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6 Attorneys for Plaintiffs  
 7 CITY OF HUNTINGTON BEACH, a California Charter City, and Municipal Corporation,  
 8 HUNTINGTON BEACH CITY COUNCIL, and  
 9 MAYOR OF HUNTINGTON BEACH, TONY STRICKLAND, and  
 MAYOR PRO TEM OF HUNTINGTON BEACH, GRACEY VAN DER MARK

10 UNITED STATES DISTRICT COURT  
 11 CENTRAL DISTRICT OF CALIFORNIA

13 CITY OF HUNTINGTON BEACH, a  
 14 California Charter City, and Municipal  
 15 Corporation, the HUNTINGTON BEACH  
 16 CITY COUNCIL, MAYOR OF  
 17 HUNTINGTON BEACH, TONY  
 18 STRICKLAND, and  
 19 MAYOR PRO TEM OF HUNTINGTON  
 BEACH, GRACEY VAN DER MARK  
 Plaintiffs,

20 v.

21 GAVIN NEWSOM, in his official  
 22 capacity as Governor of the State of  
 23 California, and individually; GUSTAVO  
 24 VELASQUEZ in his official capacity as  
 25 Director of the State of California  
 26 Department of Housing and Community  
 27 Development, and individually; STATE  
 28 LEGISLATURE; STATE OF  
 CALIFORNIA DEPARTMENT OF  
 HOUSING AND COMMUNITY  
 DEVELOPMENT; SOUTHERN

CASE NO. 8:23-CV-00421

**COMPLAINT FOR DECLARATORY  
 RELIEF; INJUNCTIVE RELIEF**

1. **VIOLATION OF FIRST AMENDMENT OF THE UNITED STATES CONSTITUTION FOR COMPELLED SPEECH**
2. **VIOLATION OF FOURTEENTH AMENDMENT OF THE UNITED STATES CONSTITUTION FOR PROCEDURAL DUE PROCESS**
3. **VIOLATION OF FOURTEENTH AMENDMENT OF THE UNITED STATES CONSTITUTION FOR SUBSTANTIVE DUE PROCESS**
4. **VIOLATION OF THE COMMERCE CLAUSE OF THE UNITED STATES CONSTITUTION (U.S. CONST., ART. I, § 8, CL. 3)**
5. **VIOLATION OF CALIFORNIA CONSTITUTION ARTICLE XI (CHARTER CITY AUTHORITY)**
6. **VIOLATION OF CALIFORNIA GOVERNMENT CODE §§ 65583 ET.**

1 CALIFORNIA ASSOCIATION OF  
2 GOVERNMENTS; and  
3 DOES 1-50, inclusive,

4 Defendants.

**SEQ. (REGIONAL HOUSING NEEDS  
ALLOCATION LAWS)**

- 7. **VIOLATION OF CALIFORNIA  
CONSTITUTION SEPARATION OF  
POWERS**
- 8. **VIOLATION OF THE CALIFORNIA  
CONSTITUTION, ILLEGAL BILL OF  
ATTAINDER (U.S. CONST., ART. I, §  
10)**
- 9. **VIOLATION OF CALIFORNIA  
ENVIRONMENTAL QUALITY ACT  
(PUBLIC RESOURCES CODE §§ 21000  
ET. SEQ. (CEQA))**
- 10. **VIOLATION OF CALIFORNIA  
CONSTITUTION ARTICLE IV,  
SECTION 16 (SPECIAL STATUTE)**
- 11. **FRAUD**

**DEMAND FOR JURY TRIAL**

13

14

15 The CITY OF HUNTINGTON BEACH (“City of HB”), the

16 HUNTINGTON BEACH CITY COUNCIL (“City Council” or “Council

17 Members”)<sup>1</sup>, the MAYOR OF HUNTINGTON BEACH TONY STRICKLAND

18 (“Mayor”), and the MAYOR PRO TEM OF HUNTINGTON BEACH

19 GRACEY VAN DER MARK (“Mayor Pro Tem”) are all collectively

20 hereinafter referred to together as “City” or together as “Plaintiff(s).” The City

21 bring this lawsuit (“Complaint”) seeking declaratory and injunctive relief for

22 violations committed by various State elected and appointed officials, including

23 GAVIN NEWSOM, in his official capacity as Governor of the State of

24 California (“Governor”), and individually; GUSTAVO VELASQUEZ in his

25 official capacity as Director of the State of California Department of Housing

26

27 <sup>1</sup> The HUNTINGTON BEACH CITY COUNCIL is comprised of Seven elected

28 Council Members; one Council Member is also the Mayor, and another Council  
Member, Mayor Pro Tem. So, when this Complaint refers to “City Council” or  
“Council Members,” those terms include the Mayor and Mayor Pro Tem.

1 and Community Development (“Director”), and individually; STATE  
2 LEGISLATURE; STATE OF CALIFORNIA DEPARTMENT OF HOUSING  
3 AND COMMUNITY DEVELOPMENT (“HCD”); SOUTHERN  
4 CALIFORNIA ASSOCIATION OF GOVERNMENTS (“SCAG”); and DOES  
5 1-50, inclusive (all together as “Defendants”), against City (and the rights of all  
6 others similarly situated) guaranteed by the First and Fourteenth Amendments of  
7 the United States Constitution, Article 1, Section 8, Clause 3 of the U.S.  
8 Constitution, Article I Section 7 of California Constitution, Article IV of the  
9 California Constitution, Article XI Section 5 of California Constitution,  
10 California Government Code Sections 65583, *et. seq.*, California Public  
11 Resources Code Sections 21000, *et. seq.*, and Urban Water Management  
12 Planning Act (Cal. Wat. Code, §§ 10610, *et. seq.*).

