

Proposition 10:
AFFORDABLE HOUSING ACT of 2018

Initiative Statute

Copyright © 2018 by the University of the Pacific,
McGeorge School of Law

By

Henry Mantel

J.D., University of the Pacific, McGeorge School of Law, to be conferred May 2019
B.A., East Asian Studies and Creative Writing, Brandeis University, 2014

&

Sebastian Silveira

J.D., University of the Pacific, McGeorge School of Law, to be conferred May 2019
B.A., Agriculture Business, California Polytechnic State University San Luis Obispo, 2013

I. EXECUTIVE SUMMARY

Proposition 10, the Affordable Housing Act, repeals the state law referred to as the Costa-Hawkins Rental Housing Act, Cal. Civ. Code §1954.50, that currently restricts the scope of rent control policies that cities and other local jurisdictions may impose on residential property.¹ The measure repeals the limits on local rent control laws in Costa-Hawkins, and, under the measure, cities and counties can regulate rents for any housing within their jurisdictions.² They also can limit how much a landlord may increase rents when a new renter moves in.³ The measure itself does not make any changes to local rent control laws.⁴ With a few exceptions, cities and counties would have to take separate actions to change their local laws.⁵

The Affordable Housing Act requires that rent control laws allow landlords a fair rate of return, codifying past court decisions that guarantee a fair rate of return for landlords when local governments institute rental control laws.⁶

Enacting rent control could lead to a net reduction in state and local revenues of tens of millions of dollars per year in the long term.⁷ Revenue losses could be less or considerably more because of reduced property value, rental income, and capital gains revenue if landlords opt to build less housing because of rent control.⁸ On the other hand, there is potential for significant increase in sales tax revenue as tenants may have more disposable income if localities cap rent.⁹

A **YES** vote on this measure means: State law would not limit the kinds of rent control laws cities and counties could enact. Landlords would still receive a “fair rate of return” allowing rents to increase enough to receive some profit each year based on previous court rulings and the express language of the initiative.

A **NO** vote on this measure means: State law would continue to limit the kinds of rent control laws cities and counties could have.¹⁰

¹ *Proposition 10 Expands Local Governments’ Authority to Enact Rent Control on Residential Property. Initiative Statute.* LEGISLATIVE ANALYST’S OFFICE (Oct. 10, 2018) available at <https://lao.ca.gov/ballot/2018/prop10-110618.pdf>.

² *Id.*

³ Woocher, Fredric D., *Request for Preparation of Title and Summary* (October 20, 2017) available at https://www.oag.ca.gov/system/files/initiatives/pdfs/17-0041%20%28Affordable%20Housing%29_0.pdf.

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ *Legislative Analyst’s Office analysis of Prop 10 (A.G. File No. 2017-041)*, LEGISLATIVE ANALYST’S OFFICE (Dec. 12, 2017) available at <https://lao.ca.gov/ballot/2017/170629.pdf>.

⁹ *Id.*

¹⁰ *Proposition 10 Expands Local Governments’ Authority to Enact Rent Control on Residential Property. Initiative Statute.* LEGISLATIVE ANALYST’S OFFICE (Oct. 10, 2018) available at <https://lao.ca.gov/ballot/2018/prop10-110618.pdf>.

II. LAW

A. Existing Law

1. *History of rental control prior to Costa-Hawkins*

The first possible recorded example of a rent control-like measure was reported in Ancient Rome in 150 B.C. when a Roman Senator appealed to the courts against his landlord who had doubled his rent.¹¹ Caesar promulgated a law according to which landlords could never exact over 2000 sesterces for villas in Rome or 500 sesterces in the rest of the county.¹²

In the United States of America, the first recorded examples of rent control date to the early 1900's.¹³ These early measures were enacted largely on a non-legislative basis, voluntary and based mainly on public opinion, and they lacked comprehensive and well-thought-out plans and principals.¹⁴ However, in 1920 the New York State Legislature enacted a series of emergency rent laws for New York City in response to insufficient housing needs.¹⁵ In 1921, the District of Columbia implemented rent control and the Supreme Court held the regulations were constitutional as a temporary emergency measure.¹⁶ However, in 1924, the same regulations were found to be unconstitutional by the Supreme Court because the emergency requiring the regulations of rent in the first place had ceased.¹⁷

Federally, rental rates have been subject to control twice through Congressional action.¹⁸ Once in 1942, Congress passed the Emergency Price Control Act. This federal statute set price controls for "defense-rental areas" when adequate local action was not found to be sufficient.¹⁹ The Emergency Price Control Act was enacted to stabilize prices and to prevent speculative, unwarranted, and abnormal increases in prices and rents from the Great Depression and World War II and expired by its own terms in 1947.²⁰ The other time occurred in 1970 during the Energy Crisis when President Nixon was authorized to issue orders and regulations deemed appropriate to stabilize prices, rents, wages, and salaries, but the controls were eventually allowed to expire.²¹ Finally, in the 1986 case of *Fisher v. City of Berkeley*,²² the Supreme Court held that there was no incompatibility between rent control and the Sherman Act, a federal anti-monopoly and antitrust statute, which prohibits activities that restrict interstate commerce and

¹¹ John W. Willis, Short History of Rent Control Laws , 36 Cornell L. Rev. 54 (1950) Available at: <http://scholarship.law.cornell.edu/clr/vol36/iss1/3> at 59.

