



Save Our Cities; Sue the State

Co-File a Lawsuit against HCD/RHNA

Make the State Audit Count!

The price of democracy is eternal vigilance and action.

See website (CatalystsCA.org, Resources/Litigation) for documents.

Contact Susan@SusanKirsch.com, 415-686-4375 for questions.



Background

- Cities and counties throughout the state were alarmed by the increased new housing units mandated in the 6th cycle RHNA.
- Sen. Steve Glazer requested a Joint Legislative Audit Committee investigation of HCD/RHNA, 9/2021
- The Audit concluded: *HCD must improve its process to ensure that communities can adequately plan for housing, 3/17/22*
- Catalysts hosted a 4-part Town Hall series on housing and litigation, “Stop State Takeover: Preserve Local Control” Fall, 2022, 550 guests; Litigation Resources: CatalystsCA.org

RHNA State Audit and Potential Lawsuit Information Sheet

<p>Why should our city get involved? How does RHNA affect us?</p> <p>It is clear that California has serious housing issues, with housing becoming less affordable for even the average, moderate income family. The short- and long-term solutions are complex, but it involves participation and funding from all levels including communities, cities, counties, and the State. Unfortunately, the State is trying to implement solutions that ignore unique factors within each community and does not account for the local government's ability to provide meaningful solutions to these housing issues. The State is also ignoring the fact that affordable housing solutions require subsidies.</p> <p>The prime example is the State's RHNA numbers generated by HCD (Dept of Housing and Community Development), which significantly over-projected future housing needs in the State. In some cases, the State ignored housing projections of the Dept of Finance or wrongly calculated them, and failed to consider factors outlined by statute. The State is now forcing local communities to dramatically change many of its neighborhoods without proper justification that their RHNA numbers are accurate. Local governments are being strong-armed into planning for hundreds of thousands of additional housing units without the State's help to address the lack of infrastructure, water, public safety, and utilities in many of these neighborhoods to accommodate such growth. This puts public health and safety at risk.</p> <p>Local governments want to work with the State to address these housing issues. HCD's flawed RHNA determinations have caused the public to lose confidence in the overall RHNA process. Additionally, if the State continues to dismiss the realities that communities have to deal with, the State will only create more problems, exacerbate housing issues and inequities, and cause irreversible damage.</p> <p>On March 17, Michael S. Tilden, the Acting California State Auditor, issued a blistering critique of the Department of Housing and Community Development (HCD) and its Regional Housing Needs Assessments (RHNA). The Auditor found problems in the HCD methodology that inflated RHNA requirements potentially by hundreds of thousands of housing units out of the State's total of 2.3 million units, overshadowing the smaller cases of undercounting in the report. The only remedy that cities have is through the courts to sue HCD to down-project the proven inaccurate RHNA numbers.</p>	
<p>HCD violated Government Code § 65584.01(b)(1)</p>	<p>HCD was required to "meet and consult with the council of governments regarding the assumptions and methodology to be used..."</p> <p>But HCD did not review or verify much of its data with the councils of governments.</p>
<p>HCD failed to consider several of the factors listed in Government Code § 65584.01(b)(1)</p>	<p>The law requires HCD to review data and assumptions that councils of governments submit for the factors considered in housing needs assessments, and it allows HCD to make adjustments to the needs assessments after this consideration.</p> <p>Again, HCD did not specifically request such information in order to determine those needs assessments.</p> <p>HCD did not adequately consider the jobs/housing balance factor or the housing lost during emergencies factor.</p>
	<p>The result is an underassessment of housing needs in certain regions, while other regions have an overassessment of housing needs.</p>

<p>HCD's use of a 5% total vacancy rate is wholly unsupported by any data and completely unreasonable.</p>	<p>HCD did not provide adequate support for a critical determination it made about the healthy housing vacancy rate that it used.</p> <p>HCD utilized unreasonable comparison points to evaluate healthy market vacancy, in that it utilized a 5% total vacancy rate, rather than a 5% rate for the rental housing market and a more realistic standard for the for-sale housing vacancy rate. HCD's 5% total vacancy rate contradicts Government Code section 65584.01(b)(1)(E), which specifically states that "the vacancy rate for a healthy <i>rental housing market</i> shall be considered no less than 5 percent." (Emphasis added.) In addition, a 5% vacancy rate for owner-occupied homes is an unhealthy rate, as homeowner vacancy in the U.S. has been around 1.5% since the 1970s. Thus, HCD's use of a 5% total vacancy rate is both contrary to the law and unreasonable.</p>
<p>HCD failed to consider appropriate comparable regions.</p>	<p>HCD did not sufficiently review the regions that councils of governments compared themselves to as part of the needs assessment process. HCD's reviews of comparable regions selected by councils of government have been inconsistent, causing inconsistent, overlapping, and undercounted data to be used, resulting in errors that are inaccurate to account for future housing needs.</p>
<p>HCD's failure to re-assess the RHNA determinations and make corrections will impact the current and potentially all future housing cycles.</p>	<p>If HCD does not correct its RHNA determinations, as recommended by the State Audit, then the current housing cycle will contain inaccurate housing needs within each region. The failure to correct the process will compound the inaccuracies in future housing cycles, as future RHNA determinations will be based on not only inaccurate data, but also improper methodology from the current housing cycle.</p>

<https://catalystsca.org/litigation-resources/>



Basis of the HCD/RHNA Lawsuit

- State Auditor's report:
 - HCD violated government code
 - Used questionable population projections
 - Used questionable assumptions about household growth rates
 - Used unreliable vacancy rate projections



RHNA is Rigged. Cities are set up to fail!

