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# **Proposition 21: Rental Affordability Act**

Initiative Statute

By

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## I. EXECUTIVE SUMMARY

Proposition 21, the Rental Affordability Act, amends Cal. Civ. Codes §1954.50, §1954.52, and §1954.53 to allow for cities or counties to enact rent control on residential properties over fifteen years old.<sup>1</sup> Under the proposed changes to existing law, after a tenant moves out and there is vacancy in a rent-controlled unit, the landlord would be limited to a rent increase of 15% over a span of three years from the start of a new tenancy.<sup>2</sup> However, these rent-control provisions would not apply to homes of individuals who own more than two homes.<sup>3</sup> If this initiative is passed, then the rent control provisions above would replace the Costa-Hawkins Rental Control Act contained in those Cal. Civ. Code sections.<sup>4</sup>

Supporters generally argue that rent control would help low-income renters to afford other life necessities, and it would also assist in reducing environmental harm by enabling people to afford to live where they work. The author's purpose is to reduce homelessness by reducing rents and, at the same time, incentivize developers to build more housing that would not be subject to the fifteen-year threshold.<sup>5</sup>

Opponents argue that rent control is not the right solution to California's housing problem and that it would put unnecessary financial strain on state and local budgets, which have already been negatively impacted by COVID-19. California's Legislative Analyst's Office estimates the fiscal impact of enacting the rent-control provisions contained in this initiative could result in the reduction of state and local revenue in the tens of millions of dollars per year.<sup>6</sup>

A **YES** vote *supports* this initiative to allow city or county governments to enact rent-control measures on residential properties over fifteen years old.

A **NO** vote *opposes* this initiative, which means that the Costa-Hawkins Rental Control Act would still limit a city or county government's ability to enact rent-control measures.

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<sup>1</sup> Cal. Proposition 21 (2020), available at <https://oag.ca.gov/system/files/initiatives/pdfs/19-0001%20%28Rental%20Affordability%20Act%29.pdf> (last visited Oct. 4, 2020).

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

<sup>3</sup> *Id.* at 8.

<sup>4</sup> *Id.*

<sup>5</sup> *Id.* at 6-7.

<sup>6</sup> Cal. Legis. Analyst's Office, *Proposition 21 Expands Local Governments' Authority to Enact Rent Control on Residential Property. Initiative Statute*. (November 3, 2020), available at <https://lao.ca.gov/ballot/2020/Prop21-110320.pdf> (last visited Oct. 4, 2020).

## II. LAW

### A. Existing Law

#### 1. History of Rent Control in the United States and in California

In the United States, Congress twice enacted legislation controlling rental rates on a federal level.<sup>7</sup> In 1942, Congress passed the Emergency Price Control Act, which set price controls for “defense rental areas” when local controls were found to be inadequate.<sup>8</sup> The federal government feared that rising rents in certain industrial zones would put pressure on wages and reduce the labor supply in these war production centers, thereby hindering the war effort.<sup>9</sup> In response, this federal statute was enacted for the purposes of stabilizing prices and preventing irregular and unwarranted increases in rents in areas with a high industrial output, and it expired on its own terms in 1947.<sup>10</sup> Later, in 1970, Congress authorized the Nixon administration to create regulations in order to stabilize prices, rents, wages, and salaries during the Energy Crisis.<sup>11</sup> Those regulations expired as well.<sup>12</sup>

The United States Supreme Court made its stance on rent control known in the 1985 case of *Fisher v. City of Berkeley*.<sup>13</sup> The Supreme Court held that rent control is not incompatible with the Sherman Act, which is a federal anti-monopoly and antitrust statute that prohibits activities restricting interstate commerce and competition in the marketplace.<sup>14</sup> However, nothing in the opinion indicates that there is any barrier by federal law to state regulation in this area.<sup>15</sup> Therefore, with the exception of the pieces of legislation passed in 1942 and 1970, and in the absence of further Congressional action, the regulation of rent in the United States is an issue for each state to confront.<sup>16</sup>

In California, there are several examples of rent control or rental stabilization. The first occurred in Berkeley in 1972, when voters passed a rent-control charter amendment via

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<sup>7</sup> John W. Willis, *Short History of Rent Control Laws*, 36 Cornell L. Rev. 54 (1950) at 80.

<sup>8</sup> *Id.*

<sup>9</sup> Daniel K. Fetter, *The Home Front: Rent Control and the Rapid Wartime Increase in Home Ownership*, Cambridge University Press, 76 Journal of Economic History 4 (2016), available at <https://www.nber.org/papers/w19604.pdf> at 6 (last visited Oct. 4, 2020).

<sup>10</sup> Joseph W. Aidlin, *The Constitutionality of the 1942 Price Control Act*, 30 Calif. L. Rev. 648 (1942).

<sup>11</sup> Miriam Greenberg & Steve McKay, *History of the Rent Control Debate in California*, No Place Like Home, U.C. Santa Cruz (2018), available at <https://noplacelikehome.ucsc.edu/en/history-of-the-rent-control-debate-in-california/> (last visited Oct. 4, 2020).