¹² *Id.* at 59-58.

¹³ *Id.* at 69.

¹⁴ *Id.*

¹⁵ *Id.* at 70.

¹⁶ *Block v. Hirsh*, 256 U.S. 135, 158 (1921).

¹⁷ *Chastleton Corp. v. Sinclair*, 264 U.S. 543, (1924).

¹⁸ John W. Willis, Short History of Rent Control Laws , 36 Cornell L. Rev. 54 (1950) Available at: <http://scholarship.law.cornell.edu/clr/vol36/iss1/3> *Id.* at 80.

¹⁹ *Id.* at 80.

²⁰ *Id.*; Joseph W. Aidlin, *The Constitutionality of the 1942 Price Control Act*, 30 Calif. L. Rev. 648 (1942). * pg 1.

²¹ Presidential Order No. 11615, "*Providing For Stabilization Of Prices, Rents, Wages and Salaries*" (order), 36 FR15727 (1971), reprinted in [1971] U.S. Code Cong. & Ad. News 2575, promulgated on August 17, 1971, by then President Richard M. Nixon.

²² *Fisher v. City of Berkeley*, 37 Cal. 3d 644, 209 (1984).

competition in the marketplace.²³ Except for the two previously mentioned examples, rent regulation in America is an issue for each state to decide.²⁴

The first examples of rent control or rent stabilization, specifically in California, occurred in 1972 in Berkeley when voters passed a rent control charter amendment through the initiative process.²⁵ The city began to implement the law, but landlords successfully challenged the amendment in court where it was held that the Berkeley law was unconstitutional on procedural grounds, but it found that cities had the right to adopt rent control without further state legislation.²⁶ In 1978, Los Angeles froze rent for six months in response to a shortage of decent, safe and sanitary housing in the City of Los Angeles resulting in a critically low vacancy factor.²⁷ By 1980, 14 cities including Los Angeles, San Francisco, San Jose, and Oakland—had some form of rent control.²⁸ Over the years California courts have held that locally enacted rent control on rent increases must allow landlords a “fair return” rate of on their investment.²⁹ Currently, there are 19 cities in California with some form of local rent control ordinances in the state.³⁰

2. *Costa-Hawkins*

Prior to the enactment of Costa-Hawkins there were 10 attempts to enact some kind of limitation on locally enacted rent control by the state legislature, these prior legislative attempts were held in committee or vetoed by the governor.³¹ Governor Jerry Brown (D) vetoed the first attempt at rent control in 1976.³² In 1980, Proposition 10, an attempt to shift rental regulations locally and permit annual rent increase based on the Consumer Price Index, was defeated 65%-to-35%.³³

²³Cornell Law School, *Sherman Antitrust Act - Definition*, available at https://www.law.cornell.edu/wex/sherman_antitrust_act.

²⁴Werness, Val, *Rent Controls - A White Paper Report National Association of Realtors* available at <https://www.irem.org/File%20library/IREMPrivate/PublicPolicy/NARRentControlWhitePaper.pdf>.

²⁵Peter Dreier, *Rent deregulation in California and Massachusetts. NYU Law School and NYC Rent Guidelines Board*. Occidental College, (May 14, 1997) available at http://scholar.oxy.edu/cgi/viewcontent.cgi?article=1325&context=uop_faculty.

²⁶*Id.*

²⁷*Rent Stabilization Ordinance of the City of Los Angeles* Ch.XV, Art.1 §151.00 Added by Ord. No. 152,120, Eff. 4/21/79.

²⁸*Legislative Analyst's Office analysis of Prop 10 (A.G. File No. 2017-041)*, LEGISLATIVE ANALYST'S OFFICE (Dec.12, 2017) available at <https://lao.ca.gov/ballot/2017/170629.pdf>.

²⁹*Birkenfeld v. Berkeley*, 17 Cal.3d 129, 160 (1976); *Cotati Alliance for Better Hous. v. City of Cotati*, 148 Cal.App.3d 280, 294 (1983).

³⁰National Multifamily Housing Council - RENT CONTROL BY STATE LAW (Spring 2018) <https://www.nmhc.org/contentassets/.../rent-control-by-state-chart.pdf>.

³¹Senate Judiciary Committee, *Residential rent controls-preemption of local ordinance with vacancy control-categorical exemption for single-family dwellings-exemption for new construction*. SB 1257 1995-96 Regular Session (April 4, 1995) (California Apartment Association, California Association of Realtors; California Housing Council) pg. 19.

³²Peter Dreier, *Rent deregulation in California and Massachusetts. NYU Law School and NYC Rent Guidelines Board*. Occidental College, (May 14, 1997) available at http://scholar.oxy.edu/cgi/viewcontent.cgi?article=1325&context=uop_faculty. at 17.

³³*Id.* at 20.