13 By this Complaint the Plaintiff(s), seeks a declaration invalidating, and an  
14 order enjoining, the enforcement of California Government Code Sections  
15 65583, 65583.1, 65583.2, 65583.3, 65584, 65584.01, 65584.02, 65584.03,  
16 65584.04, 65584.045, 65584.05 65584.06, 65584.07, 65584.09, 65584.2, 65585 of  
17 Title 7 of the Government Code (which provides State Planning and Land Use  
18 Laws), these aforementioned Government Code Sections as a subset is  
19 commonly known as the “Regional Housing Needs Allocation Laws”  
20 (hereinafter “RHNA Laws”).

21 The Plaintiff(s) bring this Action pursuant to 28 U.S.C. 1331 as  
22 Defendants have committed substantial deprivation of Plaintiff(s)’ rights under  
23 the U.S. Constitution.

24 The Plaintiff(s) aver the following upon personal knowledge, information,  
25 and belief, and based upon the investigation of counsel as to all other facts  
26 alleged in the Complaint. Plaintiff(s) requests a trial by jury of all claims so  
27 triable.

28

1 **GENERAL ALLEGATIONS**

2 **I. INTRODUCTION**

3 1. This Complaint arises from violations of the U.S. Constitution and  
4 California Constitution and State Statutes, i.e., the Governor, the Director, HCD,  
5 SCAG, and other Defendants have commandeered the *rightful and*  
6 *constitutional autonomy and Charter City authority of the City* regarding local  
7 land use matters.

8 2. In 2017 and 2018, California lawmakers passed two packages of  
9 housing bills that amended Title 7 of the California Government Code Sections  
10 65000, *et. seq.*, (“Planning and Land Use Laws”) to provide HCD and its Director  
11 unbridled and unlimited ability to commandeer Charter Cities’ authority regarding  
12 local land use.

13 3. Among the housing bills, in 2018, the State passed SB 1333, in  
14 violation of the California Constitution, requiring Charter Cities to comply with  
15 most of Planning Land Use Laws to deprive Charter Cities of their historical local  
16 authority to conduct Municipal Affairs, and punish the City of Huntington Beach.  
17 The State did this by making the unfounded allegation that housing is a matter of  
18 “Statewide Concern.” This lawsuit will prove that the concept of “Statewide  
19 Concern” with regard to the State’s Legislative efforts on housing is false.

20 4. As a practical matter if allowed to proceed, the State, through its  
21 Governor, the Director, and the State’s administrative agency, HCD, will  
22 continue with an unbridled power play to control all aspects of the City  
23 Council’s land use decisions in order to eliminate the suburban character of the  
24 City and replace it with a high-density mecca. This will be done through the  
25 forced rezoning for high-density housing, including allowing developers to  
26 construct high-density projects leaving the City Council with no discretion to  
27 deny or condition invasive high-density development.

28

1           5.       In general, the recent housing bills referred to above (as well as new  
2 more onerous and capricious ones) combined with existing Planning and Land Use  
3 Laws (California Government Code Sections 65000 through 66300 series as  
4 “Housing Laws”) deprive the City Council of its authority to zone property, and  
5 replace with a State-mandated zoning process. These laws are so flawed,  
6 conflicting, vague, arbitrary and capricious, and left to subjective interpretation and  
7 application of political actors as to be unconstitutional.

8           6.       This rapid, reckless, State-mandated re-development scheme  
9 threatens the health, safety, and welfare of the City; it overburdens existing City  
10 infrastructure, damages environmentally sensitive areas of the City, and  
11 devalues affected private properties.

12           7.       The Housing Laws, including RHNA Laws as defined above, go far  
13 beyond regulating conduct and illegally *force*, in tyrannical fashion, the City to not  
14 only conform to the specific political speech of the State, but these laws *force the*  
15 *City Council Members to make specific statements* of “State speech,” specific  
16 findings consistent with “State speech”, and make specific votes pre-approved by  
17 the State regarding, and related to, “need for housing” in violation of the City  
18 Council Members’ and the City’s, First Amendment rights under the U.S.  
19 Constitution. (*Shurtleff v. City of Boston*, (2022) 142 S. Ct. 1583, that governments  
20 have protected First Amendment “speech” and; *Expressions Hair Design v.*  
21 *Schneiderman*, (2017) 137 S. Ct. 1144, finding against the State compelling  
22 “speech”)

23           8.       The Housing Laws, including RHNA Laws, essentially require the City  
24 Council Members to replace their free speech, i.e., the verbal expressions of their  
25 freely formed opinions and decision-making thoughts, with the words of the State  
26 that advance the State’s political agenda.