<sup>12</sup> *Id.*

<sup>13</sup> *Fisher v. City of Berkeley*, 37 Cal. 3d 644, 209 (1984).

<sup>14</sup> Cornell Law School, *Sherman Antitrust Act – Definition*, available at [https://www.law.cornell.edu/wex/sherman\\_antitrust\\_act](https://www.law.cornell.edu/wex/sherman_antitrust_act) (last visited Oct. 4, 2020).

<sup>15</sup> *Fisher v. City of Berkeley*, 37 Cal. 3d 644, 209 (1984).

<sup>16</sup> Lisa Blackwell, Jim Lapidés, and Kimble Ratliff, *Rent Control Laws by State*, National Multifamily Housing Council (September 2, 2020), available at <https://www.nmhc.org/research-insight/analysis-and-guidance/rent-control-laws-by-state/> (last visited Oct. 4, 2020).

the initiative process.<sup>17</sup> Landlords challenged this amendment in court, where it was held that the Berkeley law was procedurally unconstitutional.<sup>18</sup> California courts have also consistently held that rent control laws must not infringe on a landlord's right to "fair return" on their investment.<sup>19</sup> The California Constitution confers regulatory power over rents to the cities and counties as an exercise of the state's police power.<sup>20</sup> A city's police power is subject to state law, and under this provision, a city can exercise its police power only within its own territory. Otherwise, a city's police power is as broad as the power held by the state legislature.<sup>21</sup> By 1980, 14 cities in California had some form of rent control. Today, there are 19 cities in the state that have enacted some form of localized rent control.<sup>22</sup>

## 2. Costa-Hawkins Rental Control Act

There were ten attempts by the state legislature to enact limitations on locally enacted rent control before the passage of the Costa-Hawkins Rental Control Act in 1995. Several forces converged in order to allow that legislation to pass. A combination of Republicans taking control of the Assembly, and the election of Republican Governor Pete Wilson, resulted in the legislature's first successful passage of a limitation on rent control.

In light of these political changes, Costa-Hawkins moved easily through the legislature. In April 1995, the bill passed the Senate Judiciary Committee 5-2; in May 1995, the bill passed out of the Senate 22-14; in June 1995, the bill passed the Assembly Housing Community Development Committee 6-2, and the Assembly Appropriations Committee 10-7.<sup>23</sup> On July 24, 1995, the Senate and Assembly passed the Costa-Hawkins bill by 24-11 and 45-18, respectively.<sup>24</sup> Governor Pete Wilson signed the measure, AB 1164, into law in early August, and it went into effect on January 1, 1996.<sup>25</sup>

Costa-Hawkins limited localized rent control in California by prohibiting rent control rules from applying to housing first occupied on or after February 1, 1995, and single-family homes.<sup>26</sup> While cities and counties retain the ability to implement their own local rent control, they are required to follow the regulations listed in Costa-Hawkins.<sup>27</sup> The legislation

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<sup>17</sup> Jonathan M. Ross, Comment, *California Rent Control as Applied: Assessed Value as a Measure of Fair Return*, 27 Santa Clara L. Rev. 715 (1987) at 718.

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> Cal. Const., art. XI, § 7.

<sup>21</sup> *Stanislaus Co. etc. Assn. v. Stanislaus*, 8 Cal. 2d 378, 383-384 (1937).

<sup>22</sup> Kenneth H. Carlson, *Cities with Rent Control*, The Renters' Rights Online Legal Help Clinic (2020), available at <https://caltenantlaw.com/cities-with-rent-control/> (last visited Oct. 4, 2020).

<sup>23</sup> Mantel, Henry and Silveria, 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 Oct. 4, 2020).

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

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

<sup>26</sup> 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 Oct. 4, 2020).

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

mandates that local rent-control rules allow landlords the freedom to set market rates when transitioning between tenants.<sup>28</sup> Further, any housing that was exempt from local rent-control rules at the time Costa-Hawkins passed must remain exempt.<sup>29</sup>

### 3. Statutory Language of Costa-Hawkins

The text of the Costa-Hawkins Rental Control Act is located within the California Civil Code, at §§ 1954.50–1954.535.<sup>30</sup> The intent behind this legislation was that it would act as a more moderate approach to some of the more extreme vacancy-control ordinances that were operative in cities such as Berkeley, Santa Monica, East Palo Alto, and West Hollywood.<sup>31</sup> The passage of Costa-Hawkins imposed three primary limitations. First, rent control cannot apply to any single-family homes.<sup>32</sup> Second, rent control can never apply to any housing completed on or after February 1, 1995, because the housing is considered to be newly constructed.<sup>33</sup> Third, rent-control laws cannot dictate to landlords what rates they can charge a new tenant when first moving in.<sup>34</sup>

No law can interfere with the owner’s ability to set the rental rate for their property if that property was constructed after February 1, 1995, exempted from rent control prior to that date, or is a single-family home or condominium.<sup>35</sup>

However, there are exceptions to the owner’s ability to establish the rental rate. Specifically, an owner loses that ability if they terminate the tenancy with a 30-day or 60-day notice,<sup>36</sup> if the owner agrees to a government contract for that rate,<sup>37</sup> if the owner fails to renew a government contract,<sup>38</sup> or if the housing is deemed substandard.<sup>39</sup>

Lawmakers included provisions authorizing local cities and communities to enforce eviction rules,<sup>40</sup> provisions for subleases,<sup>41</sup> contractual relationships,<sup>42</sup> protections for tenants

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

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

<sup>30</sup> Cal. Civ. Code §§ 1954.50-1954.535.