However, in 1995, there were several changes in California's government; Republicans took control of the Assembly and Pete Wilson (R) was elected Governor, this political shift eventually resulted in the passage of rent control.³⁴ Also, in the past 12 years \$50 million has been spent to fight rent control, primarily from real estate interest groups. According to these groups, they took the opportunity to make “a small investment when you consider a billion dollars or more in apartment real estate values are at stake.”³⁵

As a result of these political changes and investment in the issue by interest groups, in 1995, the rent control bill was “moving smoothly” through the legislature. On April 4, 1995, the bill passed the Senate Judiciary Committee 5-2; on May 23, 1995, the bill passed out of the Senate 22-14;³⁶ on June 21, 1995, the bill passed the Assembly Housing Community Development Committee 6-2; the bill was approved 10-7 by the Assembly Appropriations Committee;³⁷ and on July 24, 1995, the Senate (24-11) and Assembly (45-18) passed the Costa/Hawkins bill.³⁸ Finally, on August 4, 1995, the bipartisan effort between State Senator Jim Costa (D- Fresno) and Assemblymember Phil Hawkins (R- Bellflower) resulted in Governor Pete Wilson signing of AB 1164 into law. The law went into effect January 1, 1996.³⁹ Opposition to the bill was “very feeble,” “lacked the organizational infrastructure and grassroots constituency to mount a serious opposition effort,” and passage of Costa-Hawkins was “a done deal.”⁴⁰

The Costa-Hawkins Rental Control Act placed limitations on locally enacted rent control laws by prohibiting local rent control rules from applying to housing first occupied on or after February 1, 1995, and single family homes.⁴¹ Additionally, housing exempted under local rent control rules in effect at the time of Costa-Hawkins’ enactment were required to remain exempt.⁴² Costa-Hawkins also required local rent control rules to allow for “vacancy decontrol” which means landlords are free to set rents to market rates when transitioning from one tenant to the next.⁴³

3. *Statutory language of Costa-Hawkins*

The Costa-Hawkins legislation is located in the California Civil Code, sections 1954.50 to 1954.535.⁴⁴ While cities and counties continue to maintain the ability to implement local rent control laws, they must follow the parameters established in the Costa-Hawkins Rental Housing Act.⁴⁵ Costa-Hawkins creates three main limitations; (1) rent control cannot apply to any single-

³⁴ *Id.*

³⁵ *Id.* at 21.

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.* at 22-23.

⁴¹ Legislative Analyst’s Office analysis of Prop 10 (A.G. File No. 2017-041), LEGISLATIVE ANALYST’S OFFICE (Dec.12, 2017) available at <https://lao.ca.gov/ballot/2017/170629.pdf>.

⁴² *Id.*

⁴³ *Id.*

⁴⁴ Cal Civ Code § 1954.50-1954.535-1954.535.

⁴⁵ California Apartment Association - Industry Insights, “Rent Control A General Overview of California’s Costa-Hawkins Rental Housing Act” (Revised March 2017) available at

family homes; (2) rent control can never apply to any newly built housing completed on or after February 1, 1995; (3) rent control laws cannot tell landlords what they can charge a new renter when first moving in.⁴⁶

At the heart of Costa-Hawkins are a number of basic rules: housing constructed after 1995 must be exempt from local rent controls, new housing that was already exempt from a local rent control law in place before February 1, 1995, must remain exempt, single family homes and other units like condominiums that are separate from the title to any other dwelling units must be exempt from local rent controls; rental property owners must have the ability to establish their own rental rates when dwelling units change tenancy.⁴⁷ The intent of this law was to provide a “moderate” approach to the otherwise “extreme” vacancy control ordinances that were in place during the 1980’s in Berkeley, Santa Monica, Cotati, East Palo Alto, and West Hollywood.⁴⁸

Under Costa-Hawkins no law can interfere with an owner’s ability to establish the rental rate for their property when the property is newly constructed after February 1, 1995,⁴⁹ previously exempt from rent control prior to February 1, 1995,⁵⁰ and property that is a single family home and condominiums.⁵¹

Under the exceptions to vacancy decontrol, an owner can establish the initial rental rate for a dwelling or unit except when the owner terminates the tenancy with a 30-Day or 60-Day Notice,⁵² the owner fails to renew a government contract,⁵³ the owner agrees to a government contract,⁵⁴ or the housing is substandard.⁵⁵

A three year phase in program was established for single-family homes and condominiums where an owner of a property could establish the initial and all subsequent rental rates for all existing and new tenancies in effect on or after January 1, 1999.⁵⁶ Other provisions included the ability for a local community to enforce eviction rules,⁵⁷ sublease provisions,⁵⁸ contractual relationships,⁵⁹ particle changes in occupancy,⁶⁰ protection of tenants upon renewal of a lease,⁶¹ and regulations of 90-day notice when owners terminate a government contract.⁶²

<https://web.archive.org/web/20171201031016/https://caanet.org/app/uploads/2015/01/Costa-Hawkins-Rental-Housing-Act.pdf>

⁴⁶ Proposition 10 Expands Local Governments’ Authority to Enact Rent Control on Residential Property. Initiative Statute. LEGISLATIVE ANALYST’S OFFICE (Oct. 10, 2018) available at <https://lao.ca.gov/ballot/2018/prop10-110618.pdf>.

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ Cal Civ Code § 1954.52(a)(1).

⁵⁰ Cal Civ Code § 1954.52(a)(2).

⁵¹ Cal Civ Code § 1954.52(a)(3)(A).

