

**Proposition 34:  
Restricting Spending of Prescription Drug Revenues by Certain  
Health Care Providers**

Initiative Statute

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## I. EXECUTIVE SUMMARY

Proposition 34 is a proposed initiative statute that will require a health care provider that spends more than \$100,000,000 in any ten-year period on anything other than direct patient care and operates multifamily housing reported to have at least 500 high-severity health and safety violations to spend 98% of revenues from the federal discount prescription drug program on direct patient care.<sup>1</sup> The proposed initiative statute defines direct patient care as the provision of medical, dental, pharmaceutical, or behavioral health services and preventative care directly administered to individual patients.<sup>2</sup> To qualify, these services must be like those regularly provided by other health care providers at organizations receiving Medi-Cal, Medicaid, or Medicare funds.<sup>3</sup> Proposition 34 penalizes an organization's noncompliance with spending restrictions by revoking health care licenses and tax-exempt status.<sup>4</sup>

Proposition 34 also permanently authorizes the State of California to negotiate Medi-Cal drug prices on a statewide basis.<sup>5</sup> The current Medi-Cal Rx program was established through an executive order under the "virtue of the power and authority vested in [the governor] by the constitution and statutes of the State of California".<sup>6</sup> The proposed initiative statute would authorize the State Department of Health Care Services (DHCS) to provide and administer the program by statute.<sup>7</sup>

A "YES" vote on this measure means: Certain health care entities would have to follow new rules about how they spend revenue they earn from a federal drug discount program. Breaking these rules would result in penalties (such as not being able to operate as a health care entity), generally for a ten-year period AND a provision would be added to permanently authorize the state to negotiate Medi-Cal drug prices on a statewide basis through an agency.

A "NO" vote on this measure means: These new rules would not go into effect AND the state would continue to negotiate Medi-Cal drug prices on a statewide basis under authority of the governor.

## II. THE LAW

Proposition 34 implicates several provisions of existing law including prescription drug programs at both the state and federal level, licensing and discipline of health care entities, and governance of nonprofit organizations and their eligibility to receive local and state grants or contracts.

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<sup>1</sup> CAL. SEC'Y OF STATE, OFFICIAL VOTER INFORMATION GUIDE: CALIFORNIA GENERAL ELECTION, TUESDAY, NOVEMBER 5, 2024, at 46, available at <https://vig.cdn.sos.ca.gov/2024/general/pdf/complete-vig.pdf> (last visited Oct. 15, 2024) ["NOVEMBER 2024 VOTER GUIDE"].

<sup>2</sup> Cal. Proposition 34 § 14124.48(b) (2024).

<sup>3</sup> *Id.*

<sup>4</sup> NOVEMBER 2024 VOTER GUIDE, *supra* note 1, at 46.

<sup>5</sup> *Id.*

<sup>6</sup> Governor's Exec. Order No. N-01-19 (Cal. Jan. 7, 2019), <https://www.gov.ca.gov/wp-content/uploads/2019/01/EO-N-01-19-Attested-01.07.19.pdf> (last visited Oct. 15, 2024).

<sup>7</sup> Cal. Proposition 34 § 14124.42 (2024).

A. Drug Coverage in Medi-Cal

1. *Medi-Cal pays for prescription drugs for low-income people.*

Medi-Cal is a federal-state program that provides health coverage for low-income people. This coverage includes the cost of prescription drugs.<sup>8</sup>

2. *Medi-Cal has a new approach to pay for drugs.*

Before 2019, Medi-Cal paid for the cost of prescription drugs in different ways. In 2019, the state adopted a single approach called “Medi-Cal Rx.” Medi-Cal Rx likely saves the state money because Medi-Cal pays for drugs at more discounted prices.<sup>9</sup> Through Executive Order N-01-19, Governor Gavin Newsom directed the Department of Health Care Services (DHCS) to “take all necessary steps to transition all pharmacy services for Medi-Cal managed care to a fee-for-service benefit by January 2021 in order to create significant negotiating leverage on behalf of over 13 million Californians and generate substantial annual savings.”<sup>10</sup>

3. *New approach is not in state law.*

Medi-Cal Rx is not reflected in state law, but it is the approach used to pay for drugs under Medi-Cal.<sup>11</sup> The collaboration of the DHCS with the California Health and Human Services Agency (CalHHS) and the California Pharmaceutical Collaborative was established pursuant to the executive order, and, because the program was initiated by executive action, passage of statutory language is necessary to grant express authority to DHCS and require cooperation from agencies not under the direct executive authority of the governor.

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<sup>8</sup> NOVEMBER 2024 VOTER GUIDE, *supra*, note 1, at 46.