27           9.       Indeed, these RHNA Laws demand that the City’s Council engage in  
28 certain speech while engaged in the local legislative process to say what Governor

1 GAVIN NEWSOM, the Director, HCD, and other State actors want them to say,  
2 including but not limited to, there “is a housing crisis,” that Huntington Beach  
3 “needs more affordable housing,” that the State “needs more affordable housing,”  
4 that “the benefits of high-density development in the City outweigh the negative  
5 impacts of high-density development on the environment,” and so on, despite  
6 objective evidence to the contrary. The Governor, the Director, HCD, and SCAG  
7 use the RHNA Laws regulate, even mandate, *how* the City communicates its stance  
8 on housing, what ultimately the Council Members’ “say” in their vote, and what  
9 Council Members are compelled to say to the public with regard to “housing need”  
10 to justify their vote.

11 10. There is a chilling effect these sweeping RHNA Laws present to the  
12 City’s freedom to speak. According to these laws, the City Council must adopt its  
13 Housing Element *by necessarily making findings (speech) that RHNA Units imposed*  
14 *on the City by the State must be planned for based on some amorphous concept that*  
15 *the City (not necessarily the State) needs more housing.* If the City does not adopt  
16 this “State speech,” by making these findings, which are demanded by other State  
17 environmental laws, the State will punish the City. This is a content-based  
18 restriction by the State on how the City Council speaks.

19 11. To illustrate, pursuant to the State’s most prominent environmental  
20 laws, California Environmental Quality Act (“CEQA”), the City Council is required  
21 to adopt a “Statement of Overriding Consideration,” a document containing  
22 “statements of findings” by the City Council, in order to justify, as a matter of  
23 environmental impact, the massive increase in high-density housing, or not adopt a  
24 “Statement of Overriding Consideration” required by CEQA (because the high  
25 density zoning is not justified in light of requisite environmental concerns) and not  
26 zoned for the massive high-density housing mandated by the RHNA Laws and  
27 Defendants, but then face crippling penalties and lawsuits from Defendants.

28 12. The State, through the enforcement of the RHNA Laws, *force* the City

1 Council to “say” through its Statement of Overriding Consideration, which is  
2 absolutely required by CEQA, something that the City Council may not otherwise  
3 choose to say, may not believe to necessarily be true, e.g., that the benefits of the  
4 proposed high-density housing outweigh the negative impacts on the City’s  
5 environment. This is not only forcing the City Council to engage in bad  
6 government, it is forcing the City Council to “choose” high-density housing over  
7 protecting the environment, and it is *forcing* the City Council to “say” both in  
8 speeches and in writing that protecting its environment is not a priority – completely  
9 contrary to the spirit and strictures of CEQA itself.

10 13. Additionally, the high-density development goals of the RHNA Laws  
11 *compel* the City Council to arrive at a “fixed” conclusion in favor of high-density  
12 housing even before consideration through public hearings, eventually making a  
13 public Statement of Overriding Consideration.

14 14. Using RHNA Laws, Defendants, including HCD, determined in 2021  
15 that the City must rezone property to allow the development of 13,368 units of high-  
16 density RHNA Units (the 13,368 units mandated on the City is hereinafter “RHNA  
17 Units”) with little to no ability for the City to disapprove, condition, or control the  
18 development of RHNA Units.

19 15. In order to execute on the State’s asserted mandate of 13,368 RHNA  
20 Units at a 20% inclusionary rate (which is HCD’s goal), essentially means that the  
21 City must plan for approximately 66,840 total units of housing by the end of the  
22 current, 6<sup>th</sup>, Planning Cycle, in 2029.<sup>2</sup> (hereinafter, “Planning Cycle”)

23 16. Moreover, the State’s recent Housing and RHNA Laws impede on  
24 City’s *independent legislative authority* and claim to *prevent judicial review*<sup>3</sup> of  
25 *the HCD administrative rulings*, which *clearly* violates constitutional principles

26 <sup>2</sup> California cities are on the same Planning Cycle; now in the 6<sup>th</sup> Planning Cycle,  
27 which commenced October of 2021 and concludes October of 2029.

28 <sup>3</sup> The State Legislature amended the RHNA process to *eliminate judicial review*  
when it amended Section 65584(c)(4) in 2004.

1 of Separation of Powers and Procedural and Substantive Due Process afforded  
2 by the U.S. Constitution and the California Constitution.

3 17. The RHNA Laws are vague and ambiguous (at best) and create a  
4 flawed process that mandates that the City of Huntington Beach zone for of 13,368  
5 RHNA Units. The RHNA Laws violate the U.S. Constitution, the California  
6 Constitution, and Federal and State law.

7 18. In 2022, the State’s Independent Auditor determined that the  
8 State’s/HCD’s 2021 calculations created using flawed RHNA Laws, were  
9 erroneous, concluding:

10 “HCD does not satisfactorily review its needs assessments to ensure  
11 that staff accurately enter data when they calculate how much  
12 housing local governments must plan to build... **HCD could not**  
13 **demonstrate that it adequately considered all of the factors that**  
14 **state law requires...** This insufficient oversight and lack of support  
15 for its considerations risks eroding public confidence that HCD is  
16 informing local governments of the appropriate amount of housing  
17 they will need.”<sup>4</sup>

18 19. In addition, the requirement to zone for 13,368 RHNA Units is so  
19 disproportionate to other jurisdictions, the City believes that, if measured by square  
20 mile of City land, the 13,368 is the *highest RHNA number* of any other city  
21 throughout the entire State of California (for the current Planning Cycle).<sup>5</sup>