⁵² Cal Civ Code § 1954.53(a)(1).

⁵³ *Id.*

⁵⁴ Cal Civ Code § 1954.52(b), Cal Civ Code § 1954.53(a)(2).

⁵⁵ Cal Civ Code § 1954.53(f).

⁵⁶ Cal Civ Code § 1954.52(a)(3)(C).

⁵⁷ Cal Civ Code § 1954.52(c), Cal Civ Code § 1954.53(e).

⁵⁸ Cal Civ Code § 1954.53(d)(1)-(d)(4).

⁵⁹ Cal Civ Code § 1954.53(d)(1).

⁶⁰ Cal Civ Code § 1954.53(d)(3).

⁶¹ Cal Civ Code § 1954.53(b).

4. Local municipalities with rent control ordinances in effect and their relation to Costa-Hawkins

Costa–Hawkins preempted local laws to allow 'vacancy decontrol' over a three years phased-in period. The power to determine most of the elements of rent control, mentioned above, were left to the cities and counties under Costa-Hawkins, or where still permitted under the act; these municipalities remain in control of changes to the rental amount of a tenancy, under constitutional limits.⁶³ Municipalities possess a substantive jurisdiction to regulate evictions, and an owner's ability to otherwise end a tenancy.⁶⁴ Accordingly, cities could prohibit an owner from terminating a tenant without "just cause."⁶⁵ Also in terminations, the city by ordinance may place costs on an owner, and grant rights to a tenant, for example by providing relocation allowance.⁶⁶

B. Proposed Law

1. Portions of the California Civil Code to be repealed

Sections 1954.50, 1954.51, 1954.52 and 1954.53 of Chapter 2.7 of Title 5 of Part 4 of Division 3 of the Civil Code would be repealed if Proposition 10 passes.

Proposition 10 repeals the limits on local rent control laws in Costa-Hawkins, thus cities and counties can regulate rents for any housing.⁶⁷ Costa-Hawkins creates three main limitations; first, rent control cannot apply to any single-family homes, second, rent control can never apply to any newly built housing completed on or after February 1, 1995, third, rent control laws cannot tell landlords what they can charge a new renter when first moving in.⁶⁸

2. Portions of the Cal. Civ. Code to be added

Proposed section 1954.54 will be added to the California Civil Code, the section reads:

- (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.⁶⁹

⁶² Cal Civ Code § 1954.535.

⁶³ “Bill Analysis - AB 1164 (Hawkins)” CONCURRENCE IN SENATE AMENDMENTS, analysis by Stephen Holloway (July 24, 1995) available at: http://www.leginfo.ca.gov/pub/95-96/bill/asm/ab_1151-1200/ab_1164_cfa_950725_172019_asm_floor.html.

⁶⁴ Cal Civ Code § 1954.52(c), Cal Civ Code § 1954.53(e).

⁶⁵ “Bill Analysis - AB 1164 (Hawkins)” CONCURRENCE IN SENATE AMENDMENTS, analysis by Stephen Holloway (July 24, 1995) available at: http://www.leginfo.ca.gov/pub/95-96/bill/asm/ab_1151-1200/ab_1164_cfa_950725_172019_asm_floor.html.

⁶⁶ *Id.*

⁶⁷ *Proposition 10 Expands Local Governments' Authority to Enact Rent Control on Residential Property. Initiative Statute.* LEGISLATIVE ANALYST'S OFFICE (Oct. 10, 2018) available at <https://lao.ca.gov/ballot/2018/prop10-110618.pdf>.

⁶⁸ *Id.*

⁶⁹ Woocher, Fredric D., “Request for Preparation of Title and Summary” (October 20, 2017) available at https://www.oag.ca.gov/system/files/initiatives/pdfs/17-0041%20%28Affordable%20Housing%29_0.pdf.

The measure repeals the limits on local rent control laws in Costa-Hawkins where cities and counties can regulate rents for any housing.⁷⁰ Under Proposition 10, cities and counties would be able to limit how much a landlord may increase rents when a new renter moves in.⁷¹ The measure itself does not make any changes to local rent control laws and does not repeal the “fair rate of return” that property owners are allowed under past court rulings.⁷²

III. CONSTITUTIONAL ISSUES

A. Federal Constitution Issues

The United States Supreme Court has not ruled consistently regarding whether rent control laws are constitutional. In the case of *Block v. Hirsh*⁷³, decided in 1921, the Supreme Court ruled that a District of Columbia rent control regulation was constitutional because there was a public interest served in regulating how much landlords could charge for rent. The court reasoned that “[h]ousing is a necessary [sic] of life. All the elements of a public interest justifying some degree of public control are present.”⁷⁴

However, only three years later, the Supreme Court struck that same regulation down by a unanimous vote, arguing that it was no longer justified because there was no longer a housing crisis.⁷⁵ The Court stated plainly: “A law depending upon the existence of an emergency or other certain state of facts to uphold it may cease to operate if the emergency ceases or the facts change even though valid when passed.”⁷⁶