Authorized by Title XIX of the Social Security Act, Medicaid was signed into law in 1965 alongside Medicare. Although the Federal government establishes certain parameters for all states to follow, each state administers their Medicaid program differently. DHCS is the single State agency designated to administer or supervise California’s State Medicaid Program (“Medi-Cal”). The federal government’s share of most Medicaid expenditures is established by the federal medical assistance percentage (FMAP) rate, which generally is determined annually and varies by state according to each state’s per capita income relative to the U.S. per capita income. For the 2023 Fiscal Year, California’s FMAP was 50.00%. This means that California got 50 cents back from the federal government for every dollar it spent on Medi-Cal.

*Medicaid: An Overview*, CONGRESSIONAL RESEARCH SERVICE, R43357, <https://crsreports.congress.gov/product/pdf/R/R43357> (last visited Oct. 15, 2024); *California's Medicaid State Plan (Title XIX)*, DEPT. OF HEALTH CARE SERVICES, <https://www.dhcs.ca.gov/formsandpubs/laws/Pages/CaliforniStatePlan.aspx> (last visited Oct. 15, 2024); Federal Financial Participation in State Assistance Expenditures; Federal Matching Shares for Medicaid, the Children’s Health Insurance Program, and Aid to Needy Aged, Blind, or Disabled Persons for October 1, 2022 Through September 30, 2023, 86 Fed. Reg. 67,479, 67,481 tbl.1 (Nov. 26, 2021).

<sup>9</sup> *Id.*

<sup>10</sup> Governor’s Exec. Order No. N-01-19, *supra* note 6.

<sup>11</sup> *Id.*

## B. Federal Drug Discount Program

### 1. *Federal program provides discounts on drugs to certain health care providers.*

The Office of Pharmacy Affairs in the Health Resources and Services Administration (HRSA) within the United States Department of Health and Human Services (HHS) administers the “340B Drug Pricing Program.”<sup>12</sup> Under this federal program, drug makers provide discounts on their drugs to hospitals, clinics, and other providers. To qualify for these discounts, providers must meet certain rules. Eligible providers are public or private nonprofits that focus on serving low-income people. (These public and private nonprofits generally are exempt from paying taxes on their revenue.)<sup>13</sup>

### 2. *Providers tend to earn revenue from federal discounts.*

Providers tend to earn net revenue from the federal drug discount program. They do so by charging payors of health care (such as private health plans and government programs) more than the cost to provide the drugs. However, providers generally do not earn net revenue on these drugs in Medi-Cal. This is because state law bans providers from charging Medi-Cal more than the discounted price of the drug.<sup>14</sup>

### 3. *Providers decide how to spend revenue.*

According to the federal government, the intent of the federal drug discount program is to allow eligible providers to increase services and serve more low-income patients. Providers can do so by spending their net revenue on services to patients. Federal and state law, however, do not directly restrict how providers spend their revenue from federal drug discounts.<sup>15</sup> Though the 340B program does not direct where revenue is to be spent, the program does provide for procedures to audit and sanction covered entities who operate in violation of program requirements.<sup>16</sup> Further, if the Secretary of the HHS finds after audit, and after notice and hearing that such an entity is in violation of the program, the entity will be liable to the manufacturer of the covered outpatient drug in accordance with their agreement through the 340B program.<sup>17</sup>

## C. State licensing

### 1. *Health Care Entities must be licensed.*

Health care entities must be licensed to provide services in the state. Several departments license health care entities, such as the Department of Managed Health Care (for most health plans) and the Department of Public Health (for hospitals, clinics, and certain other kinds of facilities).<sup>18</sup>

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<sup>12</sup> *340B Drug Pricing Program*, HEALTH RES. AND SERV. ADMIN, <https://www.hrsa.gov/opa> (last visited Oct. 15, 2024).

<sup>13</sup> NOVEMBER 2024 VOTER GUIDE, *supra* note 1, at 46.

<sup>14</sup> *Id.* at 46-47.

<sup>15</sup> *Id.* at 47.

<sup>16</sup> 42 U.S.C. 256b § (a)(5)(A) & (B).

<sup>17</sup> *Id.* at § (a)(5)(C).

<sup>18</sup> NOVEMBER 2024 VOTER GUIDE, *supra* note 1, at 47.