22 \_\_\_\_\_  
23 <sup>4</sup> Online: California City News, “*Auditor Rips Housing Department Over Flawed*  
24 *RHNA Process*,” April 2022, <https://www.californiacitynews.org/2022/04/state-auditor-rips-housing-department-over-flawed-rhna-process.html>

25 <sup>5</sup> The City of Huntington Beach is approximately 28 square miles, much of it is  
26 environmentally sensitive Wetlands and marshes – so the developable amount of  
27 land in Huntington Beach is far less. At 13,368 units, that is approximately 472  
28 units per square mile. This number would be *much higher* if all of the undevelopable  
Wetlands, marshes, and other sensitive environmental areas were removed from the  
calculation.



1           20. For decades, the Housing Laws, including RHNA Laws, were adopted  
2 and amended poorly so as to have no productive effect, and only cause a false  
3 narrative and confusion. The poorly enacted RHNA Laws cause cities like  
4 Huntington Beach to be disproportionately burdened while allowing other cities to  
5 zone for very few RHNA Units.

6           21. So flawed are the RHNA Laws that the State, in a damning admission  
7 that its own Legislation has been flawed for years, recently passed AB 101, which  
8 states:

9           “this bill, by December 31, 2022, would also require HCD, in collaboration  
10 with the Office of Planning and Research and after engaging in stakeholder  
11 participation, to develop a recommended improved regional housing need  
12 allocation process and methodology that promotes and streamlines housing  
13 development and substantially addresses California’s housing shortage, as  
14 provided. The bill would require HCD to submit a report on its findings and  
15 recommendations to the Legislature upon completion.”<sup>6</sup>

16           22. By virtue of AB 101, the State *admits* that its RHNA Laws (and  
17 processes) to determine how many RHNA Units are needed in the State, and  
18 individual jurisdictions, must be fixed. As will be demonstrated at trial, a “flawed  
19 State mandate” can be no “mandate” on a city at all.

20           23. Moreover, if 13,368 RHNA Units are built in the current Planning  
21 Cycle, the size of the Huntington Beach would nearly double overnight, making it  
22 impossible for the City to provide for reliable infrastructure (including water, sewer  
23 and roads), adequate law enforcement and first response departments, health and  
24 safety of the community, a clean and safe environment, to name a few.

25           24. According to the State, if the City does not immediately zone for these  
26 13,368 RHNA Units as required by RHNA Laws, Defendants will punish the City.

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28  

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<sup>6</sup> Online: LegiScan: <https://legiscan.com/CA/text/AB101/id/2047816>

1           25. On February 15, 2023, the Office of the Governor of California tweeted  
2 on social media “Huntington Beach is playing chicken with housing. The state will  
3 hold them accountable. California law lets judges appoint a state agent to do their  
4 housing planning for them – HB can do it themselves or the court will take  
5 control.”<sup>7</sup> In 2019, at a Press Conference, Governor GAVIN NEWSOM proclaimed  
6 that as part of his new housing bills package, he sought to punish cities like  
7 Huntington Beach, as he said “the State’s vision [for housing] will be realized at the  
8 local level” and “ask the folks down in Huntington Beach.”<sup>8</sup>

9           26. The State’s high density housing proliferation scheme is also flawed in  
10 that it targets already-developed areas of the State, does little or nothing to increase  
11 housing development in undeveloped areas of the State, and exempts entirely certain  
12 “favored” portions of the State.

13           27. Governor GAVIN NEWSOM, the Director, and other State Defendants  
14 advance a false narrative that there is a “housing crisis” yet it has been reported,  
15 “according to the 2010 Census, 95 percent of Californians live on just 5.3 percent of  
16 the territory in the state.”<sup>9</sup> In other words, over 95 percent of California is  
17 undeveloped and unoccupied. Moreover, it has also been reported that California  
18 actually has declining population, that “between April 2020 and July 2022, with the  
19 number of residents leaving surpassing those moving in by nearly 700,000.”<sup>10</sup>

20           28. While the State of California is facing an electricity crisis due to supply  
21 shortages, a drought, and water supply crisis, Defendants continue to peddle this  
22 narrative of a need for *more* development, which would put even more strain on all

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23 <sup>7</sup> Online: Twitter: <https://twitter.com/CAgovernor/status/1625898020683538432>

24 <sup>8</sup> Online: YouTube: <https://www.youtube.com/watch?v=JSy2VOGkBF8> at 45:30

25 <sup>9</sup> Online: Daily News, “*Land Use Regulations are obstacles to the California*  
26 *Dream*” April 3, 2019: <https://www.dailynews.com/2019/04/03/land-use-regulations-are-obstacles-to-the-california-dream>

27 <sup>10</sup> Online: California Globe, “*California Loses Nearly 700,000 Residents Since*  
28 *2020*” February 17, 2023: <https://californiaglobe.com/articles/california-loses-nearly-700000-residents-since-2020>

1 of these resources. In doing so, **Defendants target already developed suburban**  
2 **cities** like Huntington Beach for complete *re-development* to densify and transform  
3 suburban single-family communities into high-density suburban cities.

