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**SENATE COMMITTEE ON  
ELECTIONS AND CONSTITUTIONAL AMENDMENTS**  
Senator Steven Glazer, Chair  
2021 - 2022 Regular

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<b>Bill No:</b>	SCA 2	<b>Hearing Date:</b>	6/28/21
<b>Author:</b>	Allen		
<b>Version:</b>	12/7/20		
<b>Urgency:</b>		<b>Fiscal:</b>	No
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**Subject:** Public housing projects

**DIGEST**

This measure repeals Article 34 of the California Constitution, which requires majority approval by the voters of a city or county for the development, construction, or acquisition of a publicly funded affordable housing project.

**ANALYSIS**

Existing law:

- 1) Requires majority approval by the voters of a city or county for the development, construction, or acquisition of a publicly funded “low-rent housing project.”
- 2) Provides that the term “low-rent housing project,” as defined in Section 1 of Article 34 does not apply to any development composed of urban or rural dwellings, apartments, or other living accommodations that meets any of the following:
  - a) The development is privately owned housing, receiving no property tax exemption, as specified, and not more than 49% of the dwellings, apartments, or other living accommodations of the development may be occupied by persons of low income.
  - b) The development is privately owned housing, is not exempt from property taxes by reason of any public ownership, and is not financed with direct long-term financing from a public body.
  - c) The development is intended for owner-occupancy rather than for rental-occupancy.
  - d) The development consists of newly constructed, privately owned, one-to-four family dwellings not located on adjoining sites.
  - e) The development consists of existing dwelling units leased by the state public body from the private owner of these dwelling units.

- f) The development consists of the rehabilitation, reconstruction, improvement or addition to, or replacement of, dwelling units of a previously existing low-rent housing project.
- g) The development consists of the acquisition, rehabilitation, reconstruction, improvement, or any combination thereof, of a rental housing development which, prior to the date of the transaction to acquire, rehabilitate, reconstruct, improve, or any combination thereof, was subject to a contract for federal or state public body assistance for the purpose of providing affordable housing for low-income households and maintains, or enters into, a contract for federal or state public body assistance for the purpose of providing affordable housing for low-income households.

This measure:

- 1) Repeals Article 34 of the California Constitution, which requires majority approval by the voters of a city or county for the development, construction, or acquisition of a publicly funded affordable housing project.

### **BACKGROUND**

Article 34 History. Article 34 was added to the California Constitution in 1950 on the heels of the passage of the federal Housing Act of 1949. The Housing Act of 1949 banned explicit racial segregation in public housing, which left cities scrambling to find alternative ways to separate communities of color from white neighborhoods. The real estate industry, unable to stop the passage of the Housing Act of 1949 at the federal level, sought to slow and stop its implementation at the state and local level.

The enactment of Article 34 grew out of a controversy surrounding a low-income housing project in Eureka, California. The local Housing Authority had applied for federal funding to cover the costs of planning and surveys for a low-income public housing development. After the application for funding was submitted, the City Clerk received a signed petition from more than 15% of the city electorate, requesting any city council approval of the loan application be submitted to the voters for approval. A lawsuit made its way to the California Supreme Court and held that the power of referendum applies only to legislative acts, not acts that are executive or administrative. Since the acts were administrative and not legislative, the people could not use a referendum to change the city government's decisions, and the court had no jurisdiction.

Given that the citizens of Eureka could not make decisions around low-income housing developments in their community, they joined forces with the California Real Estate Association (known today as the California Association of Realtors) to enact Article 34 on the November 1950 ballot. According to the argument supporting the initiative, a vote in favor of adding Article 34 to the California Constitution was a vote for the right to say yes or no when a community was considering a low-income housing project. Supporters argued the need for community control was necessary because of tax waivers, and other forms of community assistance that a public housing project required.

Campaign materials and internal documents produced by the California Real Estate Association, the organization behind the ballot measure enacting Article 34 indicate that the constitutional change was more than just giving a voters a say in the approval of housing projects. According to the *Los Angeles Times*, an internal newsletter from the California Real Estate Association legislative committee Chairman stated:

“If you value your property, if you hold liberty dear, if you believe in the dignity of the individual, if you love this land of the free and the home of the brave, if you desire to stop the enemy of socialism that is gnawing at the vitals of America from within, the ballot box is your weapon, the one and only means by which our great Republic will be preserved and improved.”

In the 1950 general election, this was seen as Proposition 10 and approved by voters.

Impacts on Housing Development. Article 34 requires that voter approval be obtained before any “state public body” develops, constructs or acquires a “low rent housing project.” Cities, counties, housing authorities and agencies are all “state public bodies” for purposes of Article 34. As a result, if any of those entities participates in development of a “low rent housing project” and that participation rises to the level of development, construction, or acquisition of the project by the agency, approval by the local electorate is required for the project.

Local agencies usually seek general authority from the electorate to develop low income housing prior to the identification of a specific project. For example, a typical Article 34 election might authorize construction of 500 low income units anywhere in the city or county’s jurisdiction, including its housing authority or other state public bodies. Not all low- and moderate-income housing is a “low rent housing project.” To clarify the requirements of Article 34, the Legislature clarified in statute that specified projects would not require voter approval, such as projects in which less than 49% of the units are occupied by low-income families, and privately owned housing that does not receive public financing, owner-occupied developments.

Jurisdictions that do not comply with Article 34 requirements are not eligible for state funds.