<sup>31</sup> 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 Oct. 4, 2020).

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

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

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

<sup>35</sup> Cal. Civ. Code § 1954.52(a)(1-3).

<sup>36</sup> *Id.* § 1954.53(a)(1).

<sup>37</sup> *Id.* § 1954.52(b), 1954.53(a)(2).

<sup>38</sup> *Id.* § 1954.53(a)(1).

<sup>39</sup> *Id.* § 1954.53(f).

<sup>40</sup> *Id.* § 1954.52(c), 1954.53(e).

<sup>41</sup> *Id.* § 1954.53(d)(1-4).

<sup>42</sup> *Id.* § 1954.53(d)(1).

on renewal of a lease,<sup>43</sup> and regulations requiring a 90-day notice when owners terminate a government contract.<sup>44</sup>

#### 4. Proposition 10 and the Tenant Protection Act

Proposition 10 was a measure on the ballot in 2018 and would have repealed the entirety of Costa-Hawkins by removing §§ 1954.50–53 of the California Civil Code. It would have repealed the limits on local rent-control laws, thereby allowing cities and counties to limit how much a landlord may increase rent when a new tenant moves in.<sup>45</sup> Proposition 10 itself would not have made any changes to local rent-control laws and would have had no impact on the requirement that a property owner be allowed a “fair rate of return” as dictated by past court rulings.<sup>46</sup>

However, voters made it clear that they were uninterested in a wholesale repeal of Costa-Hawkins; Proposition 10 lost by a 59.4% vote against versus a 40.6% vote in favor.

Almost one year later, on October 8, 2019, Governor Gavin Newsom signed the Tenant Protection Act into law.<sup>47</sup> The measure has two major impacts on landlords and tenants of residential property in the state: (1) it imposes a percentage limit on the maximum annual rent increase, capped at 5% of the gross rental rate plus the change in cost of living, which is not to exceed 10% in total; and (2) it introduces a requirement that tenants may only be evicted for “just cause” if they have occupied a property for at least twelve months.<sup>48</sup> The measure does not apply to housing that has been issued a certificate of occupancy in the last fifteen years, school dormitories, or owner-occupied single-family homes and duplexes.<sup>49</sup>

There are several key differences between the Tenant Protection Act of 2019 and the changes that Proposition 21 would implement. First, the act does not amend any section of Costa-Hawkins, instead amending sections 1946.2, 1947.12, and 1947.13 of the Civil Code.<sup>50</sup> Second, the legislation caps the annual rent increase at 10% over the course of a single year, where Proposition 21 would cap the annual rent increase at 15% over a three-year period.<sup>51</sup> For example, under the act, an owner of residential real property could raise rents

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<sup>43</sup> *Id.* § 1954.53(b).

<sup>44</sup> *Id.* § 1954.535.

<sup>45</sup> Mantel, Henry and Silveria, 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 Oct. 4, 2020).

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

<sup>47</sup> Timothy Hutter, *Governor Newsom Signs Tenant Protection Act of 2019: What Residential Landlords Need to Know About the Capped Rent Increases and New Eviction Protocols*, *The National Law Review* (October 27, 2019), available at <https://www.natlawreview.com/article/governor-newsom-signs-tenant-protection-act-2019-what-residential-landlords-need-to> (last visited Oct. 4, 2020).

<sup>48</sup> *Id.*

<sup>49</sup> Cal. Civ. Code § 1946.2(e)(1-8)

<sup>50</sup> *Id.* § 1946.2, 1947.12, 1947.13.

<sup>51</sup> *Id.* § 1947.12(a)(1).

at a rate of as much as 10% per year, which could result in a rate increase of as much as 30% over three years. An increase of that size is twice what would be permissible under Proposition 21 for a new tenant. Lastly, the Tenant Protection Act is only in place until January 1, 2030.<sup>52</sup>

## B. Proposed Law

### 1. Changes to 1954.50 of the California Civil Code

The title of the sections of the Civil Code spanning from section 1954.50 through section 1954.535 will change from the “Costa-Hawkins Rental Control Act” to the “Rental Affordability Act.”<sup>53</sup>

### 2. Changes to 1954.52 of the California Civil Code

Instead of exempting housing first occupied after February 1, 1995, only housing first occupied within the last fifteen years of the date from which the owner seeks to set the rental rate would be exempt.<sup>54</sup> Further, the blanket exemption from rental control for property that was already exempt on or before February 1, 1995 is completely eliminated.<sup>55</sup> Lastly, while the exemption for single-family homes and condominiums remains in place, it is only effective if the owner is a natural person that owns no more than two residential dwelling or housing units.<sup>56</sup>

Proposition 21 will also codify what California courts consistently hold: that a landlord’s right of fair return on a property shall not be infringed upon by any local charter provision, ordinance, or regulation enacted by a city or county.<sup>57</sup>

### 3. Changes to 1954.53 of the California Civil Code

Aside from the exceptions outlined in section 1954.52, Proposition 21 will allow a city or county to control initial and subsequent rental rates for residential property by way of local charter provision, ordinance, or regulation. As a result, many of the specific exemptions listed in the existing law within section 1954.53 are eliminated, in favor of only including those exemptions listed in 1954.52.