4 29. In addition to a lack of seriousness by the State in creating more  
5 housing where it would be productive to do so in undeveloped areas of the State,  
6 Defendants have also carved out “favored” portions of the State to be *allowed to*  
7 *skirt the very same Housing Laws, including RHNA Laws, which are imposed on*  
8 *Huntington Beach*. In a 2019 article, entitled “*Huntington Beach Sued While Marin*  
9 *County Exempted from Affordable Housing Requirements*” it was reported that in  
10 order to protect Governor GAVIN NEWSOM’s home county, Marin County is  
11 “enjoying a moratorium on affordable housing building requirements until 2028.”  
12 To accomplish this, “sneaky language inserted into a 2017 budget trailer bill  
13 allowed Marin County to maintain its extra restrictions on how many homes  
14 developers can build, giving the finger to the California Anti-NIMBY Statute.”<sup>11</sup>  
15 That Bill was AB 106.

16 30. Defendant Governor GAVIN NEWSOM benefitted his home county of  
17 Marin County from having to comply with certain RHNA Laws in the same way the  
18 City is required to. Marin County is allowed to flout RHNA Laws; the City of  
19 Huntington Beach must plan to build 13,368 RHNA Units while Marin County gets  
20 a pass.

21 31. Moreover, it is reported that “It’s at least noteworthy that the affluent  
22 suburbs seeking ways around their quotas, mostly in the San Francisco Bay Area,  
23 are overwhelmingly Democrat in their political orientation while Huntington Beach  
24 is a Republican stronghold. That would be Montecito, home to celebrities galore,

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25  
26 <sup>11</sup> Online: California Globe, “*Huntington Beach Sued While Marin County*  
27 *Exempted From Affordable Housing Requirements*” January 31, 2019:  
28 [https://californiaglobe.com/articles/  
huntington-beach-sued-while-marin-county-exempted-from-affordable-housing-  
requirements](https://californiaglobe.com/articles/huntington-beach-sued-while-marin-county-exempted-from-affordable-housing-requirements)

1 including Oprah Winfrey, Rob Lowe, Ellen DeGeneres and, most recently,  
 2 expatriate British Prince Harry and his wife, actress Meghan Markle.”<sup>12</sup> And,  
 3 “Some of the sites are vacant while others are occupied, including some shopping  
 4 centers and churches. None is in Montecito or an adjacent enclave called  
 5 Summerland, even though the county’s inventory of vacant land includes about a  
 6 dozen parcels, some of them large, in those two communities. When county officials  
 7 outlined their plan at a public meeting this month, they were asked why no sites in  
 8 Montecito were included. County planning director Lisa Plowman said only sites  
 9 whose owners were interested in development were chosen and no one in Montecito  
 10 or Summerland was amenable to dense multi-family housing.” *Id.*

11 32. If housing and development were of real concern to the State, the  
 12 Governor would not have vetoed a bill in 2022 which sought to prevent foreign  
 13 governments from coming into the State and buying up its precious land resources.<sup>13</sup>  
 14 The fact that Governor GAVIN NEWSOM vetoed such legislation is another act  
 15 that undermines any claim that housing and its high-density development is a matter  
 16 of “Statewide Concern.”

17 33. Governor GAVIN NEWSOM, the Director, and other Defendants have  
 18 claimed repeatedly that housing, homelessness, and urban development is a matter  
 19 of “Statewide Concern.” Their actions are to the contrary.

20 34. If increasing housing was a matter of “Statewide Concern,” (which it  
 21 can be proven it is not), there would be a focus on housing development in  
 22 *undeveloped* areas of the State where development could occur without disrupting  
 23

24 <sup>12</sup> Online: CalMatters, “*As City-State Housing War Heats Up, One Rich California*  
 25 *Enclave Gets A Pass*” February 26, 2023:

26 <https://calmatters.org/commentary/2023/02/housing-quota-montecito-enclave>

27 <sup>13</sup> Online: California Globe, “*Newsom Vetoes Bill To Prohibit Foreign*  
 28 *Governments From Buying CA Agricultural Land*” September 28, 2022:

<https://californiaglobe.com/articles/newsom-vetoes-bill-to-prohibit-foreign-governments-from-buying-ca-agricultural-land>

1 existing development and it would be far less expensive. Moreover, if increasing  
2 housing was a matter of legitimate Statewide Concern, the State could not carve-out  
3 special treatment for certain “favored” portions of the State like Marin County.  
4 Instead, the State’s agenda is clearly *not* a matter of “Statewide Concern” and is  
5 instead nakedly designed to target already-developed suburban cities, to re-develop  
6 them, to make them into new high-density urban areas, thereby reducing the amount  
7 of private property lot ownership and increasing the amount of multi-family housing  
8 for transient living opportunities.

9       35. The favoritism demonstrated by the State is shocking, but it only  
10 underscores the lack of consistent application and equal treatment, i.e., “Equal  
11 Protection” under the Housing Laws, including RHNA Laws. Moreover, it  
12 highlights to selective and punitive nature of those same laws against cities like  
13 Huntington Beach.

14       36. By this Complaint the Plaintiff(s), seeks a Declaration from this Court  
15 that the State’s RHNA Laws are invalid and an Order enjoining the enforcement  
16 thereof against Plaintiff(s) and other cities similarly situated.