There is precedent regarding a rent control initiative in California. In 1980, the electorate of Berkeley enacted a rent control initiative in order to address the city’s housing crisis. The California Supreme Court upheld the measure, but it was then challenged in federal court as a violation of §1 or §2 the Sherman Antitrust Act, which makes it illegal to form contracts, combinations, or conspiracies for the purpose of restraining or monopolizing trade.⁷⁷ The U.S. Supreme Court rejected this argument. The Court ruled that there was no conspiracy because “[t]he ordinary relationship between the government and those who must obey its regulatory commands whether they wish to or not is not enough to establish a conspiracy.”⁷⁸

Rent control statutes have been challenged in other states under the Takings Clause. The Takings Clause of the Fifth Amendment of the U.S. Constitution provides that private property shall not “be taken for public use, without just compensation.”⁷⁹ In some instances, government regulation of private property may be “so onerous that its effect is tantamount to a direct

⁷⁰ Legislative Analyst’s Office analysis of Prop 10 (A.G. File No. 2017-041), LEGISLATIVE ANALYST’S OFFICE(Dec.12, 2017) available at <https://lao.ca.gov/ballot/2017/170629.pdf>.

⁷¹ *Id.*

⁷² *Id.*

⁷³ *Block v. Hirsh*, 256 U.S. 135 (1921).

⁷⁴ *Id.* at 156.

⁷⁵ *Chastleton Corp. v. Sinclair*, 264 U.S. 543, 547-548 (1924).

⁷⁶ *Id.*

⁷⁷ 15 U.S.C.S §1-2.

⁷⁸ *Fisher v. Berkeley*, 475 U.S. 260, 267 (1986).

⁷⁹ USCS Const. Amend. V.

appropriation or ouster... compensable under the Fifth Amendment.”⁸⁰ In 2010, New York City’s Rent Stabilization Law was challenged by a pair of landlords as an unconstitutional taking of their property.⁸¹ The case was appealed to the Second Circuit Court of Appeals, after the case was dismissed by the district court. The Second Circuit affirmed the lower court’s decision, finding that rent control did not qualify as a taking because the landlords still retained significant statutory rights over the property and because they knew about the rent control regulations when they purchased the property.⁸² The case was appealed to the Supreme Court of the United States, but the Supreme Court declined to hear the case, allowing the Court of Appeals’ decision to stand.⁸³

Based on the disinterest by the U.S. Supreme Court in accepting the New York case, it is unlikely that Proposition 10 would be struck down by the U.S. Supreme Court as unconstitutional. However, there has been a significant shift in the make-up of the Supreme Court since 2011 when the New York case was presented. Trying to predict the types of cases that may be appealing to the new Justices is difficult. There is at least a chance that a Takings Clause argument could have some traction with some of the Supreme Court.

IV. DRAFTING AND LEGAL ISSUES

A. Drafting Issues

Proposition 10 includes different definitions of “landlord” and “owner.” Currently, “owner” is defined in the Civil Code as “includes any person, acting as principal or through an agent, having the right to offer residential real property for rent, and includes a predecessor in interest to the owner, except that this term does not include the owner or operator of a mobile home park, or the owner of a mobile home or his or her agent.”⁸⁴ Proposition 10 repeals the existing definition of “owner,” replaces “owner” with “landlord” and does not define or point to another definition elsewhere in any other code sections.⁸⁵ Also, in the portion not repealed by Proposition 10, 1954.535, “owner” is still present and now lacking a definition.⁸⁶ This could lead to legal confusion across California’s cities and counties while the court take years to work out the differences. There do not appear to be any other drafting issues concerning Proposition 10. Opponents reported no conflicts or inconsistencies.⁸⁷

B. Local Legal Issues

In the event Proposition 10 passes there is an expectation for an “explosion of litigation due to disputes in cities with rent control ordinances that were either adopted before Costa-Hawkins or which were adopted later, but which have provisions that incorporate Costa-Hawkins

⁸⁰ *Lingle v. Chevron U.S.A. Inc.*, 544 U.S. 528, 537 (2005).

⁸¹ *Harmon v. Markus*, 412 F. App’x 420, 422 (2d Cir. 2011).

⁸² *Id.*

⁸³ Liptak, Adam. *U.S. Supreme Court Declines to Hear Suit Challenging the Rent Stabilization Law*, *New York Times* (April 23, 2012).

⁸⁴ Cal. Civ. Code. 1954.51 (b).

⁸⁵ Woocher, Fredric D., “Request for Preparation of Title and Summary” (October 20, 2017) available at https://www.oag.ca.gov/system/files/initiatives/pdfs/17-0041%20%28Affordable%20Housing%29_0.pdf.

⁸⁶ *Id.*

⁸⁷ Email by Sebastian Silveira with Whitney Prout, Policy and Compliance Counsel, California Apartment Association (September 18, 2014).

by reference, about what the effect of the repeal is on those ordinances.”⁸⁸ In other words, this patch work of regulations between municipalities could lead to legal confusion across California’s cities and counties while the courts take years to work out the differences.

C. Legal Defense

Section 10 of Proposition 10 grants the proponents of the act the right to defend it in court should the voters approve it and the State refuses to defend its constitutionality. When an initiative or legislative act is challenged in California court as a violation of the state constitution, it is generally the Attorney General’s job to defend the act in court.⁸⁹ However, if the Attorney General refuses to defend the act in court, under Article II, Sec. 8 of the California Constitution, the official proponents of the initiative may become the formal defenders of the act.⁹⁰ Section 10 grants the proponents of Proposition 10 the formal authority to defend the initiative in court if it is approved by voters and if California officials refuse to defend it in either state or federal court and at any point in the proceeding. This is not likely to be an issue, however, since the Attorney General has not given any sign that he would refuse to defend Proposition 10 should it become law, and he is constitutionally mandated to do so.

