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February 18, 2021

SENT VIA U.S. MAIL & EMAIL (cara.jenkins@legislativecounsel.ca.gov)

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State Legislative Counsel
California State Capitol
1315 10th Street, Room 3021
Sacramento, CA 95814

Re: SB51 (2021 - Durazo) - Possible Violation of U.S. and State Fair Housing Laws and California Constitution Article IV section 16 (Prohibited Special Local Legislation)

Dear Office of Legislative Counsel:

This office represents the **UNITED CALTRANS TENANTS**, an association of families living in the 450+ residential properties owned by the Department of Transportation (“Caltrans”) located in the cities of Pasadena, South Pasadena, and the El Sereno neighborhood of the City of Los Angeles, zip codes 91105, 91030, and 90032. These 450+ homes were acquired by Caltrans beginning in the 1960's for a Route 710 freeway extension. In 2019, two laws halted this freeway extension. Stats 2019 ch 835 (SB7 - Portantino) and Stats 12019 ch 791 (SB29 -Holden).

Between 1973 and 1999 federal court orders under the National Environmental Protection Act (“NEPA”) and the U.S. Historic Preservation Act which stopped construction on this extension. See, City of South Pasadena v. Slater (C.D. Calif. 1999) 56 F.Supp.2d 1106; City of South Pasadena v. Volpe (C.D. Calif. 1976) 418 F.Supp, 854, and El Sereno Organizing Committee v. California Transportation Commission (C.D. Calif. 1995) xxx F.Supp. xxx. The last property was acquired in 1997. Until 1999, the court orders had required all properties to be occupied. In 1999, Caltrans’ lawyers convinced the court to omit this requirement from that order, and soon Caltrans began to de-populate the corridor and engage in abusive landlord policies. Since the rents were paid to the State Highway, the L.A. Caltrans received none, and it had a strong local economic incentive to create permanent vacant homes as being less costly to manage and repair.

This letter concerns pending Senate Bill 51 (2021 - Durazo). It proposes to amend the 1979 Roberti Law, Government Code §§ 54235 through 54238.8, which grants affordable purchase rights to Caltrans residential tenants having ***up to 150% of area median income***. Non-profits and businesses who occupy Caltrans properties as tenants have different purchase rights. SB51 proposes to create a new set of marketing and purchase rules for Caltrans properties ***only in El Sereno (90032)***. It does not change purchase rights in Pasadena or South Pasadena. We request the Office of Legislative Counsel consider the different treatment under SB51 between El Sereno and Pasadena/South Pasadena as to housing marketing and purchases. Is this distinction proper under state and U.S. fair housing laws (42 U.S.C. §§ 2000d-1, 3601-3619, and 5309, and California Government Code §§ 12900-12996) and under California’s Constitution’s prohibition on special local legislation in Article IV section 16? See detailed analysis below on each point.

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SB51's Housing Discrimination Violates U.S. and California Fair Housing Laws.

Since 1979, the Roberti Law has treated tenant purchase rights equally without regard to their address, providing all working income tenants a pathway to home ownership, including the right to form residential rental cooperatives to purchase multi-family properties. Since 1979, there have been many amendments to the Roberti Law. But no prior amendment sought to treat different local areas under different rules.

El Sereno today has a largely Latinx population. Pasadena and South Pasadena have more diverse populations. SB51 has an adverse impact on people of a Latinx background living in Caltrans properties in El Sereno. It denies them the right to purchase properties from Caltrans using tenant-formed residential rental co-ops. This tenant co-op purchase right was used in the Echo Park and Silver Lake areas of Los Angeles in the early 1980's when the Route 2 Freeway was halted by statute. Just five of these tenant rental co-ops provided *permanent affordable rental housing* under the Roberti Law as it is now written:

1.	Marathon Cooperative, Inc.	Properties: 31	Dwelling Units: 73
2.	Silverlake Cooperative, Inc.	Properties: 15	Dwelling Units: 45
3.	Alexandria Cooperative, Inc.	Properties: 6	Dwelling Units: 42
4.	Route 2 Imogene Housing, Inc.	Properties: 1	Dwelling Units: 16
5.	4-Streets Co-op of Rte 2, Inc.	Properties: 23	Dwelling Units: 116
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	Total	Properties: 76	Dwelling Units: 292

All of these are former Caltrans properties sold under the tenant co-op rights provided by the Roberti Law. All five tenant rental co-ops *also are located in Senator Durazo's district*. It is unclear whether any of the five tenant rental co-ops have been consulted on the impacts of SB51 on their operations on former Caltrans properties. Denying the right to use a tenant rental co-op to purchase property in the same Senate District is a form of discrimination in violation of state and federal fair housing laws. This same irrational discrimination would be enacted by SB51 as between El Sereno, Pasadena, and South Pasadena. The stated rationale that one State Senator personally wishes to impose different rules for areas in her district is not legally recognized as a valid reason for violating state and federal fair housing laws. It is arbitrary and capricious.