17       37. Plaintiff(s), and on behalf all others similarly situated, brings this  
18 lawsuit seeking a Declaration and Injunction to define the limits of a State’s police  
19 power. The U.S. Constitution provides such limits, specifically prohibiting  
20 unfettered and unchecked “police power” of the State and administrative agencies,  
21 like HCD. The issues raised in this Complaint are novel and complex and are of  
22 such importance that they can long longer go without judicial review in Federal  
23 Court.

24       **II. PARTIES**

25       38. Plaintiff, CITY OF HUNTINGTON BEACH (“City”), is and at all  
26 relevant times was a Municipal Corporation and Charter City<sup>14</sup> organized and

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28 <sup>14</sup> Online: Charter, City of Huntington Beach: [https://library.qcode.us/lib/huntington\\_beach\\_ca/pub/municipal\\_code/item/charter-preamble](https://library.qcode.us/lib/huntington_beach_ca/pub/municipal_code/item/charter-preamble)

1 existing under a freeholder’s charter and exercising “Home Rule” powers over its  
2 Municipal Affairs, including without limitation local zoning and land use matters, as  
3 authorized by Article XI, Section 5 of the California Constitution. For decades, the  
4 U.S. Supreme Court has viewed Corporations as “persons” entitled to Fourteenth  
5 Amendment protections, and then most recently, First Amendment Protections  
6 under *Citizens United v. Federal Election Commission* 558 U.S. 310 (2009).

7 39. Plaintiff, HUNTINGTON BEACH CITY COUNCIL (“City Council”  
8 or “Council Members”), is and at all relevant times the elected body of seven  
9 members, elected by the People of the City. This City Council body of seven  
10 members also includes the Mayor and Mayor Pro Tem.

11 40. Plaintiff, MAYOR OF HUNTINGTON BEACH TONY  
12 STRICKLAND (“Mayor”), is and at all relevant times elected by the City Council  
13 as the leader of the City Council pursuant to the City’s Charter.

14 41. Plaintiff, MAYOR PRO TEM OF HUNTINGTON BEACH GRACEY  
15 VAN DER MARK (“Mayor Pro Tem”), is and at all relevant times elected by the  
16 City Council as a leader of the City Council pursuant to the City’s Charter.

17 42. Defendant GAVIN NEWSOM (“Governor”) is and at all relevant times  
18 was the Governor of the State of California. He is being sued in his official and  
19 individual capacity.

20 43. Defendant STATE LEGISLATURE (“State Legislature”) is and at all  
21 relevant times was the State’s Legislative body that developed and passed the  
22 Housing Laws and RHNA Laws as defined above.

23 44. Defendant GUSTAVO VELASQUEZ (“Director”) is and at all relevant  
24 times was the Director of the State of California Department of Housing &  
25 Community Development. He is being sued in his official and individual capacity.

26 45. Defendant SOUTHERN CALIFORNIA ASSOCIATION OF  
27 GOVERNMENTS (“SCAG”) is and at all relevant times was the Southern  
28 California Association of Governments, acting as a body to further the

1 implementation of the Housing Laws and RHNA Laws as defined above in concert  
2 with, or as an extension of, the STATE OF CALIFORNIA DEPARTMENT OF  
3 HOUSING & COMMUNITY DEVELOPMENT.

4 46. Defendant, STATE OF CALIFORNIA DEPARTMENT OF  
5 HOUSING & COMMUNITY DEVELOPMENT (“HCD”) is and at all relevant  
6 times was a Department of the State of California.

7 **III. POTENTIAL PARTIES**

8 47. The City is ignorant of the true names and capacities of those  
9 Defendants sued herein as DOES 1 through 50, inclusive, and therefore sue those  
10 Defendants by such fictitious names. City will amend this Complaint to allege the  
11 true names and capacities of these fictitiously named Defendants when the same  
12 have been ascertained.

13 48. There are several individuals and/or entities whose true names and  
14 capacities are currently not known to the City. Evidence may come forth that others  
15 are legally responsible and liable to the City to the extent of the liability of the  
16 named Defendants. The City will seek leave of the Court to amend this Complaint to  
17 reflect the names and capacities should they become known. The City reserves the  
18 right to amend this claim pursuant to Fed. R. Civ. P. 15(a) and Fed. R. Civ. P. 21  
19 with leave of the Court to add potential additional defendants and additional  
20 allegations and claims.

21 **IV. JURISDICTION AND VENUE**

22 49. Plaintiff(s) bring this Action pursuant to 28 U.S.C. 1331 as Defendants  
23 have committed substantial deprivation of Plaintiff(s)’ rights under the U.S.  
24 Constitution.

25 50. Defendants have deprived Plaintiff(s) of First Amendment rights,  
26 Constitutional rights of Procedural and Substantive Due Process, and Defendants  
27 have violated the Commerce Clause of the U.S. Constitution. Accordingly, this  
28 Court has federal question jurisdiction under 28 U.S.C. Sections 1331 and 1343.

1 This Court has authority to award the requested Declaratory Relief under 28 U.S.C.  
2 § 2201; and the requested Injunctive Relief and damages under 28 U.S.C. § 1343(a).

3 51. Venue is proper in the Southern District of California under U.S.C. §  
4 1391(b)(2) because a substantial part of the events or omissions giving rise to the  
5 claim occurred, or a substantial part of property that is the subject of the action is  
6 situated.