D. Severability

Section 8 of Proposition 10, commonly referred to as a “severability clause,” permits any part of the act to be severed from the rest of the measure if the language of the statute, or its application, are declared invalid. The presence of a severability clause establishes a presumption in favor of severance.⁹¹ California courts apply three criteria when determining if a provision can be severed: “the invalid provision must be grammatically, functionally, and volitionally separable.”⁹² If a section of Proposition 10 is held invalid, it will be severed from the rest of the act if the following are true: the rest of the act makes sense grammatically; the rest of the act can be implemented on its own; and the electorate would have voted for the initiative if the invalid section had not been included in the measure. If these criteria are not met, then the court may invalidate the act in its entirety.⁹³

It is highly unlikely that any section of Proposition 10 will be held invalid by the courts, but in the event that one of them is, that section will likely be held to be severable, leaving the rest of the act intact.

E. Doctrine of Incorporation by Reference

The Propositions incorporation of other laws creates some potential drafting problems. California law interprets incorporation of other laws according to whether the incorporation was specific or general.⁹⁴ Where a statute adopts part of another statute by specific reference, the provisions are incorporated in the form they exist at the time of the incorporation and not as

⁸⁸ *Id.*

⁸⁹ Woocher, Fredric D., “Request for Preparation of Title and Summary” (October 20, 2017) available at https://www.oag.ca.gov/system/files/initiatives/pdfs/17-0041%20%28Affordable%20Housing%29_0.pdf

⁹⁰ *Perry v. Brown*, 52 Cal. 4th 1116, 1126 (2011).

⁹¹ *Cal. Redevelopment Ass’n v. Matosantos*, 53 Cal. 4th 231, 270 (2011).

⁹² *Id.* at 271.

⁹³ *Id.*

⁹⁴ *Palermo v. Stockton Theatres, Inc.*, 32 Cal. 2d 53, 58-59 (1948).

subsequently amended.⁹⁵ If the reference is a general one, amendments to the provision become incorporated into the incorporating statute.⁹⁶

The Proposition incorporates a number of other laws including the many local ordinances.⁹⁷ Most of these laws appear generally incorporated into the Act. Thus, if they are later amended, the Act will be amended to conform to the changes.

V. POLICY CONSIDERATIONS

A. Arguments For Proposition 10

The arguments for the initiative revolve around the current housing crisis facing the state. Housing costs and homelessness have both increased dramatically across the state in the last decade. A UCLA study found that the rising cost of housing has been a significant factor in the increase in homelessness.⁹⁸ Across California, more than four in ten households are dealing with housing costs that are 30% or more of household income.⁹⁹ More than half of renter households put more than 30% of their income towards rent in 2015.¹⁰⁰ The text of the Affordable Housing Act notes that median rents are higher in California than any other state, home ownership rates have fallen to their lowest level since the 1940s, and the Costa-Hawkins Act prevents cities from implementing laws that keep rents affordable for residents.

Proponents argue that the lack of affordable housing and the increase in homelessness has a serious negative impact on the health of California as a whole. The AIDS Health Foundation is strongly supporting the measure, contributing more than \$12 million to the Yes on 10 campaign, because of the role that stable, affordable housing plays in the wellbeing of their patients and their staff.¹⁰¹

The unions have lined up behind Proposition 10, and have made affordable housing a priority for their members. With rising housing costs, workers are forced to live further and further away from where they work. Teachers in California's urban centers are paying 40% to 70% of their salaries on housing while many are forced to live more than an hour away from their jobs.¹⁰²

Proposition 10 is supported by a broad coalition of powerful groups.¹⁰³ Unions such as the California Teachers Association, the California Nurses Association, and Service Employees

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ Email by Sebastian Silveira with Whitney Prout, Policy and Compliance Counsel, California Apartment Association (September 18, 2014).

⁹⁸ Khouri, Andrew. *High cost of housing drives up homeless rates, UCLA study indicates*, *Los Angeles Times* (June 2018), available at <http://www.latimes.com/business/la-fi-ucla-anderson-forecast-20180613-story.html>.

⁹⁹ Kimberlin, Sarah. *Californians in All Parts of the State Pay More Than They Can Afford for Housing*, *California Budget and Policy Center* (September 2017), available at <https://calbudgetcenter.org/resources/californians-parts-state-pay-can-afford-housing/>.

¹⁰⁰ *Id.*

¹⁰¹ Mills, Rachel. *AHF Contributes \$10 Million to 'Yes on 10' Campaign*. *Aids Healthcare Foundation: Featured* (August 8, 2018).

¹⁰² Affordable Housing Act, *Findings and Declaration*, Section 2(f).

¹⁰³ Vote Yes on Prop 10, *Endorsements* (September 2018), available at <https://voteyesonprop10.org/endorsements>.