- State Auditor's report: HCD violated government code, used questionable population projections, questionable assumptions about household growth rates, and unreliable vacancy rate projections.
- 3.5M housing unit shortage was "aspirational." <https://embarcaderoinstitute.com/portfolio-items/3-5-million-california-housing-shortage-number-is-wrong-fueling-poor-policy/>



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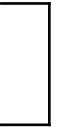


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- Legislation to dismantle local control: **SB-330** (Housing Crisis Act, streamlining approvals for infill building); **SB-35** (streamlining for developers if RHNA not met), **SB-9** (ministerial lot-splits); **Builder's Remedy** (in cities without a certified Housing Element, gives developers streamlined approval if 20% of new units are "affordable.")



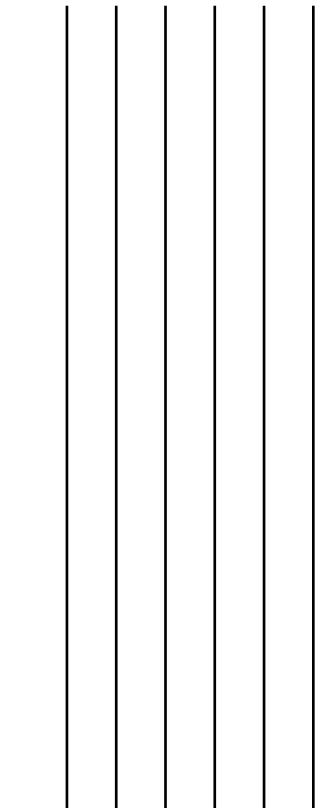
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Special Guest Michael Barnes

an 8-year Albany City Council member
**Author, "How California's sixth-cycle RHNA
was rigged"**

<http://mb4albany.org/?p=1807>



What can elected officials do?

“Our hands are tied” vs “We have a plan”

1

Take an active behind-the-scene leadership role to get the HCD/RHNA lawsuit on the agenda and speak in favor of your jurisdiction joining as a co-plaintiff.

2

Talk to colleagues in surrounding cities and counties to file as co-plaintiffs. Get on the agenda at county-wide and multi-county meetings.

3

Provide leadership that promotes vision and problem solving in support of constituents. Don't succumb to the state's threat, "There's nothing you can do. Your hands are tied."

4

Collaborate with constituent groups. Promote alignment around values of housing policies that are sensible, affordable, environmentally sound, and under local control.

What can constituents do?

Goal: Get 10 or more cities & counties signed as co-plaintiffs by March, 2023

How to get the votes

- Work smarter, not just harder
- It only takes a few committed people to make a big difference
- Go for the low-hanging fruit

1. Get Started: Organize a team & review the process
2. Assess likelihood of success: BOS/CC
3. Identify sources of influence
4. Plan a strategy (tasks, teams, and timelines) to get to “yes”
5. Implement the strategy
6. Monitor progress
7. Evaluate results and plan next steps



GOAL: 10 or more co-plaintiffs

Why 10 or more co-plaintiffs?

- ✓ Increased diversity (North/South; urban, rural, suburban; wealthy, less wealthy)
- ✓ Increased influence and visibility
- ✓ Decreased risk of state retaliation
- ✓ Shared cost
- ✓ Increased opportunity to educate and organize neighbors who don't have a clue about the threats to their neighborhoods.



FAQs

Q: Why should our city/county join a lawsuit when a lawsuit could make us a target?

A: Your city/county is already a target! Your voice is being silenced. Demand sensible planning and RHNA numbers that account for water, safety, evacuation routes, infrastructure, transportation, air quality, and thriving businesses.

2.Q: Is it prudent to join a lawsuit when the chances of winning are uncertain?

A: If constituents don't fight now, legislators and HCD, working on behalf of builders and investors, are on track to eliminate local control.



FAQs *continued*

Q: Lawsuits are expensive. Can your city/county afford it?

A: The lawsuit may cost up to \$235K total through the end of a trial. With 10 co-plaintiffs, the cost is estimated to be \$25-\$30K. Cities are paying \$500K+ to housing consultants. Over time, the costs of unfunded mandates run the risk of bankrupting cities.



FAQs *continued*

Q: What are realistic outcomes of the lawsuit?

1. Enough is enough! Stop the madness of building without justification and without providing housing that serves those in greatest need.
2. 6th cycle RHNA numbers would be adjusted.
3. 7th cycle RHNA numbers would not perpetrate the inflated quotas and faulty methodology of the 6th cycle that put cities at risk.
4. Elected officials reject the state's message that "there's nothing you can do" and inspire with the courage to represent their constituents.
5. Constituents demand sensible growth that honors the General Plan and community vision, not succumbing to the power of the builder, real-estate, investor complex.



Q&A

Comments & Discussion

Make the HCD/RHNA Audit Count!

5 Steps to Co- filing a Lawsuit

Step 1: Keep talking.

Talk to peers, neighbors, constituents and colleagues in other cities or counties. Join a Catalysts Call and the next workshop.

Step 2: Check your values, hopes, & concerns.

Assess the short- and long-term risks of forfeiting local control to meet unsafe and unrealistic top-down state mandates that fail to meet the need for housing that is affordable.

Step 3: Confer with the HCD/RHNA Attorney, Pam Lee.

Get answers to the FAQs of your colleagues and constituents.

Step 4: Deliberate about the lawsuit in a public meeting.

Step 5: Take a vote. Make a decision.



What's Next?

For more information: Make the Audit Count . . . Join as a co-plaintiff in the HCD/RHNA lawsuit

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Catalysts website: CatalystsCA.org, Resources