As recipients of funds from the U.S. government, the State of California in general, and Caltrans in particular, are barred from engaging the type of housing discrimination now proposed by SB51. *See*, U.S. Fair Housing Act (42 U.S.C. §§ 3601 to 3619), Title VI of the U.S. Civil Rights Act of 1964 (42 U.S.C. § 2000d-1), and Title I of the Housing and Community Development Act of 1974 (42 U.S.C. § 5309). *See also*, Presidential Executive Orders No. 11063 (11-20-1962 by Kennedy), No. 12892 (1-17-1994 by Clinton), No. 12898 (2-11-1994 by Clinton), and No. 13166 (8-11-2000, by Clinton). *See also*, Federal Regulations: 24 C.F.R. parts 108, 110, 200 subpart M, and §203.12(b)(3) (Requiring Fair Housing Marketing), 24 C.F.R. §§ 5.150 – 5.168 (Duty of Public Agencies to Affirmatively Further Fair Housing), 24 C.F.R. part 115 (State and Local Fair Housing Enforcement), 24 C.F.R. part 100 (Types of Discriminatory Conduct Under the Fair Housing Act); and 24 C.F.R. § 5.105 and § 5.106 (Required Equal Access to Housing).

The Office of Legislative Counsel needs to advise the Legislature on the propriety of SB51 under state and federal fair housing laws.

SB51 Denies Tenant Residential Rental Cooperatives ONLY in El Sereno.

SB51 (2021 - Durazo) eliminates a priority for tenant residential rental cooperatives now found at Government Code § 54237(d)(1)(B) and in Regulations at 21 C.C.R. §§ 1476(r) & (t), 1477(a)(3), and 1478(c)(1). But SB51 does so *only for the El Sereno area of Los Angeles (zip code 90032)*. Caltrans tenants in Pasadena and South Pasadena would retain the coop purchase rights. Other parts of Senator Durazo's district have many existing tenant rental co-ops operating since 1982 as permanent rental housing on former Caltrans properties. See above list.

SB51 seeks to change the goal of the Roberti Law from ownership by Caltrans tenants to ownership by outside groups, known as "housing related entities." SB51 imposed income limits on the future occupants of such housing at or below 120% of area median income. Existing Roberti Law provides purchase rights to tenants at or below 150% of area median income. Thus, SB51 poses a risk that some existing tenants will not qualify to participate in the proposed SB51 rental program based on slightly higher income, but only if they reside in El Sereno. SB51's new lower income limits would not apply to tenants residing in Pasadena or South Pasadena. Nor would the lower income limits apply to tenants now residing in the five tenant rental co-ops elsewhere in Senator Durazo's district. These distinctions appear to be arbitrary and capricious.

These proposed SB51 different housing marketing and purchasing standards would harm residents of El Sereno, who are overwhelmingly Latinx, while Pasadena and South Pasadena residents are not. All these areas are in the 710 Corridor. These different treatments of housing marketing and purchase rules would harm Latinx El Sereno residents, denying them the existing right to purchase via tenant residential rental cooperative under the Roberti Law. SB51 imposes lower income restrictions on participation in the SB51 rental programs compared to participation in the ownership program in the Roberti Law: 120% versus 150% of area median income (current Government Code section 54237 versus proposed SB 51).

These artificial discriminations in a state housing program likely violate the U.S. Fair Housing Act (42 U.S.C. §§ 2000d-1, 3601-3619, and 5309, and California Government Code §§ 12900-12996), similar California fair housing laws (Government Code §§ 12900 to 12996), and violate the California's prohibition on special local legislation. We request that the Office Legislative Counsel advise the California Legislature of the risks that would attend passage of SB51 due to a likely violation of U.S. and California fair housing laws.

SB51 Violation California Constitution Article IV Section 16 - Local Legislation.

California Constitution Article IV section 16 prohibits legislation that is not of statewide applicability or is of a purely local focus. In 2010, a version of SB9 (Durazo) was amended to avoid this prohibition on special local legislation, apparently at the request of the Governor, and perhaps Legislative Counsel in 2020 advised Senator Durazo on this issues. Such special local legislation is only permitted upon proof of a unique facts that justify the special local legislation. There must be a nexus between the unique facts and the terms in the legislation. None of these requirements of Article IV section 16 are present for SB51.

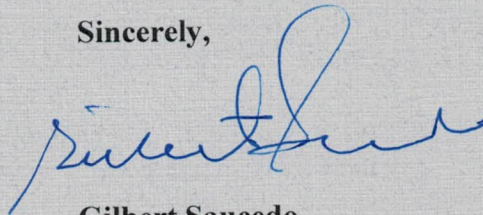
There is no basis to treat properties and residents in El Sereno different from properties and residents in Pasadena and South Pasadena within the same Route 710 corridor, or to treat them differently from tenant rental co-op properties in Echo Park and Silver Lake in the same State Senate District. While SB51 makes a finding seeking to justify this different treatment, the finding is facially false and not supported by any evidence or facts. No facts or evidence are recited to explain the differential treatment of El Sereno properties and tenants from Pasadena and South Pasadena properties and tenants, or from properties and tenants in Echo Park and Silver Lake where tenant-controlled residential coops have operated 292 affordable rental units since the early 1980's and continue to do so on former Caltrans properties.

Besides all the problems with this bill, it is totally unnecessary legislation because the properties can be sold under the existing Roberti Law and regulations. There is no point in passing legislation that does not accomplish anything new of value, and will likely violate state and federal fair housing laws, as well as the California Constitution.

We request that the Office Legislative Counsel advise the California Legislature of the risks that would attend passage of SB51 due to a likely violation of California Constitution Article IV section 16 as special local legislation unjustified by actual facts.

Also, we request that the Office Legislative Counsel advise the California Legislature of the risks that would attend passage of SB51 due to likely violation of state and federal fair housing laws.

Sincerely,



Gilbert Saucedo
Attorney for United Caltrans Tenants

cc: Governor Gavin Newsom (governor@governor.ca.gov)
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