Certain licenses allow for an entity to provide health care services in accordance with the Health and Safety Code, the Business and Professions Code, or both.<sup>19</sup>

## 2. *Licensed entities must follow certain rules.*

Licensed entities must follow certain rules. For example, they cannot engage in conduct that is unprofessional, dishonest, or harmful to public health or safety. An entity that violates these rules can face penalties, including losing their license (which means the entity can no longer operate as a health care entity).<sup>20</sup> The procedures for loss and revocation of an organization’s non-profit status are found in California’s Revenue and Taxation Code for all entities, including those that are licensed health care entities.<sup>21</sup>

### III. PROPOSED LAW

Proposition 34 is a complex and multifaceted law that targets prescription drug price manipulators and how they spend their money.<sup>22</sup> This initiative fits into the Welfare and Institutions Code Chapter 20, specifically section 14124.48. This section identifies a prescription drug price manipulator as: an entity, including any parent, subsidiary, or affiliate of that entity, that purchases, negotiates, authorizes, or obtains prescription drugs through the discount drug program and spends over \$100,000,000 on purposes that do not qualify as direct patient care during any 10-calendar-year period.<sup>23</sup> Proposition 34 also mentions that to qualify as a prescription drug price manipulator the entity must purchase, negotiate, or deal with prescription drugs through the discount prescription drug program, and, spend more than \$100,000,000 on purposes that do not qualify as direct patient care.<sup>24</sup>

The beginning of the initiative describes the interest of the bill and what it hopes to accomplish.<sup>25</sup> Within this portion of the text, the initiative describes several purposes including: to ensure that those who currently benefit under the Medi-Cal drug prescription program can do so indefinitely; to prevent patients and taxpayers from predatory maneuvers from a “discount” program; to hold prescription drug price manipulators accountable by ensuring that they pay 98% of net revenue, in California, on direct patient care; and to provide a consequence for those who do not abide by these standards in the form of a loss of state-provided privileges and benefits (License suspension and loss, loss of funding, changing of tax-exempt status).<sup>26</sup>

After the description of the goals, from sections 14124.42 – 14124.44, the initiative authorizes the State Department of Health Care Services to have full oversight of the Medi-Cal

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<sup>19</sup> CAL. HEALTH & SAFETY CODE § 1204 (“Clinic”); CAL. HEALTH & SAFETY CODE § 1340 (“Health care service plan”); CAL. BUS. & PROF. CODE §§ 4000 et seq. (“Pharmacy”); CAL. WELF. & INST. CODE §§ 14088 et seq. (“Primary care case management organization”).

<sup>20</sup> *Id.*

<sup>21</sup> CAL. REV. & TAX. CODE § 2370.

<sup>22</sup> Secretary of State, Text of Proposed Laws, <https://vig.cdn.sos.ca.gov/2024/general/pdf/text-proposed-laws.pdf> (last visited Sep 23, 2024).

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

pharmacy service.<sup>27</sup> It also describes the sorts of limitations that prescription drug price manipulators would have to follow in relations to their dealings with pharmacies and patients directly.<sup>28</sup> The main take away from these sections is that a prescription drug price manipulator can only be eligible for any sort of license or tax-exempt status if it spends 98% of its net revenues in California on direct patient care.<sup>29</sup> In section 14124.48, the initiative defines “direct patient care” as: “...health care services that are regularly provided by other health care providers in the community or nonprofit community-based health care services that are also receiving reimbursements or payments from the Medi-Cal, Medicaid, or Medicare programs.”<sup>30</sup>

From various portions of sections 14124.45 – 14124.49 the initiative goes through the different mechanisms that prescription drug price manipulators must undertake to report the necessary information to the correct government institution.<sup>31</sup> The first of these sections proscribes that any prescription drug price manipulator that wants to hold tax-exempt status, a pharmacy license, a health care service plan license, or a clinic license, must submit an accounting form of the prior calendar year for both statewide and nationwide net and gross revenues.<sup>32</sup> Furthermore, the remaining sections go over what compliance with these standards means, who determines if compliance has taken place, and what happens if the prescription drug price manipulator decides to lie, use unprofessional conduct, or engage in conduct that would hurt the public more generally.<sup>33</sup>

Section 14124.47 states all the penalties that would be imposed if the reports that come back do not comply with the 98% threshold.<sup>34</sup> These penalties include, all California pharmacy licenses, health care service plan licenses, or clinic licenses would be permanently revoked from that specific prescription drug price manipulator.<sup>35</sup> They would also be barred from applying for any further license that they do not already have for 10 years.<sup>36</sup> Any person serving in the role of owner, CEO, CFO, CAO, COO, president, or any like position would be barred from serving as an owner, officer, director, or employee from any pharmacy or clinic in California for 10 years.<sup>37</sup> The specific prescription drug price manipulator would no longer be eligible for tax-exempt status in California; and, would be prohibited from applying for tax-exempt status for another 10 years.<sup>38</sup> Lastly, the prescription drug price manipulator would be ineligible to receive any new or renewed state or local grants or contracts for 10 years.<sup>39</sup>