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<sup>52</sup> *Id.* § 1946.2(j), 1947.12(j), 1947.13(c).

<sup>53</sup> Cal. Proposition 21 (2020), available at <https://oag.ca.gov/system/files/initiatives/pdfs/19-0001%20%28Rental%20Affordability%20Act%29.pdf> (last visited Oct. 4, 2020).

<sup>54</sup> Cal. Legislative Analyst’s Office, *Proposition 21 Expands Local Governments’ Authority to Enact Rent Control on Residential Property. Initiative Statute.* (November 3, 2020), available at <https://lao.ca.gov/ballot/2020/Prop21-110320.pdf> (last visited Oct. 4, 2020).

<sup>55</sup> *Id.*

<sup>56</sup> *Id.*

<sup>57</sup> *Id.*



The most significant change within this section is the limitations placed on rent increases for rent-controlled properties at the start of a new tenancy. This increase is capped at 15% over the course of the first three years of the new tenancy, calculated in addition to any increase permitted by local charter provision, ordinance, or regulation.<sup>58</sup> Hypothetically, if a new tenant moves into a building, and the initial rental rate is set at 1000 dollars per month, then over the course of the first three years, the rent could rise no higher than 1150 dollars per month. This is in contrast to the current permitted 10% increase annually, which could result in the same tenant seeing a rent of 1100 dollars per month by the end of the first year alone, and significantly higher than that by the end of the same three-year period.

It is crucial to note that Proposition 21 will not in itself make any changes to local rent-control laws – it merely allows cities and counties to dictate rent control on a more local basis, with less interference from state law.

### III. DRAFTING ISSUES

#### A. Severability

Section 9 of Proposition 21, generally referred to as a “severability clause,” allows any part of the act to be severed from the rest of the measure if the language of the statute, or its application, are deemed invalid. The existence of a severability clause establishes the presumption in favor of severance.<sup>59</sup> Courts in California apply three criteria when determining if a provision can be severed: “the invalid provision must be grammatically, functionally, and volitionally severable.”<sup>60</sup> In the event that any section of Proposition 21 is held invalid, it will be severed from the rest of the measure if the following three statements are true: the rest of the measure makes sense grammatically; the rest of the measure can be implemented on its own; and the electorate would have voted for the initiative even if the invalid section had not been included in the measure. If these criteria are not met, then the court may invalidate the measure in its entirety.<sup>61</sup>

The first key aspect of this measure mainly takes the form of adding and repealing various exemptions to rent control. If one of the added exemptions is found to be improper, or one of the repealed exemptions is found to have been improperly removed, the remaining exemptions can exist on their own. Their removal will not render the code sections grammatically insensible, and the loss of one exemption or another will still allow the rest of the measure to be implemented.

The second key aspect of this measure – that rent increases for a new tenancy be capped at 15% over the course of the first three years – is separate from the listed

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<sup>58</sup> *Id.*

<sup>59</sup> *Cal. Redevelopment Ass’n v. Matosantos*, 53 Cal. 4th 231, 270 (2011).

<sup>60</sup> *Id.*

<sup>61</sup> *Id.*

exemptions, and so the changes to § 1954.52 and § 1954.53 of the Civil Code can occur independent of each other. While the result if one or more provisions were severed would not necessarily be the reform to Costa-Hawkins that the proponents of Proposition 21 intended, the result would still be a partial expansion of the authority to enact rent control to cities that adopt rent-control measures, and so the electorate's interests in voting for the measure would likely be satisfied. Therefore, if one of the sections of Proposition 21 is held invalid by the courts, that section will likely be considered severable, leaving the rest of the measure intact.

#### IV. CONSTITUTIONAL ISSUES

##### A. United States Constitutional Issues

The United States Constitution's Fourteenth Amendment Due Process Clause prevents the government from enacting legislation that lacks a reasonable relation to a proper legislative purpose.<sup>62</sup> The Supreme Court of California interpreted this to mean that rent-control ordinances must be "reasonably calculated to provide landlords with a just and reasonable return on their property."<sup>63</sup> Therefore, if an ordinance does not allow landlords a just or reasonable return on their property then it is confiscatory, unconstitutional, and thus invalid.<sup>64</sup> In general, the Supreme Court of California is hesitant to decide rent-control cases because an issuance of an opinion can leave the "reviewing court the impossible task of finding somewhere in the penumbra of the Constitution a stipulation that a particular apartment in a particular building should rent for \$746 per month rather than \$745."<sup>65</sup>

The burden falls on the landlord to challenge a rent control law that does not allow a just or reasonable return.<sup>66</sup> If the rent-control ordinance is determined to be unconstitutional, then the city or county government has to adjust future rents to a rate that will reasonably compensate landlords in the future.<sup>67</sup> In order to determine whether rent-control prices offer a just or reasonable return to landlords, courts do an analysis which balances the consumer's interests against the investor's interests.<sup>68</sup> Included within the balancing analysis is whether the rent-control law allows the city or county to adjust prices "within a broad zone of reasonableness" but not to the extent that would prevent effective real estate enterprises from "operating successfully."<sup>69</sup>

If this proposition is passed, it would face legal challenges from Californian landlords. First, a city or county government would have to adopt the rent-control measures

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<sup>62</sup> *Birkenfeld v. City of Berkeley*, 550 P.2d 1001 (Cal. 1976); *Kavanau v. Santa Monica Rent Control Bd.*, 941 P.2d 851 (Cal. 1997).

