands of cities and counties, challenges to ordinances would likely be decided on a case-by-case basis. However, the California Supreme Court has generally been hesitant to decide rent control cases. According to the court’s decision in *Kavanau v. Santa Monica Rent Control Bd.*, the landlord has the burden of challenging a rent control law that does not allow for a just or reasonable return.⁷² If the ordinance is found to be in violation of the Due Process Clause, then the city or county is required to adjust future rents to a rate that will reasonably compensate landlords in the future.⁷³ To determine whether a rate subject to a rent control ordinance provides a landlord with a just or reasonable return, courts balance the consumer’s interest against that of the investor.⁷⁴ The courts’ balancing test also considers whether the rent control law at issue allows the city or county to adjust rates “within a broad zone of reasonableness” but not so much that it would prevent real estate enterprises from “operating successfully.”⁷⁵ Nothing in Proposition 33 would abrogate the rights of landlords to continue to sue to ensure that cities and counties pass laws that offer a fair rate of return consistent with California law.⁷⁶

V. PUBLIC POLICY CONSIDERATIONS

A. Support for Proposition 33

Proponents of Proposition 33 generally argue that the rent in the state is too high and is a contributing factor to the state’s ongoing and worsening homelessness crisis. They point to the fact that for more than a decade, California has led the Nation as the state with the largest population of unhoused persons.⁷⁷ Although issues such as mental illness, and substance abuse problems are contributing factors, they assert that it is the state’s lack of affordable housing that is driving the problem. According to the Public Policy Institute of California, home values and rents in California are among the highest in the nation.⁷⁸ Legislation limiting annual rent increases has been enacted, but there are flaws. Exemptions in the laws and median-income calculations that result in misleading figures have left hundreds of thousands of residential properties exempt from rent caps, or with caps that inaccurately reflect what renters can pay.

One of the major issues regarding the exemptions lies with the tax credit-funded properties. Regarding these units, the rent restrictions are not tied to the individual tenant’s income, but to the local median income.⁷⁹ In wealthy areas, which are often dotted with low-income households, this

⁷¹ *Id.*

⁷² *Kavanau v. Santa Monica Rent Control Bd.*, 16 Cal.4th 761 (1997).

⁷³ *Id.*

⁷⁴ *Galland v. City of Clovis*, 24 Cal.4th 1003 (2001).

⁷⁵ *Id.*

⁷⁶ *California Building Industry Assn. v City of San Jose*, 61 Cal. 4th 435 (2015)

⁷⁷ Deja Thomas, “Californians See a Rise in Homelessness in Their Communities,” April 2023.

<https://www.ppic.org/blog/californians-see-a-rise-in-homelessness-in-their-communities/>

⁷⁸ <https://www.ppic.org/interactive/californians-and-the-housing-crisis/> (last visited Sept. 14, 2024)

⁷⁹ Kuang, *supra* note 32.

formula can create especially high rent ceilings leaving tenants below the median income without protection. By repealing Costa-Hawkins, cities and counties would be free to do their own individualized assessments and impose rent restrictions in accordance with each community's unique needs. Proponents acknowledge that the housing crisis is complex, but that the state's solution must start with keeping people in their homes.⁸⁰ They assert that “the only practical way to do it is to allow local government to enact and expand rent control because one size doesn't fit all.”⁸¹

1. *Proponents' Coalition*

“Renters and Homeowners for Rent Control Yes on 33, Sponsored by AIDS Healthcare Foundation,” the committee formed in support of the ballot measure initiative, has a broad coalition of supporters. It consists of local and statewide labor unions, the California Democratic Party, United States Senator Bernie Sanders, activist Dolores Huerta and a list of local and statewide officeholders. The initiative is being sponsored by the AIDS Healthcare Foundation, one of its top contributors, along with UNITE HERE Local 11.⁸² The AIDS Healthcare Foundation is the largest AIDS organization in the world,⁸³ and UNITE HERE Local 11 is a labor union representing more than 32,000 workers.⁸⁴ The membership of UNITE HERE Local 11 is comprised of workers employed in hotels, restaurants, airports, sports arenas, and convention centers throughout both Southern California and Arizona and is mostly women and people of color.⁸⁵ Consumer Watchdog, the California Nurses Association, Housing is a Human Right and Tenants Together are just a few of the other organizations in support of the initiative.⁸⁶