The final sections of the proposed initiative delve into how government institutions will interact with prescription drug price manipulators.<sup>40</sup> They discuss eligibility for tax dollars and

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<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

grants, the framework for how those state institutions would set up the process for public input on these price manipulators, and the day the bill would become effective.<sup>41</sup> One important point from these sections is the topic of severability.<sup>42</sup> A severability clause, “...allows the remaining provisions of a bill to remain in effect even if one or more other provisions in the same bill are found to be unenforceable.”<sup>43</sup> This is noteworthy as there will be possible constitutional challenges to this bill, and severability may become a doctrine that is enlisted to save some of the sections even if others are deemed invalid.<sup>44</sup>

#### IV. CONSTITUTIONAL ISSUES

On Nov. 11, 2023, AIDS Healthcare Foundation filed a writ of mandate for expedited review in the California Court of Appeal for the Third Appellate District.<sup>45</sup> It named Shirley N. Weber, in her capacity as California Secretary of State, as respondent, and named Thomas Bannon, and Protect Patients Now Sponsored by California Apartment Association, as the real parties in interest.<sup>46</sup> The suit alleged that the ballot initiative that was qualified as Proposition 34 should be removed for various constitutional violations. The petition for writ of mandate with request for expedited review was summarily denied without prejudice so that AIDS Healthcare Foundation could “pursu[e] relief in the superior court in the first instance”, presumably in the California Superior Court of Sacramento County.<sup>47</sup>

At the direction of the Court of Appeals, AIDS Healthcare Foundation filed a Petition for Writ for Election on January 24, 2024, with the Sacramento County Superior Court, and the Court published its tentative ruling on March 25, 2024.<sup>48</sup> The Superior Court denied the petition without prejudice to a postelection challenge “if such challenge is warranted.”<sup>49</sup> AIDS Healthcare Foundation had alleged that preselection review was appropriate because Proposition 34 was not a constitutional exercise of the electorate’s power in that it singles out a single non-profit corporation for adverse treatment. However, the Superior Court concluded that under Elections Code section 13314, subdivision (a),

[i]n consideration of the strong presumption against preselection review of proposed initiative measures, [...] the Court finds the instant Petition premature. The Proposed Measure does not, and may not, qualify for the November ballot. [...] If the Proposed Measure does appear on the ballot, the voters may reject it. And if the Proposed Measure is adopted by the voters, the instant challenge is one that can be raised and resolved after an election. Thus,

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<sup>41</sup> *Id.*

<sup>42</sup> *Id.*

<sup>43</sup> Rich Ehsen, Judicial determinations of Severability Clauses Capitol Weekly (2024), <https://capitolweekly.net/judicial-determinations-of-severability-clauses/> (last visited Sep 23, 2024).

<sup>44</sup> CalMatters, Proposition 34: Patient spending CalMatters (2024), <https://calmatters.org/california-voter-guide-2024/propositions/prop-34-patient-spending/> (last visited Sep 23, 2024).

<sup>45</sup> *AIDS Healthcare Foundation v. Weber*, No. C099923 (Cal. Ct. App. Nov. 30, 2023).

<sup>46</sup> *Id.*

<sup>47</sup> *Id.* (citing *Cohen v. Superior Court*, 267 Cal. App. 2d 268, 270–271 (1968)).

<sup>48</sup> *AIDS Healthcare Foundation v. Weber*, No. 24WM000018 (Cal. Super. Ct. Mar. 25, 2024).

<sup>49</sup> *Id.* at 2.

deferring judicial resolution until after the election-when there will be more time for full briefing and deliberation is the appropriate course here.<sup>50</sup>

Subsequently, Proposition 34 was qualified for the ballot, and an appeal of the Superior Court’s final order is pending appellate review at the Third District Court of Appeal once more.<sup>51</sup> If Proposition 34 passes, litigation over its constitutionality will resume.

#### A. Bill of Attainder

A bill of attainder is a piece of legislation that declares a party is guilty of a crime. At common law, bills of attainder allowed a government to punish a party for a perceived crime without first going through the trial process.<sup>52</sup> Both the U.S. Constitution and California Constitution prohibit bills of attainder.<sup>53</sup> Courts have adopted a three-part test to determine if a law functions as an unconstitutional bill of attainder: (1) the law inflicts punishment, (2) the law targets specific named or identifiable individuals or groups, and (3) those individuals or groups would otherwise have judicial protections.<sup>54</sup> Under the first step of the bill of attainder determination, California courts generally apply three tests: the historical test, the functional test, and the motivational test.<sup>55</sup>

Opponents to the Proposition have argued that the severe consequences of a finding of noncompliance under the measure are like those “traditionally deemed prohibited” by the federal Constitution. They further assert that the loss of all state healthcare licenses is a confiscation of protected property interests. They further argue that provisions barring employment at pharmacies and clinics in California for 10 years are akin to legislation that prohibits a person from engaging in certain employment. Additionally, the challengers argue that the penalties are too severe to be proportionate to a legitimate legislative purpose, and that the history of the measure and the supporters’ intention in drafting it clearly demonstrate the intention to punish AIDS Healthcare Foundation and its president specifically.