<sup>63</sup> *Id.*

<sup>64</sup> *Galland v. City of Clovis*, 16 P.3d 130 (Cal. 2001), *as modified* (Mar. 21, 2001).

<sup>65</sup> *Kavanau v. Santa Monica Rent Control Bd.*, 941 P.2d 851 (Cal. 1997).

<sup>66</sup> *Id.*

<sup>67</sup> *Id.*

<sup>68</sup> *Galland v. City of Clovis*, 16 P.3d 130 (Cal. 2001).

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

from the proposition, which state voters have already passed into law. Next, after a landlord has incurred enough losses to prove that their ability to raise rent, being restricted to 15% over the span of three years at the start of a new tenancy, did not allow them to make a just or reasonable return, then a they would bring a lawsuit against the city or county. An important note, applying to a landlord's ability to recover, is that a "a constitutional injury does not occur simply because a government regulation limits the value of property."<sup>70</sup> If the rent-control provision is found to be unconstitutional because it does not allow landlords a just or reasonable return, then the court could order the city or county government to adjust the provision to allow for landlords to be reasonably compensated in the future. After the city or county has adjusted its rent-control ordinance, then the landlord would have to prove that, even after this adjustment, they could not obtain a "fair return" on their property because of the continued rent control.<sup>71</sup>

Landlords have also challenged rent-control ordinances in other states under the Fifth Amendment Takings Clause.<sup>72</sup> This clause states that private property shall not "be taken for public use, without just compensation."<sup>73</sup> A recent U.S. Supreme Court decision recognized that property owners may bring Fifth Amendment claims for compensation in federal court without first getting a ruling in state court.<sup>74</sup> This case overturned the previous requirement that property owners bringing a Fifth Amendment claim would have to receive a decision from state court before proceeding to litigation in federal court.<sup>75</sup> With this impactful decision, it is expected that the number of landlords who will attempt to bring Fifth Amendment Takings Clause claims in federal court, against local or state rent-control laws, will increase.<sup>76</sup> If that is true, then federal court circuits may develop their own rent control tests. Therefore, the future of rent control, as a policy, is uncertain and federal court decisions may dictate any new developments.

## V. POLICY CONSIDERATIONS

### A. Arguments for Proposition 21

Proponents generally cite statewide statistics to support their arguments that rent control helps improve rent affordability, prevent homelessness, and reduce environmental harm.

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<sup>70</sup> *Hillsboro Properties v. City of Rohnert Park*, 41 Cal. Rptr. 3d 441 (Cal. App. 1st Dist. 2006).

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

<sup>72</sup> Luis Ferre-Sadurni, *Landlords Strick Back, Suing to Dismantle Rent Regulation System* (July 16, 2019), available at <https://www.nytimes.com/2019/07/16/nyregion/ny-rent-regulation-lawsuit.html> (last visited Oct. 5, 2020).

<sup>73</sup> U.S. Const. amend. V.

<sup>74</sup> *Knick v. Township of Scott, Pennsylvania*, 139 S. Ct. 2162 (2019).

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

<sup>76</sup> Luis Ferre-Sadurni, *Landlords Strick Back, Suing to Dismantle Rent Regulation System* (July 16, 2019), available at <https://www.nytimes.com/2019/07/16/nyregion/ny-rent-regulation-lawsuit.html> (last visited Oct. 5, 2020).

First, proponents argue that this proposition would assist the many Californians who are renters.<sup>77</sup> According to California’s Department of Housing and Community Development, of California’s six million renter households, one in three renters pays more than 50% of their income toward rent.<sup>78</sup> In addition, home ownership in California is the lowest it has been since the 1940s.<sup>79</sup> A 2018 USC study found that implementation of rent control to this renter population could protect tenants from price gouging while also being simple to administer by local governments.<sup>80</sup> Prior studies demonstrates that long-term tenants living in rent-controlled units “receive considerable benefits by paying substantially less than what would otherwise be the case.”<sup>81</sup> In sum, populations who are unable to pay rent could gain social benefits, which are difficult to quantify, because of the money they would retain by living in a rent-controlled unit.<sup>82</sup>