Prior Attempts at Repeal. In 1971, *James v. Valtierra* tested the constitutionality of Article 34. After low-income housing proposals were defeated by referenda in San Jose and San Mateo County, a group of black and Mexican-American persons who were eligible for low-income housing in these communities filed suit alleging Article 34 violated the federal Constitution’s Supremacy Clause, Privileges and Immunities Clause, and Equal Protection Clause. The United States Supreme Court found that Article 34 did not rest on “distinctions based on race” because a referendum was required on any low-income project when the project was within the guidelines set forth in the article, not just projects which were to be occupied by racial minorities. The appellees also argued that Article 34 denied equal protection to low-income households because they were singled out for a mandatory referendum. The Court disagreed with this argument as well by pointing out that a referendum is a democratic decision-making procedure and that California has a long history of using the referendum process to influence or make public policy.

In 1974, Assemblymember Willie Brown authored ACA 40, Resolution Chapter 80, Statutes of 1974, which placed the repeal of Article 34 on the ballot as Proposition 15. That measure was defeated with 61.28% voting against the measure.

Next, Assemblymember Brown authored ACA 47 (Brown), Resolution Chapter 72, Statutes of 1978, and ACA 8 (Brown), Resolution Chapter 32, Statutes of 1979. Combined, these two measures modified Article 34 and was seen as Proposition 4 at the 1980 primary election. Proposition 4 was defeated with 63.41% voting against the measure.

The most recent attempt at repeal took place in 1993 via SCA 17 (Calderon), Resolution Chapter 109, Statutes of 1992, and was seen Proposition 168 at the 1993 special statewide election held on November 2, 1993. This measure was defeated by voters with 59.82% voting against the measure.

### COMMENTS

- 1) According to the Author: Today, California has only 22 affordable and available rentals for every 100 extremely low-income households. A majority of California renters spend more than 30% of their income on housing (nearly one-third spend more than half). Too many people are one missed paycheck away from homelessness.

California's voters have made it clear they want leaders to do better by those struggling to afford housing—supporting ballot measures dedicating hundreds of millions in taxpayer dollars to tackling the housing and homelessness crises. The state owes it to all taxpayers to use the money as efficiently as possible.

SCA 2 will give voters an opportunity to eliminate an obstacle enshrined in the California Constitution in a bygone era, which undermines elected officials' ability to address California's acute housing and homelessness challenges.

- 2) Argument in Support: In a letter supporting SCA 2, the California Association of Realtors states, in part, the following:

*Today, Article 34 is used as a powerful "no growth" weapon for communities that don't want development. The Los Angeles Times has reported that compliance with Article 34 can add between \$10,000 and \$80,000 to the cost of low-income housing. Specifically, Article 34 restricts local governments from efficiently building mid-rise public housing or subsidizing low-income housing. For example, a mid-century, single-story city building, or even a vacant lot, could become a five-story building with affordable rents and public services on the ground floor. The problem is that local government and developers can't develop these types of housing without first engaging in an expensive ballot referendum where they are hoping to educate and convince a majority or super majority of voters to approve the development.*

*Publicly owned affordable housing for low-income people is critical to reducing homelessness and ensuring that housing is available to people of all income levels, especially those living in mixed income developments, which is becoming*

*more of the norm in dense urban environments. To avoid the costs for compliance with Article 34, the public sector provides low-rent housing through a convoluted spread of funding sources and market incentives, including Low Income Housing Tax Credits, to circumvent this requirement. Creative avoidance of the vote required under Article 34 should not be necessary and the archaic requirements repealed.*

*Repealing Article 34 would lift a roadblock to affordable housing construction all over the state.*

- 3) November 2022 Ballot. If SCA 2 passes the Legislature, the authors intend to put the amendment on the November 2022 ballot.
- 4) Double Referral. Prior to this committee, SCA 2 passed the Senate Committee on Housing with a vote of 9-0.

### **RELATED/PRIOR LEGISLATION**

SCA 1 (Allen) of 2020 would have repealed Article 34 of the California Constitution, which requires majority approval by the voters of a city or county for the development, construction, or acquisition of a publicly funded affordable housing project.

### **POSITIONS**

**Sponsors:** California Association of Realtors  
California Housing Consortium  
California Rural Legal Assistance Foundation  
California YIMBY  
Western Center on Law & Poverty

**Support:** London N. Breed, Mayor of the City and County of San Francisco  
Abundant Housing LA  
ActiveSGV  
Affordable Housing Management Association – Northern California and Hawaii  
Affordable Housing Management Association – Pacific South West  
AIDS Healthcare Foundation  
American Planning Association, California Chapter  
Apartment Association, California Southern Cities  
California Community Economic Development Association  
California Housing Partnership  
Chan Zuckerberg Initiative  
City of Pasadena  
City of Pleasanton  
City of Santa Monica  
East Bay for Everyone  
East Bay Housing Organizations  
East Bay Rental Housing Association  
Eden Housing

Facebook, Inc.  
Fresno Metro Black Chamber of Commerce  
Generation Housing  
Health Officers Association of California  
Housing Action Coalition  
Inner City Law Center  
League of Women Voters of California  
Long Beach YIMBY  
Los Angeles Continuum of Care  
Los Angeles County Democratic Party  
Los Angeles Homeless Services Authority  
Merritt Community Capital Corporation  
Mountain View YIMBY  
North Bay Leadership Council  
Northern Neighbors  
Orange County Apartment Association  
Peninsula for Everyone  
People Assisting the Homeless (PATH)  
People for Housing, Orange County  
Public Advocates  
San Fernando Valley YIMBY  
San Francisco Bay Area Rapid Transit District (BART)  
San Francisco YIMBY  
Santa Cruz YIMBY  
Silicon Valley at Home  
Silicon Valley Leadership Group  
South Bay YIMBY  
Southern California Association of Governments  
Streets for People, Bay Area  
University of California Student Association  
Urban Environmentalists  
YIMBY Action  
Zillow Group

**Oppose:** None Received

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