Proponents of Proposition 34 would argue that the measure cannot be considered punitive, as it is not a criminal statute, and it is not intended to impose criminal consequences such as imprisonment or excessive fines. Further, such opponents would argue that the measure clearly

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<sup>50</sup> *Id.* at 2-3 (citing *Indep. Energy Producers Ass’n v. McPherson*, 38 Cal. 4th 1020, 1030 (2006)) (internal quotations omitted).

<sup>51</sup> *Appellate Courts Case Information*, Jud. Council of Cal., <https://appellatecases.courtinfo.ca.gov/> (choose “Appellate District”, “Third Appellate District”, then follow “Search” hyperlink; then search case number field for “C100999”) (last visited Oct. 15, 2024).

<sup>52</sup> *Bill of Attainder*, LEGAL INFO. INST., [https://www.law.cornell.edu/wex/bill\\_of\\_attainder](https://www.law.cornell.edu/wex/bill_of_attainder) (last visited Oct. 15, 2024).

<sup>53</sup> U.S. CONST. art. I, § 10; CAL. CONST. art. I, § 16.

<sup>54</sup> *Bill of Attainder*, LEGAL INFO. INST., *supra* note 52.

<sup>55</sup> The historical test examines whether the legislation imposes a type of punishment that has traditionally been deemed prohibited by the federal Constitution. The functional test analyzes whether the law, in terms of the type and severity of burdens imposed, can reasonably be said to further nonpunitive legislative purposes. The motivational test inquires whether the legislative record shows an intent to punish. See *Legislature v. Eu*, 54 Cal. 3d 492 (1991); *Law Sch. Admission Council, Inc. v. State of Cal.*, 222 Cal. App. 4th 1265 (3d Dist. 2014); *Alpha Standard Inv. Co. v. Cnty. of L.A.*, 118 Cal. App. 3d 185 (2d 1981).



does not name or identify any individual or entity, and that there are multiple organizations that benefit from the 340B program operating in California that manipulate prices in the interest of increasing revenue. If the opponents to such a challenge prevail on either of the first two elements, it would follow that the third element of finding a measure to be a bill of attainder would be unmet, as there is no punishment to be protected from nor entity to protect.

Should the courts find that Proposition 34 inflicts punishment under the historical, functional, or motivational tests, it is likely unconstitutional under a bill of attainder analysis.

## B. Ex Post Facto

In a legal context, ex post facto is most typically used to refer to a criminal statute that punishes actions retroactively, thereby criminalizing conduct that was legal when originally performed.<sup>56</sup> Like bills of attainder, the U.S. Constitution prohibits criminal statutes that are ex post facto by the states.<sup>57</sup> Additionally, the California Constitution prohibits the practice, interpreting the clause identically to the federal judiciary.<sup>58</sup> The prohibition against ex post facto legislation applies almost exclusively to criminal statutes but, in limited circumstances, it can apply to civil legislation.<sup>59</sup> As a matter of statutory interpretation, a court determines a civil statute is actually criminal under ex post facto doctrine if the statutory text and construction suggest “the statute as applied retroactively was intended to punish.”<sup>60</sup>

Challengers of the Proposition would argue that, for the same reasons as stated above, Proposition 34 should be considered punitive when scrutinized under Article I Sec. 10 of the U.S. Constitution.<sup>61</sup> They would further argue that the initiative is ex post facto, as the language of Proposition 34 looks at conduct “in the prior calendar year” that is currently compliant with licensing requirements and 340B program procedures.<sup>62</sup> The initiative statute would make this otherwise allowable spending immediately noncompliant upon enactment. Opponents to litigation would again argue that even an interpretation of the measure generously favorable to the proponents would not meet the extremely high bar of a civil statute functioning as a criminal one under the ex post facto doctrine. Opponents may further argue that the public interest is in favor of allowing the initiative to be backwards looking with its emphasis on accountability for health care entities.

The classification defined in the text of Proposition 34 relies on behavior prior to its enactment. Just as in the case of a challenge under prohibitions against bill of attainders, should the courts find that Proposition 34 is intended to punish, it is likely an unconstitutional measure under the ex post facto doctrine.