2. *Proponents' Main Sources of Funding*

So far, the AIDS Healthcare Foundation has spent more than \$14.8 million in support of Proposition 33.⁸⁷ Just this year, it has contributed more than \$4.9 million dollars to its passage and has given a total of \$37,000,524 total in support of the initiative.⁸⁸ UNITE HERE Local 11, the initiative's second highest contributor, has given \$50,000 so far.⁸⁹ Candidate committee Kevin de Leon for Lieutenant Governor 2026 has given approximately \$600,000 in support.⁹⁰

⁸⁰ CAL. SEC'Y OF STATE, OFFICIAL VOTER INFORMATION GUIDE: PROPOSITION 33 ARGUMENTS AND REBUTTALS, available at <https://voterguide.sos.ca.gov/propositions/33/arguments-rebuttals.htm> [“PROPOSITION 33 ARGUMENTS AND REBUTTALS”] (last visited Sept. 23, 2024).

⁸¹ *Id.*

⁸² *November 2024 General Election Top Contributors*, California Fair Political Practices Commission, <https://fppc.ca.gov/transparency/top-contributors/nov-24-gen.html> [“Top Contributors”] (last visited Sept. 23, 2024).

⁸³ PROPOSITION 33 ARGUMENTS AND REBUTTALS, *supra* note 79.

⁸⁴ *Who We Are*, UNITE HERE 11, <https://www.unitehere11.org/who-we-are/> (last visited Sept. 23, 2024).

⁸⁵ *Id.*

⁸⁶ *Prop 33: Allow Local Governments to Impose Rent Controls*, CAL MATTERS, <https://calmatters.org/california-voter-guide-2024/propositions/prop-33-rent-control/> (last visited, Sept. 23, 2024).

⁸⁷ Nicole Nixon, *Proposition 33 Explained: What California's Rent Control Ballot Measure is Asking You*, THE SACRAMENTO BEE, (Sept. 17, 2024, 12:26PM), <https://www.sacbee.com/news/politics-government/election/voter-guide/article291231935.html>.

⁸⁸ Top Contributors, *supra* note 81.

⁸⁹ *Id.*

⁹⁰ *Id.*

Renters and Homeowners for Rent Control Yes on 33 has spent a total of \$15,317,006 thus far and has raised a total of \$42 million dollars.⁹¹ These numbers will have increased by the time this article goes to print.

B. Opposition to Proposition 33

Opponents of Proposition 33 argue that the initiative is “deeply flawed” and will make the housing crisis worse.⁹² Further, that it will hurt small mom and pop landlords, many of whom rely on rental income to support themselves. Fullerton Mayor, Nicholas Dunlap, is one of many elected officials who oppose the ballot measure. He says, and others agree, that the real issue fueling the state’s crisis is one of too little supply and too much demand.⁹³ Even cities without rent control policies in place have not added enough residential units to meet community needs.⁹⁴ Mayor Dunlap, and others opposed to Proposition 33, point to the Tenant Protection Act (TPA) as legislation that is already in place to protect the state’s renters.⁹⁵ They assert that the TPA’s rent cap is reasonable, and that the state’s focus should be on its enforcement, and the expansion of affordable housing credits.⁹⁶ The opposition to Proposition 33 is robust and includes, among others, the San Francisco Chronicle, Senators Susan Rubio and Bill Dodd, several California State Assemblymembers, the California Chamber of Commerce, the California Council of Carpenters and the California Housing Consortium.⁹⁷

1. *Opponents’ Coalition*

There are two political action committees on file with the California Secretary of State which are in opposition to Proposition 33. “No on 33, Californians for Responsible Housing: A Bi-Partisan Coalition of Affordable Housing Advocates, Taxpayers, Veterans, and Small Businesses, Sponsored by California Apartment Association” is funded mostly by the California Apartment Association Issues Committee, George W. Lattimer and Burnett Apartments, LLC and Affiliated Entities.⁹⁸ “No on Prop 33, Californians to Protect Affordable Housing, a Coalition of Advocates, Renters, Businesses, Taxpayers and Veterans” is funded mostly by Michael K. Hayde, Including Western National Group and Affiliated Entities, the Issues PAC of Apartment Association of Greater Los Angeles, and Californians for Affordable Housing, Sponsored by California Rental Housing Association.⁹⁹ The California Association of Realtors has also contributed \$44 million so far through its PAC, “Homeownership for Families.”¹⁰⁰ Additional Political Action Committees and groups are also raising and spending money to oppose the measure.