International Union California are pushing hard for the act.¹⁰⁴ The Democratic Party and many Democratic politicians have endorsed the act. Los Angeles Mayor Eric Garcetti has come out in support of the act, arguing that “local government should have control over their own city.”¹⁰⁵ The Sacramento Bee Editorial Board has endorsed Proposition 10 for the same reason.¹⁰⁶

B. Arguments Against Proposition 10

Proposition 10 would “entrust another vast swath of housing policy to the very same officials” whose policies exacerbated the housing crisis to begin with.¹⁰⁷ Rent is high in California because the state does not have enough housing for everyone who wants to live here and people who want to live here must compete for housing, which increases rents.¹⁰⁸ Rent control would make the “housing problems worse” because it would lead to a scarcity of available rentals, much higher rental costs for newcomers, and a sharp decline in rent-controlled units as owners converted property to types of housing not subject to rent limits.¹⁰⁹ Furthermore, it is the last thing California needs when the real solution is to build more housing, not restrict rents.¹¹⁰ Rent control is further governmental regulations; it interferes with the market and it results in a shortage of housing.¹¹¹

Proposition 10’s repeal of the single family home protections will allow local governments to micromanage, add additional cost, and directly impact where the middle class lives. Specifically, Costa-Hawkins prohibited local rent control rules from applying to housing first occupied on or after February 1, 1995, and single-family homes.¹¹² Proposition 10 gives too much control to cities and counties to regulate rents for all types of housing regardless of age and they can regulate how much a landlord may increase rents between tenants.¹¹³ Also, Proposition

¹⁰⁴ *Id.*

¹⁰⁵ City News Service, *Garcetti Throws Support Behind Rent Control Initiative*, NBC Los Angeles (April 23, 2018), available at <https://www.nbclosangeles.com/news/local/Garcetti-Throws-Support-Behind-Rent-Control-Initiative-480599151.html>.

¹⁰⁶ Editorial Board, *Afraid of rent control? Here’s why you should vote yes on Proposition 10 anyway*, Sacramento Bee (September 14, 2018), available at <https://www.sacbee.com/opinion/election-endorsements/article218278780.html>.

¹⁰⁷ Editorial Board *Chronicle Recommends: No on Prop. 10* San Francisco Chronicle (September 14, 2018), available at <https://www.sfchronicle.com/opinion/editorials/article/Chronicle-Recommends-No-on-Prop-10-13231228.php>.

¹⁰⁸ Legislative Analyst’s Office analysis of Prop 10 (A.G. File No. 2017-041), LEGISLATIVE ANALYST’S OFFICE(Dec.12, 2017) available at <https://lao.ca.gov/ballot/2017/170629.pdf>.

¹⁰⁹ The San Diego Union-Tribune Editorial Board *Proposition 10: Vote no on rent control, a 'solution' that worsens housing crisis* The San Diego Union-Tribune (September 13, 2018), available at <http://www.sandiegouniontribune.com/opinion/editorials/sd-prop-10-rent-control-20180913-story.html>.

¹¹⁰ San Jose Mercury News & East Bay Times Editorial Boards *Prop. 10 would exacerbate California’s housing crisis* The San Jose Mercury News & East Bay Times (Published: August 25, 2018, Updated: September 7, 2018), available at <https://www.mercurynews.com/2018/08/25/editorial-prop-10-would-exacerbate-californias-housing-crisis/>.

¹¹¹ Nichols, Chris *Exploring the promise — and unintended consequences — of rent control* CALmatter (June 21, 2018), available at <https://calmatters.org/articles/exploring-the-promise-and-unintended-consequences-of-rent-control/>.

¹¹² Legislative Analyst’s Office analysis of Prop 10 (A.G. File No. 2017-041), LEGISLATIVE ANALYST’S OFFICE(Dec.12, 2017) available at <https://lao.ca.gov/ballot/2017/170629.pdf>.

¹¹³ *Id.*; George Skelton Column: California’s housing situation is a mess. Proposition 10 isn’t going to help (October 8, 2018), available at <http://www.latimes.com/politics/la-pol-sac-skelton-proposition-10-20181008-story.html>.

10 could drive up rent prices by reducing housing supply in several ways.¹¹⁴ Developers could back off from building new apartment complexes fearing a lousy return on investment, existing rental units could be converted to condos, and “Mom-and-pop” landlords could sell their single-family rentals to owner-occupiers.¹¹⁵

Also, Proposition 10 increases local government costs by shifting revenue and diverting funds away from local governments.¹¹⁶ Under the measure, more property owners would face the risk and possible reality of new rent regulations, which would likely lead to a decline in the market value of these properties with newly enacted rent control.¹¹⁷ This, in turn, would reduce property tax collections for local governments.¹¹⁸ Depending on actions taken by local governments, these property tax losses could range from a few million dollars to low hundreds of millions of dollars per year.¹¹⁹

A 2017 report out of Stanford Graduate School of Business found that rent control had the opposite intended consequences and the actions taken in San Francisco demonstrate that rent control is “particularly worrisome from an affordability point of view” further reaffirming the fact that Proposition 10 is flawed.¹²⁰ A substantial expansion of rent control in California could result in economic effects more dramatic than those suggested by research on rent control to date, including significant reductions in construction of new housing.¹²¹ This chilling effect on rental numbers and construction will do exactly the opposite of the measure’s intent; instead of helping those in a housing crisis it may further block them out of the market.