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<sup>56</sup> *Ex Post Facto*, LEGAL INFO. INST., [https://www.law.cornell.edu/wex/ex\\_post\\_facto](https://www.law.cornell.edu/wex/ex_post_facto) (last visited Oct. 15, 2024).

<sup>57</sup> U.S. CONST. art. I, § 10.

<sup>58</sup> *People v. Snook*, 16 Cal. 4th 1210, 1220 (1997) (interpreting CAL. CONST. art. I, § 9).

<sup>59</sup> *Hipsher v. L.A. Cty. Emps. Ret. Ass'n*, 58 Cal. App. 5th 671, 697 (2nd Dist. 2020) (citing *Roman Catholic Bishop of Oakland v. Superior Court*, 128 Cal. App. 4th 1155 (2nd Dist. 2005)).

<sup>60</sup> *Roman Catholic Bishop of Oakland*, 128 Cal. App. 4th at 1169–70 (internal citations omitted).

<sup>61</sup> Section IV(A), *supra*.

<sup>62</sup> Cal. Proposition 34 § 14124.44 (2024).

### C. Single Subject Rule

California initiatives are bound by the single subject rule, which means that all provisions of a particular ballot proposition must be reasonably related to a single subject.<sup>63</sup> The single-subject rule is not violated if all parts of the initiative are reasonably germane to each other and the general purpose of the initiative.<sup>64</sup> The California Supreme Court has emphasized that the single-subject rule is to be construed liberally, and has found that even “a lengthy political reform measure” with “multiple complex features” can survive a single-subject challenge.<sup>65</sup>

Opponents to Proposition 34 would likely argue that the statutory authorization of the DHCS to administer a large, collaborative state healthcare program, such as the Medi-Cal Rx program, is not germane to enacting spending restrictions on narrowly defined non-government entities. Proponents might argue that the connection among subjects is overly broad as related only by the category of “healthcare.”<sup>66</sup> Opponents of such litigation will likely argue that all issues are reasonably germane to each other because they each relate to the administration of cost saving prescription and health care provision programs for low-income Californians.

It is likely that Proposition 34 would overcome a single-subject challenge.

## V. PUBLIC POLICY ISSUES

The issue of prescription drug pricing in the United States has been greatly documented.<sup>67</sup> From January of 2022 to January of 2023 roughly 4,200 drug products had increased in price by 46% which was larger than the rate of inflation.<sup>68</sup> On average the increase was 15.2%, which ended up totaling \$590 per drug product.<sup>69</sup> There have been many federal discussions that have taken place to attempt to combat this issue.<sup>70</sup> Some support the narrative that the state needs to have a hand in lowering costs; and others support the narrative that the state should let the market self-regulate.<sup>71</sup>

Proposition 34 does not only aim at reducing prescription drug pricing, as this Initiative is heavily tied to the issue of rent control.<sup>72</sup> The current rent control law in the State of California

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<sup>63</sup> *Raven v. Deukmejian*, 52 Cal. 3d 336 (1990); CAL. CONST., art. II, § 8(d).

<sup>64</sup> *Id.*

<sup>65</sup> See *Fair Pol. Pracs. Comm'n v. Superior Court*, 25 Cal. 3d 33 (1979).

<sup>66</sup> See *Brosnahan v. Brown*, 32 Cal. 3d 236 (1982).

<sup>67</sup> Arielle Bosworth, Changes in the list prices of prescription drugs, 2017-2023 ASPE,

<https://aspe.hhs.gov/reports/changes-list-prices-prescription-drugs#:~:text=Over%20the%20period%20from%20January,to%20%24590%20per%20drug%20product.> (last visited Sep 24, 2024).

<sup>68</sup> *Id.*

<sup>69</sup> *Id.*

<sup>70</sup> *Id.*

<sup>71</sup> *Id.*

<sup>72</sup> California Proposition 34, require certain participants in Medi-Cal RX Program to spend 98% of revenues on Patient Care Initiative (2024), Ballotpedia, [https://ballotpedia.org/California\\_Proposition\\_34,\\_Require\\_Certain\\_Participants\\_in\\_Medi-Cal\\_Rx\\_Program\\_to\\_Spend\\_98%25\\_of\\_Revenues\\_on\\_Patient\\_Care\\_Initiative\\_\(2024\)](https://ballotpedia.org/California_Proposition_34,_Require_Certain_Participants_in_Medi-Cal_Rx_Program_to_Spend_98%25_of_Revenues_on_Patient_Care_Initiative_(2024)) (last visited Sep 24, 2024).

designates that landlords cannot raise rent more than 10% total or 5% plus the percentage change in the cost of living.<sup>73</sup> One of the biggest supporters to rent control in California is the AIDS Healthcare Foundation.<sup>74</sup> One of the biggest opponents to rent control in the State of California is the California Apartments Association.<sup>75</sup> It is also important to note that the founder of the AIDS Healthcare Foundation is a man named Michael Weinstein.<sup>76</sup>