⁹¹ BALLOTPEDIA Proposition 33, *supra* note 12.

⁹² *Endorsements*, No on Prop 33, <https://noonprop33.com/endorsements/> [“Endorsements”], (last visited Oct. 8, 2024).

⁹³ Interview with Nicholas Dunlap, Mayor, City of Fullerton (September 13, 2024) (notes on file with the *California Initiative Review*).

⁹⁴ *Id.*

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ *Endorsements*, *supra* note 91.

⁹⁸ Top Contributors, *supra* note 81.

⁹⁹ *Id.*

¹⁰⁰ *Id.*

2. Opponents' Main Sources of Funding

The first of the two political action committees formed to oppose Proposition 33, No on Prop 33, Californians to Protect Affordable Housing, a Coalition of Advocates, Renters, Businesses, Taxpayers and Veterans” spent \$788,323 between January 1 and June 30, 2024, when the most recent campaign disclosure report was filed.¹⁰¹ During the same period, “No on 33, Californians for Responsible Housing: A Bi-Partisan Coalition of Affordable Housing Advocates, Taxpayers, Veterans, and Small Businesses, Sponsored by California Apartment Association” reported expenditures totaling \$1,750,961.14.¹⁰² “Homeownership for Families” has spent approximately \$234,552 in opposition, while “No on Prop 33, Californians for Affordable Housing” has spent approximately \$54,992, and has raised a total of \$92.3 million dollars.¹⁰³ These numbers will have increased by the time this article goes to print.

C. Proposition 33's Impact on Current Tenant Protection Laws

Opponents of Proposition 33 argue that the measure undermines the TPA and includes no protections for renters.¹⁰⁴ Further, they assert that “the measure could effectively overturn more than 100 state housing laws, including laws making it easier to build affordable housing, and fair housing and tenant eviction protections.”¹⁰⁵ The California Legislative Counsel has suggested the current rent restrictions on floating houses and mobile homes would be repealed if the measure passes, but that the provisions in the TPA would remain in place.¹⁰⁶ If Proposition 33 passes, state law would only become ineffective if a city, county or city and county implemented a rent control law that was more restrictive on landlords than the TPA or other existing state law.

On August 12, 2024, the California State Superior Court granted a writ of mandate filed by the AIDS Healthcare Foundation.¹⁰⁷ The writ ordered the deletion and amendment of certain language from the Argument Against Proposition 33 which appears in the California Secretary of State's General Election Voter Guide for the November 2024 election. Included in the amendments was an order to change the affirmative word “would” to “could” everywhere that the word appeared.¹⁰⁸ It ordered the word “eliminates” be changed to “undermines,” “repeals” became “weakens,” and

¹⁰¹ *Campaign Finance: Californians for Affordable Housing*, CAL-ACCESS, <https://cal-access.sos.ca.gov/Campaign/Committees/Detail.aspx?id=1406018>, (last visited Oct. 8, 2024).

¹⁰² *Campaign Finance: No on 33, Californians for Responsible Housing*, CAL-ACCESS <https://cal-access.sos.ca.gov/Campaign/Committees/Detail.aspx?id=1421884>, (last visited Oct 8, 2024).

¹⁰³ BALLOTPEDIA Proposition 33, *supra* note 12.

¹⁰⁴ CAL. SEC'Y OF STATE, OFFICIAL VOTER INFORMATION GUIDE: CALIFORNIA GENERAL ELECTION, TUESDAY NOVEMBER 5, 2024, at 45, *available at*, <https://vig.cdn.sos.ca.gov/2024/general/pdf/complete-vig.pdf> [NOVEMBER 2024 VOTER GUIDE].

¹⁰⁵ *Id.*

¹⁰⁶ Interview with counsel at California Legislative Counsel (October 9, 2024) (notes on file with the *California Initiative Review*).

¹⁰⁷ *Ashoke Talukdar v. Shirley N. Weber, Ph.D., in her official capacity as California Secretary of State; and Does 1-50*, ORDER GRANTING PETITION FOR WRIT OF MANDATE, Superior Court of the State of California, County of Sacramento (Aug. 14, 2024), <https://www.aidshealth.org/wp-content/uploads/2024/08/24CV015584-Order-Granting-Petn-SIGNED-8-12-24.pdf>.