7 52. The City has standing to bring this action as a Municipal Corporation,  
8 which is a “person” within the meaning of Fourteenth Amendment, and is entitled to  
9 its protection. (*River Vale v. Orangetown*, 403 F.2d 684, 1968 (2d Cir. 1968)). The  
10 City of Huntington Beach was not created by the State. In fact, the City, invoking  
11 Article XI of the California Constitution (which is a document embodying the voice  
12 of the people (not the State)), created itself by adopting a Charter and incorporating  
13 as Municipal Corporation. For decades, the U.S. Supreme Court has viewed  
14 Corporations as “persons” entitled to Fourteenth Amendment protections, and then  
15 most recently, First Amendment Protections under *Citizens United v. Federal*  
16 *Election Commission* 558 U.S. 310 (2010). Especially in a conflict with the State  
17 where individual property rights and individual Constitutional rights are at issue in  
18 addition to the City’s property rights and Constitutional rights, the individuals and  
19 their Municipal government properly seek recourse in Federal Court.

20 53. Challenges in Federal Court by a Municipal Corporation and Charter  
21 City are proper when the State legislation adversely affects a municipality’s  
22 proprietary interest in a specific fund of monies; where the State statute violates  
23 “Home Rule” powers of a municipality constitutionally guaranteed under Article XI  
24 Section 5 of the California Constitution; California Government Code Sections  
25 65583, *et. seq.*, and/or where the municipal challenger asserts that if it is obliged to  
26 comply with the State statute it will by that very compliance be forced to violate a  
27 constitutional proscription as well as conflicting State environmental laws.

28 54. Sovereign immunity does not prevent a suit by Plaintiff(s) to restrain



1 individual officials of the State, thereby restraining the government from violations  
2 of the U.S. Constitution. The violations alleged against the Governor and Director  
3 are ongoing and continuous, not simply a one-time violation or recurring past  
4 violations.

5 55. Defendants Governor and HCD through its Director are charged with  
6 the enforcement of the unconstitutional acts alleged herein such that the suit against  
7 the official is not equated with a suit against the State.

8 56. Under 28 U.S.C. Section 1367, a Federal District Court may exercise  
9 supplemental jurisdiction over State claims that the Federal District Court would not  
10 otherwise have.

11 57. The City has performed all conditions precedent to filing this  
12 Complaint including exhausting all available administrative remedies. The City of  
13 Huntington Beach, although maintaining its belief that it was not *required* to as a  
14 matter of State law, has always maintained its Home Rule, Charter City authority,  
15 yet followed the RHNA Laws process (under protest) as required by State law.

16 58. The City further alleges that it is excused from exhausting any available  
17 administrative remedies it may have since Defendants have determined on multiple  
18 occasions they will not accept, agree to, or approve any City claims regarding the  
19 flawed RHNA process including City claims that HCD and SCAG failed to follow  
20 the State RHNA Laws process and denied the City Substantive and Procedural Due  
21 Process, and that the process itself is flawed and the State requirements of 13,368  
22 RHNA Units imposed on the City are illegal. Accordingly, any further exhaustion  
23 would be a futile act.

24 59. This action challenges the decision made and the action already taken  
25 by Defendants and accordingly, not subject to the exhaustion of administrative  
26 remedies doctrine.

27 60. Based upon the recent revelations of the State's Department of  
28 Finance's Independent Auditor's 2022 Report of findings, the City of Huntington

1 Beach has timely brought this action to challenge the flawed RHNA Laws that  
2 require the City to provide land suitable to build 13,368 RHNA Units for this  
3 current Planning Cycle.

4 61. City has no plain, speedy, and adequate remedy in the ordinary course  
5 of law other than to bring this Action to this Federal Court.

6 **V. BACKGROUND**

7 62. Since 1969, the California State Legislature has passed laws requiring  
8 that *general law* cities and counties adequately plan to meet the future housing  
9 needs of people at all income levels in the community. While these laws did *not*  
10 require Charter Cities to comply, most Charter Cities voluntarily followed the  
11 process, but did not to relinquish their Charter City Constitutional Home Rule  
12 authority.

13 63. California’s general law cities (and counties) must meet housing  
14 development goals requirements by adopting housing plans as part of their “General  
15 Plan” as required by the State.

16 64. General Plans serve as the local government’s “blueprint” for how the  
17 city or county will grow and develop and are required to include seven elements.  
18 General Plans lay out process; they do not mandate a particular outcome, or  
19 production result. One such element of a General Plan that is required is a Housing  
20 Element.

21 65. As part of “Housing Element Law” and a subset, RHNA Laws, the  
22 State requires that jurisdictions conduct a *regional housing needs assessment*, which  
23 in part attempts to determine the future housing needs of a jurisdiction during a  
24 planning cycle. Meeting a certain RHNA housing units goal was always a  
25 “mandate” for general law cities, but not for Charter Cities. SB 1333 suddenly  
26 imposed that same mandate on Charter Cities in 2018.