Section 10, the Legal Defense, of the Proposition 10 requires California taxpayers to pay the proponents of the initiative’s legal expenses if any challenges to the law in court must be defended by the proponents.¹²² This careless mistake by the proponents of Proposition 10, replacing “owner” with “landlord” and not defining any other code sections, will lead to legal confusion across all municipalities in California, take years to figure out, and cost taxpayers millions in legal fees.

Rent control does not do a good job of protecting its intended beneficiaries—poor or vulnerable renters—because the targeting of the benefits are haphazard since noncontrolled units pay higher rents than they would without the presence of rent control; one reason being that landlords need to make up the difference for lower rents in controlled units.¹²³ The poor, the elderly, and families—the three major groups targeted for benefits of rent control—were no more

¹¹⁴ *Id.*

¹¹⁵ *Id.*

¹¹⁶ Legislative Analyst’s Office analysis of Prop 10 (A.G. File No. 2017-041), LEGISLATIVE ANALYST’S OFFICE(Dec.12, 2017) available at <https://lao.ca.gov/ballot/2017/170629.pdf>.

¹¹⁷ *Id.*

¹¹⁸ *Id.*

¹¹⁹ *Id.*

¹²⁰ Nichols, Chris *Exploring the promise — and unintended consequences — of rent control* CALmatter (June 21, 2018) <https://calmatters.org/articles/exploring-the-promise-and-unintended-consequences-of-rent-control/>

¹²¹ Legislative Analyst’s Office analysis of Prop 10 (A.G. File No. 2017-041), LEGISLATIVE ANALYST’S OFFICE(Dec.12, 2017) available at <https://lao.ca.gov/ballot/2017/170629.pdf>.

¹²² Woocher, Fredric D., “Request for Preparation of Title and Summary” (October 20, 2017) available at https://www.oag.ca.gov/system/files/initiatives/pdfs/17-0041%20%28Affordable%20Housing%29_0.pdf.

¹²³ Tatian, Peter A., *Is rent control good policy?* (January 2, 2013) available at <https://www.urban.org/urban-wire/rent-control-good-policy>.

likely to be found in controlled than uncontrolled units.¹²⁴ In the end, the net effect is that tenants do not save much in the long run—they simply trade higher rents now for lower rents later.¹²⁵

Veterans groups have come out against Proposition 10 because it will increase the “cost of existing housing and making it even harder for renters to find affordable housing in the future.”¹²⁶ Finally, some unions, like the Los Angeles/Orange Counties Building & Construction Trades Council, have lined up in opposition to Proposition 10 have made affordable housing and jobs as priority for their members.¹²⁷

There are many opponents to Proposition 10. Some to highlight fall into three categories:

Bipartisan - Gavin Newsom and John Cox, Democrat and Republican candidates for governor, are opposed.¹²⁸

Major Newspapers - 17 newspapers across California oppose Proposition 10 compared to two that support it.¹²⁹

Assorted list of opposition groups - California Chamber of Commerce, Antonio Villaraigosa former Mayor of Los Angeles, and California State Conference of the NAACP¹³⁰

VI. CONCLUSION

It is undeniable that there is a housing crisis in California today. Rent control is a highly controversial subject that some believe will help make housing more affordable while others argue that it will do much more harm than good. While Proposition 10 only gives cities and counties the freedom to implement their own rent control policies, if local politicians are given that power, some will inevitably use it. A lot of money is being spent on this race because of the implications it could have on the market for real estate. Voters will have to decide if rent control should be a policy that cities and counties may consider when dealing with the housing crisis.

¹²⁴ *Id.*

¹²⁵ *Id.*

¹²⁶ California Secretary of State *Official Voter Information Guide* (September 18, 2018), p. 61, available at <https://vig.cdn.sos.ca.gov/2018/general/pdf/complete-vig.pdf>; No on Prop 10 *RELEASE: VETERANS GROUPS ANNOUNCE OPPOSITION TO PROPOSITION 10* (September 18, 2018) available at <https://noprop10.org/veterans-groups-announce-opposition-to-proposition-10/>.

¹²⁷ No on Prop 10, *RELEASE: MAJOR UNION, SENIOR AFFORDABLE HOUSING ASSOCIATION ANNOUNCE OPPOSITION TO PROPOSITION 10 “HOUSING FREEZE”* (July 16, 2018) available at <https://noprop10.org/release-major-union-senior-affordable-housing-association-announce-opposition-to-proposition-10-housing-freeze/>.

¹²⁸ Garofol, Joe *How Gavin Newsom, John Cox say they’d make California more affordable* (Oct. 10, 2018) available at <https://www.sfchronicle.com/politics/article/How-Gavin-Newsom-John-Cox-say-they-d-make-13297271.php>.

¹²⁹ Rodata, Joe & Klink, Matt *California 2018 Initiative Editorial Scorecard #4* (Oct. 10, 2018) available at <http://www.foxandhoundsdaily.com/2018/10/california-2018-initiative-editorial-scorecard-4/>.

¹³⁰ No on Prop 10, *Our Coalition* (September 18, 2018) available at <https://noprop10.org/who-opposes-prop-10/>.