Second, proponents associate high rent prices with an increasing number of homeless people in California.<sup>83</sup> A 2018 UCLA study’s title sums up this argument as “People Are Simply Unable to Pay Rent.”<sup>84</sup> This study conducted an overview of Los Angeles’s rent-control history which has been characterized by a continual inflation of rent prices since the 1940s.<sup>85</sup> The number of affordable housing units, covered under Los Angeles’s Rental Stabilization Ordinance, has decreased despite the population of Los Angeles increasing.<sup>86</sup> At the time of this study in 2018, there were 53,000 homeless people in the county of Los Angeles.<sup>87</sup> A report from California’s Legislative Analyst’s Office (LAO) states that, as of 2019, there are a total of 151,000 people experiencing homelessness in California.<sup>88</sup> While the LAO admits that most legislative proposals addressing homelessness have occurred on the local level, the LAO asserts that the state still contributes to resolving the problem through the administering of various grant programs to developers or landlords. Lastly, the

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<sup>77</sup> Cal. Proposition 21 (2020), available at <https://oag.ca.gov/system/files/initiatives/pdfs/19-0001%20%28Rental%20Affordability%20Act%29.pdf> (last visited Oct. 4, 2020).

<sup>78</sup> Cal. Dep’t Hous. & Cmty. Dev., *California’s Housing Future: Challenges And Opportunities* (Feb. 2018), available at [https://hcd.ca.gov/policy-research/plans-reports/docs/sha\\_final\\_combined.pdf](https://hcd.ca.gov/policy-research/plans-reports/docs/sha_final_combined.pdf) (last visited Oct. 4, 2020).

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

<sup>80</sup> Pastor, Carter, and Abood, *Rent Matters: What are the Impacts of Rent Stabilization Measures?* (Oct. 2018), available at [https://dornsife.usc.edu/assets/sites/242/docs/Rent\\_Matters\\_PERE\\_Report\\_Web.pdf](https://dornsife.usc.edu/assets/sites/242/docs/Rent_Matters_PERE_Report_Web.pdf) (last visited Oct. 4, 2020).

<sup>81</sup> *Id.*

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

<sup>83</sup> Cal. Proposition 21 (2020), available at <https://oag.ca.gov/system/files/initiatives/pdfs/19-0001%20%28Rental%20Affordability%20Act%29.pdf> (last visited Oct. 4, 2020).

<sup>84</sup> Belinkoff Katz, “People Are Simply Unable to Pay the Rent” *What History Tells Us About Rent Control in Los Angeles* (Oct. 2018), available at <https://luskincenter.history.ucla.edu/wp-content/uploads/sites/66/2018/09/People-Are-Simply-Unable-to-Pay-the-Rent.pdf> (last visited Oct. 4, 2020).

<sup>85</sup> *Id.*

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

<sup>87</sup> *Id.*

<sup>88</sup> Cal. Legislative Analyst’s Office, *Proposition 21 Expands Local Governments’ Authority to Enact Rent Control on Residential Property. Initiative Statute*. (November 3, 2020), available at <https://lao.ca.gov/ballot/2020/Prop21-110320.pdf> (last visited Oct. 4, 2020).

UCLA study recommends repealing the Costa-Hawkins Act in order to address the homelessness crisis.<sup>89</sup>

Third, proponents argue that high rent forces people to live further away from their workplace and results in environmental harm from the longer commute.<sup>90</sup> Californians average a 29.3-minute commute, which is the fifth longest in the United States.<sup>91</sup> A 2018 UC Berkeley policy brief argued that workers without stable housing are susceptible to increased difficulties in finding and keeping a job.<sup>92</sup> As a result, these workers are forced to live in areas outside of cities, although cities have the most jobs, so they are forced into long commutes through use of private vehicles.<sup>93</sup> An increased commute time is directly related to an increased amount of harmful greenhouse gases being released into the environment from these vehicles.<sup>94</sup> Even with the COVID-19 pandemic causing many people to work from home, Pew Research Center cites data that working from home is only an option for the highest positions in the most affluent professions.<sup>95</sup> Thus, people who are not in these professions must still do in-person work, which necessitates them using some mode of transportation to get there.<sup>96</sup> If people could afford to live near where they worked, then environmental harm would be decreased because traffic congestion would be reduced.

## B. Proponent's Coalition

There are a variety of organizations who are supporting this proposition which was financed by the AIDS Healthcare Foundation.<sup>97</sup> Individuals such as U.S. Senator Bernie Sanders, U.S. Congressperson Maxine Waters, U.S. Congressperson Barbara Lee, President pro Tempore of the California Senate Kevin de Leon, and Reverend Al Sharpton all support this initiative.<sup>98</sup> The California Democratic Party is among the most prominent organizations

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<sup>89</sup> Belinkoff Katz, *"People Are Simply Unable to Pay the Rent" What History Tells Us About Rent Control in Los Angeles* (Oct. 2018), available at <https://luskincenter.history.ucla.edu/wp-content/uploads/sites/66/2018/09/People-Are-Simply-Unable-to-Pay-the-Rent.pdf> (last visited Oct. 4, 2020).

<sup>90</sup> Cal. Proposition 21 (2020), available at <https://oag.ca.gov/system/files/initiatives/pdfs/19-0001%20%28Rental%20Affordability%20Act%29.pdf> (last visited Oct. 4, 2020).