Michael Weinstein and others tied to the AIDS Healthcare Foundation have taken the stance that Prop 34 is a revenge initiative that singles out the AIDS Healthcare Foundation.<sup>77</sup> The Foundation is the primary sponsor for the supporters on Prop 33 which is focused on removing rent control restrictions from state law.<sup>78</sup> Weinstein believes this is a revenge proposition because some of the guidelines mentioned in the law are unrelated to patient care and seem to only apply to his foundation specifically; and the main proponents of this bill are the main opponents of Proposition 33.<sup>79</sup>

#### A. Supporters' argument for Proposition 34

Yes on 34, Protect Patients Now, which is sponsored by the California Apartment Association, is leading the campaign in support of Proposition 34.<sup>80</sup> The supporter's website states that a yes vote on Proposition 34 will "close an exploited loophole" in the health care system "that has diverted hundreds of millions of taxpayer dollars away from patient care" and will "drastically reduce Medi-Cal prescription drug costs."<sup>81</sup> The site highlights that "Prop 34 requires the program's worst offenders to spend 98% of their taxpayer-generated revenues on direct patient care."<sup>82</sup>

The same website also states that:

...some of these same corporations that get billions in taxpayer dollars have spent hundreds of millions of dollars on housing projects that are often run like slums. An LA Times investigation

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<sup>73</sup> Landlord-tenant issues, State of California - Department of Justice - Office of the Attorney General (2024), <https://oag.ca.gov/consumers/general/landlord-tenant-issues#:~:text=Landlords%20cannot%20raise%20rent%20more,Code%20%201947.12.> (last visited Sep 24, 2024).

<sup>74</sup> CalMatters, Proposition 34: Patient spending CalMatters (2024), <https://calmatters.org/california-voter-guide-2024/propositions/prop-34-patient-spending/> (last visited Sep 23, 2024).

<sup>75</sup> *Id.*

<sup>76</sup> AIDS healthcare foundation, Wikipedia (2024), [https://en.wikipedia.org/wiki/AIDS\\_Healthcare\\_Foundation](https://en.wikipedia.org/wiki/AIDS_Healthcare_Foundation) (last visited Sep 24, 2024).

<sup>77</sup> Molly Burke, *California ballot measure appears to target a single nonprofit — and it's furious*, San Francisco Chronicle.

<sup>78</sup> *Id.*

<sup>79</sup> *Id.*

<sup>80</sup> *California Proposition 34, Require Certain Participants in Medi-Cal Rx Program to Spend 98% of Revenues on Patient Care Initiative (2024)*, BALLOTPEdia, [https://ballotpedia.org/California\\_Proposition\\_34,\\_Require\\_Certain\\_Participants\\_in\\_Medi-Cal\\_Rx\\_Program\\_to\\_Spend\\_98%25\\_of\\_Revenues\\_on\\_Patient\\_Care\\_Initiative\\_\(2024\)](https://ballotpedia.org/California_Proposition_34,_Require_Certain_Participants_in_Medi-Cal_Rx_Program_to_Spend_98%25_of_Revenues_on_Patient_Care_Initiative_(2024)) (last visited Oct. 15, 2024).

<sup>81</sup> PROTECT PATIENTS NOW, YES ON 34, <https://yesonprop34.com/> (last visited Oct. 15, 2024).

<sup>82</sup> *Id.*

found that residents at several of these housing projects were forced to live in squalid conditions, exposed to roach and bed bug infestations, putting the health and safety of tenants at risk.<sup>83</sup>

The most in-depth of the *Los Angeles Times*'s stories related to AIDS Healthcare Foundation's housing projects on Skid Row in Los Angeles and it was published in November of 2023.<sup>84</sup>

## B. Opposition's Argument Against Proposition

The AIDS Healthcare Foundation refers to Proposition 34 as the "California Apartment Association Bogus Ballot Initiative" and the "Landlord Revenge Initiative," among other shorthand names.<sup>85</sup> The Foundation alleges that the initiative is crafted to apply "to one—and only one—organization in all of California: AIDS Healthcare Foundation."<sup>86</sup> The Legislative Analyst's Office reported that "few entities would meet the measure's tests to qualify as a prescription drug price manipulator, but the exact number is not known."<sup>87</sup> The Office added on that "total administrative costs associated with the measure could initially cost up to the low tens of millions of dollars to determine which entities qualify for the measure."<sup>88</sup>