¹⁰⁸ *Id.*

the clause “. . . and effectively reverse dozens of new state housing laws” became “. . . and could effectively reverse dozens of new state housing laws.”¹⁰⁹

D. Proposition 33’s Relationship with Proposition 34

Proposition 34 is being called the Patient Protection Act. Under federal law, health providers that serve low-income and at-risk patients are given a discount on the purchase of pharmaceuticals. These providers are then able to sell those pharmaceuticals at the higher retail rate and use the profits to expand their healthcare services to the low income and at-risk patients they serve.¹¹⁰ Proposition 34 requires some California providers to spend at least ninety eight percent of the net revenue from those drug sales on what is being called “direct patient care.”¹¹¹ Providers that do not are at risk of having their state license and tax-exempt status revoked and loss of government contracts.¹¹² Proposition 34 only applies to providers that spend \$100 million on expenses other than “direct care,” that also own and operate apartment buildings and that have incurred at least 500 “severe” health and safety violations over the last decade.¹¹³ As it stands, these parameters only apply to one organization, the AIDS Healthcare Foundation.¹¹⁴

The AIDS Healthcare Foundation (the Foundation) is the top contributor to “Renters and Homeowners for Rent Control Yes on 33.” The Foundation and its supporters argue that Proposition 34 specifically targets the Foundation and seeks to render it unable to bankroll any future state initiatives.¹¹⁵ This is because the measure would require that the organization spend virtually all of its money on patient services with little to none left for political endeavors.¹¹⁶ In the fiscal year ending in 2019, the Foundation dedicated sixty-six percent of spending on direct patient care.¹¹⁷ Proposition 34 would require an increase of thirty-two percent of the Foundation’s spending on direct patient care.

Those in support of Proposition 34 point out that the Foundation has come under scrutiny for its operation of Skid Row properties in Los Angeles, among others. The Los Angeles Times reported that the Foundation settled with current and former residents at one of its properties for \$575,000 on September 17, 2024.¹¹⁸ Supporters of Proposition 34 are opposed to Proposition 33 and argue that the Foundation is pushing Proposition 33 to further its “anti-housing crusade.”¹¹⁹ They claim that the Foundation’s long-time president, Michael Weinstein, has diverted billions of “taxpayer” dollars that should have gone towards healthcare to building his own real estate empire

¹⁰⁹ *Id.*

¹¹⁰ *Prop 34: Require certain providers to use prescription drug revenue for patients*, CAL MATTERS, <https://calmatters.org/california-voter-guide-2024/propositions/prop-34-patient-spending/> (last visited Oct 8, 2024).

¹¹¹ *Id.*

¹¹² *Id.*

¹¹³ *Id.*

¹¹⁴ *Id.*

¹¹⁵ Molly Burke, *Ads for Prop 33, Prop 34 Underscore Confusing Messages Facing California Voters*, SAN FRANCISCO CHRONICLE (Sept. 18, 2024) <https://www.sfchronicle.com/politics/article/california-propositions-33-34-19771070.php> (last visited, Sept. 24, 2024).

¹¹⁶ *Id.*

¹¹⁷ *Id.*

¹¹⁸ *Id.*

¹¹⁹ PROPOSITION 33 ARGUMENTS AND REBUTTALS, *supra* note 79.

instead.¹²⁰ Proponents of Proposition 33 are opposed to Proposition 34 and argue that the billionaires backing the “No on Prop 33” committees are interested in keeping rents high and are using fear to get homeowners and renters to vote against their own interests. They argue that “rent control is an American tradition since 1919,” and is essential to ending the housing and homelessness crisis in California.¹²¹

VI. CONCLUSION

The housing crisis in California is real, and in the years since Costa-Hawkins passed, it has gotten worse. Too many Californians are at risk of losing their homes, unable to keep up with the rising cost of rent. Many people in the state, and around the country, see rent control as one solution, and are fighting for its implementation. They believe that cities and counties should be free to implement their own rent control mandates, free of state control. They argue that current rent control protections do not go far enough to protect renters. Opponents argue that it is not the “silver bullet” California voters are hoping for. They argue that Proposition 33 will make the problem worse by eliminating protections for renters that are already in place and driving up the cost of housing. They assert that rent control stifles development, and that even in cities without strict rent control, development is far behind what is needed. Proposition 33, like similar ballot measure initiatives that have come before it, is highly controversial, and promises to be hotly contested. In November, voters will once again be asked whether putting rent control mandates solely in the hands of cities and counties is the solution they want.

¹²⁰ *Id.*

¹²¹ *Id.*