<sup>91</sup> United States Census Bureau, *Mean Travel Time to work (minutes), workers age 16+ years* (2018), available at <https://www.census.gov/programs-surveys/acs/> (last visited Oct. 4, 2020).

<sup>92</sup> Montojo, Barton, and Moore, *Opening the Door for Rent Control: Toward a Comprehensive Approach to Protecting California's Renters* (2018), available at <https://belonging.berkeley.edu/opening-door-rent-control> (last visited Oct. 4, 2020).

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

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

<sup>95</sup> Drew Desilver, *Before Coronavirus, telework was an optional benefit, mostly for the affluent few* (Mar. 20, 2020), available at <https://www.pewresearch.org/fact-tank/2020/03/20/before-the-coronavirus-telework-was-an-optional-benefit-mostly-for-the-affluent-few/> (last visited Oct. 4, 2020).

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

<sup>97</sup> Yes on Prop 21, *Who We Are*, available at <https://yeson21ca.org/endorsements/> (last visited Oct. 4, 2020).

<sup>98</sup> Joshua Smith & Ged Kenslea, *Sen. Bernie Sanders Endorses California's Rental Affordability Act* (Nov. 16, 2019), available at <https://www.businesswire.com/news/home/20191116005038/en/Sen.-Bernie-Sanders-Endorses-California%E2%80%99s-Rental-Affordability> (last visited Oct. 4, 2020); Vivian Bossieux-Skinner, *California Proposition 21: Rent Control* (July 30, 2020), available at <https://www.kalw.org/post/california-proposition-21-rent-control#stream/0> (last visited Oct. 4, 2020).

to endorse a yes vote on this proposition.<sup>99</sup> Other supportive organizations include Housing Now! California, National Organization of Black County Officials, and AFSCME California PEOPLE.<sup>100</sup> The Los Angeles Times' editorial board, in support, states that, "Rent control can be a helpful tool for cities struggling with gentrification, displacement and homelessness in a booming real estate market."<sup>101</sup>

### C. Arguments Against Proposition 21

Opponents generally argue that rent control will not fix California's housing problem, and that the state needs to create other innovative solutions. Additionally, they cite how the passage of this proposition would lead to a substantial loss in tax revenue for governments and lead to renters being more significantly disadvantaged than they are now.

First, opponents cite how nearly 60% of California voters rejected Proposition 10, the previous form of Proposition 21, in 2018.<sup>102</sup> The argument is; because voters rejected a similar proposition, voters should be consistent and reject this one too.<sup>103</sup> The OC Register sums up this position, "Voters rejected a similar measure two years ago by a significant margin. But once again, they are being presented a measure predicated on the fallacy that rent control is a good policy."<sup>104</sup> Simply put, opponents do not think that rent control works because it is an example of a "price ceiling," which kills incentives to build more housing, causes landlords to neglect maintenance, and inflates prices for non-rent-controlled units.<sup>105</sup> Instead of implementing rent control which amounts to excessive regulation, local lawmakers could reform local zoning laws instead.<sup>106</sup>

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<sup>99</sup> *Id.*

<sup>100</sup> Aids Healthcare Foundation, *Calif. Rent Control Ballot Measure Heads to Voters in Nov.; Campaign Rolls Out 200+ Endorsements* (July 3, 2020), available at <https://www.aidshealth.org/2020/07/calif-rent-control-ballot-measure-heads-to-voters-in-nov-campaign-rolls-out-200-endorsements/> (last visited Oct. 4, 2020).

<sup>101</sup> Los Angeles Times Editorial Board, *Endorsement: Yes on Prop. 21. California has a housing crisis and cities should be able to protect tenants* (Sep. 16, 2020), available at <https://www.latimes.com/opinion/story/2020-09-10/yes-prop-21> (last visited Oct. 4, 2020).

<sup>102</sup> No on Prop 21, *No on Proposition 21 We need real housing solutions, not the same flawed initiative year after year*, available at [https://noonprop21.vote/wp-content/uploads/2020/07/HousingFreeze\\_FactSheets\\_1-Initiative\\_v6-4pdf.pdf](https://noonprop21.vote/wp-content/uploads/2020/07/HousingFreeze_FactSheets_1-Initiative_v6-4pdf.pdf) (last visited Oct. 4, 2020).

<sup>103</sup> Cal Matters, *Proposition 21: Rent Control*, available at <https://calmatters.org/election-2020-guide/proposition-21-rent-control/> (last visited Oct. 4, 2020).

<sup>104</sup> Orange County Editorial Board, *Proposition 21 will make the housing crisis worse. Vote No.* (Aug. 6, 2020), available at <https://www.ocregister.com/2020/08/06/proposition-21-will-make-the-housing-crisis-worse-vote-no/> (last visited Oct. 4, 2020).

<sup>105</sup> Cal Matters, *5 Things a Californian should know about rent control* (Jan. 2, 2018), available at <https://calmatters.org/housing/2018/01/5-things-californian-know-now-rent-control/> (last visited Oct. 4, 2020).

<sup>106</sup> Adam Millsap, *More Rent Control In California Will Make Housing Problem Worse* (Sep. 4, 2020), available at <https://www.forbes.com/sites/adammillsap/2019/09/04/more-rent-control-in-california-will-make-housing-problem-worse/#6e22eaec1955> (last visited Oct. 4, 2020).