The Foundation contends that Proposition 34 is the CAA's response to the Foundation's significant financial contributions in support of qualifying Proposition 33 for the November 2024 ballot. The Secretary of State announced that Proposition 33 had acquired the necessary signatures to qualify for the ballot on July 26, 2023.<sup>89</sup> Thomas Bannon filed Proposition 34 with the Secretary of State on August 30, 2023.<sup>90</sup> Susie Shannon, the policy director of Housing is a Human Right is quoted by the Foundation as saying the following:

The anti-renter California Apartment Association is peddling a deceptive, unconstitutional ballot measure cleverly disguised as a patient protection bill but is, in fact, designed to hurt both patients and low-income renters. It's a wolf in sheep's clothing. Don't be fooled: The Patient Protection Act targets one organization, AHF, the largest HIV/ AIDS organization in the world, and the leading

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<sup>83</sup> *Id.*

<sup>84</sup> Liam Dillon, et al., *Inside the world's largest AIDS charity's troubled move into homeless housing*, L.A. TIMES, Nov. 16, 2023, <https://www.latimes.com/homeless-housing/story/2023-11-16/aids-healthcare-foundation-low-income-housing-landlords> (last visited Oct. 15, 2024).

<sup>85</sup> Ged Kenslea, *AHF Files to Halt California Apartment Association Bogus Ballot Initiative*, AIDS HEALTHCARE FOUND. (Nov. 29, 2023) <https://www.aidshealth.org/2023/11/ahf-files-to-halt-california-apartment-association-bogus-ballot-initiative/> (last visited Oct. 15, 2024).

<sup>86</sup> *Id.*

<sup>87</sup> Letter from Gabriel Petek, Legis. Analyst, and Joe Stephenshaw, Dir. of Fin., Legis. Analyst's Off., to Att'y Gen. Rob Bonta 4 (Oct. 19, 2023), available at <https://www.lao.ca.gov/ballot/2023/230488.pdf> (last visited Oct. 15, 2024).

<sup>88</sup> *Id.*

<sup>89</sup> Memorandum from Joan Hackeling, Elections Analyst, Cal. Sec'y of State, to All County Clerks/Registrars of Voters and Proponent, CC/ROV No. 23060 (July 26, 2023), available at <https://elections.cdn.sos.ca.gov/ccrov/2023/july/23060jh.pdf> (last visited Oct. 15, 2024).

<sup>90</sup> *California Proposition 34*, BALLOTPEDIA, *supra* note 80.

organization working to expand rent control for the most vulnerable in our society – low-income seniors, veterans, single parents and patients with HIV/AIDS. CAA, which does not represent patients, has shown they are willing to deceive voters in their quest for unbridled profits for the billionaire landlord class they represent, while patients and low-income renters suffer. The courts will now decide whether this unconstitutional, dangerous, anti-renter and anti-patient initiative will be placed before voters.<sup>91</sup>

## VI. CAMPAIGN FINANCE

According to Cal Matters, proponents of Proposition 34 have spent \$29.8 million in support of the measure.<sup>92</sup> Opponents have spent \$1.15 million in opposition of the measure.<sup>93</sup> On the side of the proponents, there are 7 listed major contributors to the measure.<sup>94</sup> The top contributor is the California Apartment Association as they have contributed \$29.5 million of the \$29.8 million in support of the measure.<sup>95</sup> There are 2 contributors to the opposition.<sup>96</sup> The AIDS Healthcare Foundation is the primary contributor to the opposition as they have raised \$1.04 million out of the \$1.15 million raised.<sup>97</sup>

## VII. CONCLUSION

Proposition 34 aims at prescription drug price manipulators and their ability to effectively spend their revenue on subjects other than direct patient care. In effect, this Proposition also targets Michael Weinstein, the founder of the AIDS Healthcare Foundation, and his ability to effectively lobby for rent control in the state of California.

A **YES** vote for Proposition 34 means that the state will be able to enforce that prescription drug price manipulators will have to pay 98% of net profits in California on direct patient care. This most likely means that Michael Weinstein will not be able to lobby for rent control as effectively in the State of California.

A **NO** vote for Proposition 34 means that the that prescription drug price manipulators will not have to pay the 98% threshold for net revenues in California and rent control lobbying by Michael Weinstein will most likely remain as it is today.

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<sup>91</sup> Dillon, *supra* note 84.

<sup>92</sup> CalMatters, Proposition 34: Patient spending CalMatters (2024), <https://calmatters.org/california-voter-guide-2024/propositions/prop-34-patient-spending/> (last visited Sep 23, 2024).

<sup>93</sup> *Id.*

<sup>94</sup> *Id.*

<sup>95</sup> *Id.*

<sup>96</sup> *Id.*

<sup>97</sup> *Id.*