Second, opponents argue that the loss of tax revenue would be devastating, especially with the COVID-19 pandemic restricting budgets.<sup>107</sup> California’s LAO estimates that tens of millions of dollars per year, in the form of lessened property, sales, and income tax revenues, could be lost for state and local governments.<sup>108</sup> The value in rental properties will go down, which will cause a decrease in property and income taxes paid by landlords.<sup>109</sup> These lost costs would most likely “be paid by fees on owners of rental housing” in an attempt to make up some lost revenue.<sup>110</sup> Additionally, rent-control policies necessitate local governments expand their rent oversight boards which would result in increased costs of operation.<sup>111</sup> Overall, “most economists – left or right – think rent control is bad.”<sup>112</sup>

Third, low to middle class renters who may be seniors, veterans, or disabled are offered no protections under this rent-control policy.<sup>113</sup> An analysis by the California Apartment Association concludes that rent control policies are not a solution to a housing crisis because low-income individuals are not motivated to move out of their rent controlled units while non-rent-controlled units increase in price to make up lost costs.<sup>114</sup> If fewer people move out of their rent controlled units, then “the supply of available units can actually contract.”<sup>115</sup> Lastly, a limitation on how much a landlord may increase rent could lead to a disincentive for them to maintain their units in hopes of making up some of the lost revenues.<sup>116</sup>

#### D. Opponent’s Coalition

The Californians for Responsible Housing leads the “No on Prop 21” campaign and has united a wide range of individuals and organizations against rent control.<sup>117</sup> The most prominent individual is Governor Newsom, who is against this proposition because of the recent passage of AB 1482, which caps annual rent increases at 5% plus inflation for tenants, up to a maximum of 10%.<sup>118</sup> Organizations who oppose include The California

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<sup>107</sup> No on Prop 21, *No on Proposition 21 We need real housing solutions, not the same flawed initiative year after year*, available at [https://noonprop21.vote/wp-content/uploads/2020/07/HousingFreeze\\_FactSheets\\_1-Initiative\\_v6-4pdf.pdf](https://noonprop21.vote/wp-content/uploads/2020/07/HousingFreeze_FactSheets_1-Initiative_v6-4pdf.pdf) (last visited Oct. 4, 2020).

<sup>108</sup> Cal. Legislative Analyst’s Office, *Proposition 21 Expands Local Governments’ Authority to Enact Rent Control on Residential Property. Initiative Statute*. (November 3, 2020), available at <https://lao.ca.gov/ballot/2020/Prop21-110320.pdf> (last visited Oct. 4, 2020).

<sup>109</sup> *Id.*

<sup>110</sup> *Id.*

<sup>111</sup> *Id.*

<sup>112</sup> *Id.*

<sup>113</sup> California Apartment Association, *An Analysis of Rent Control Ordinances in California* (Jan. 2016), available at [https://caanet.org/app/uploads/2016/02/Jan2016\\_Rent\\_Control\\_Study.pdf](https://caanet.org/app/uploads/2016/02/Jan2016_Rent_Control_Study.pdf) (last visited Oct. 4, 2020).

<sup>114</sup> *Id.*

<sup>115</sup> *Id.*

<sup>116</sup> *Id.*

<sup>117</sup> No on Prop 21, *Who We Are*, available at <https://noonprop21.vote/who-we-are/> (last visited Oct. 4, 2020).

<sup>118</sup> California Apartment Association, *Gov. Newsom no on Proposition 21* (Sep. 11, 2020), available at <https://caanet.org/gov-newsom-vote-no-on-proposition-21/> (last visited Oct. 4, 2020).

Chamber of Commerce, The Congress of California Seniors, The OC Register, and many other veteran's and trade groups.<sup>119</sup>

## VI. CONCLUSION

Proposition 21 lifts statewide restrictions on the ability of city and county governments to implement rent control at a time when rising costs of living bear down on Californians to a greater extent than at any other time in history. Rising rents, coupled with economic hardship wrought by COVID-19, have pushed many renters into a position where they are forced to choose between paying rent or providing for their families. If pushed into homelessness, these hardships compounded exponentially.

Similarly, the rising costs of living have an impact on owners and landlords. Proposition 21 seeks to address those concerns while simultaneously giving local politicians the power to address the housing concerns of their constituents as needed. Ultimately, the voters will need to decide what level of priority to give to the issue of rental affordability in November.

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<sup>119</sup> Steve Maviglio, *Leading Seniors Groups Announce Opposition to Proposition 21* (Aug. 5, 2020), available at <https://www.businesswire.com/news/home/20200805005835/en/Leading-Senior-Groups-Announce-Opposition-to-Proposition-21> (last visited Oct. 4, 2020); CalChamber, *OPPOSE: Rental Affordability Act* (Mar. 3, 2020), available at <https://advocacy.calchamber.com/2020/03/03/calchamber-board-votes-to-support-crime-reduction-measure-oppose-rent-control-medical-damage-cap-increase-measures/#rental> (last visited Oct. 4, 2020).