27 66. The process begins with HCD determining a total housing need for the  
28 entire State (the State is divided into regions) (“Regional Determination”). The

1 Regional Determination considers measures of existing housing needs (such as  
2 overcrowding and overpayment or rent) in addition to forecast population growth.  
3 Orange County and Huntington Beach are within the region covered by Southern  
4 California Association of Governments (hereinafter “SCAG”). In this case, HCD  
5 provided SCAG a Regional Determination of 1,341,827 RHNA allocation for the  
6 current Planning Cycle, 2021-2029.

7 67. SCAG developed a methodology for allocating the Regional  
8 Determination to each city and county in the region, and each jurisdiction is  
9 assigned a RHNA allocation.

10 68. The Council of Governments (“COG”) develops a Regional Housing  
11 Need Allocation Plan (“RHNA-Plan”) allocating the Regional Determination to  
12 cities and counties within the region. The typical scenario is that HCD, in  
13 consultation with each COG, such as SCAG, determines the existing and projected  
14 housing needs for each region. (Government Code § 65584.01 (describing the way  
15 the needs determination shall be made)). SCAG is responsible for creating a  
16 formula for distributing the Regional Determination to local governments/cities.  
17 Each city and county must adopt a Housing Element that demonstrates how the  
18 jurisdiction will accommodate its assigned RHNA units through its current zoning  
19 or potential rezoning program. HCD reviews each jurisdiction’s proposed Housing  
20 Element for compliance with State law, i.e., Housing Laws and RHNA Laws.

21 69. Under a comprehensive administrative appeal procedure listed under  
22 Government Code Section 65584.04, a COG may adjust the RHNA numbers of  
23 one or more local governments, regardless of whether each government is the  
24 subject of any appeal.

25 70. Once each local government’s share of the amount of RHNA units,  
26 has been finalized upon the conclusion of the appeal process, Housing Laws  
27 provide that government’s planning agency must then submit drafts of proposed  
28 Housing Elements containing the finalized RHNA units for that local government

1 to HCD for review. HCD then has ninety-days (for adoptions) or sixty-days (for  
2 amendments) to provide written comments to the local government, which the  
3 local government must consider before final adoption of the Housing Element.

4 71. If HCD finds that a draft Housing Element does not substantially  
5 comply with statutory requirements, the local government must either revise the  
6 element in accordance with HCD's recommendations or adopt findings explaining  
7 why the local government believes the Housing Element substantially complies  
8 with the statute despite HCD's comments. (Gov't Code § 65585(f).)

9 72. Once the local government adopts the new or amended Housing  
10 Element, the local government must again submit the same to HCD for review.  
11 (Gov't Code § 65585(g).) HCD will then determine whether the Housing Element  
12 is in substantial compliance with State law. (Gov't Code § 65585(h).)

13 73. If a local government fails to submit a compliant Housing Element  
14 within the required timeframe or is found to be noncompliant with its RHNA  
15 requirements, it can face significant penalties, including the following:

- 16 a. A local government will be subject to a 4-year housing element review  
17 cycle, rather than an 8-year cycle. (Gov't Code § 65588(b).)
- 18 b. A local government will be prohibited from disapproving housing  
19 development projects that meet certain affordability requirements, even  
20 though the proposed projects are not in conformance with the  
21 government's zoning or general plan (colloquially known as the  
22 "Builder's Remedy"). (Gov't Code § 65589.5(d)(5).)
- 23 c. Under certain conditions, if a local government fails to complete a  
24 required rezoning within the time frame required upon the housing  
25 element update, the local government is prohibited from disapproving  
26 a housing development project (that is located on property that is  
27 required to be rezoned and objectively consistent with the general plan  
28

1 policies and design standards) or from taking certain other actions.  
2 (Gov't Code § 65583(g)(1).)

3 d. A court may suspend a local government's authority to issue any  
4 building or zoning permit or any subdivision map approval. (Gov't Code  
5 § 65755(a)(1)-(3).) Conversely, a court may mandate that a local  
6 government approve certain housing projects. (Gov't Code §  
7 65755(a)(4)-(6).)

8 e. A local government will become the target of lawsuits by both the  
9 Attorney General and interested parties, subject to financial penalties.  
10 (Gov't Code § 65583(g)(3).)

11 f. The local government will not be eligible for certain State or federal  
12 grant funds. (*See, e.g.*, Health & Saf. Code § 50829.)

13 74. The Governor, the Director, and HCD have threatened to impose all of  
14 these remedies on the City of Huntington Beach.

15 75. The process to determine a city's RHNA allocation or determination  
16 under the Housing Laws, including RHNA Laws, has some mathematic and pseudo-  
17 scientific components, which constitutes the State's "methodology" for determining  
18 RHNA units for each city in each planning cycle. However, much of the process to  
19 allocate RHNA has been done more and more recently by virtue of an illicit and  
20 illegal *ad hoc political* process, in contravention to aforementioned State laws.

21 76. Political gaming has, in actuality, replaced what State RHNA Laws  
22 originally sought, which was some verifiable process (the existing law is so  
23 convoluted as to be vague) to determine how much housing a particular jurisdiction  
24 may actually need in the future.

25 77. Through the RHNA Laws mandate, the State is removing the century-  
26 old idea of Euclidian zoning, and replace it with chaotic re-zoning and  
27 redevelopment with the excuse that a lack of adequately zoned high-density housing  
28

1 sites exacerbates the already significant deficit of housing affordable to lower  
2 income households.

3 **A. Overview of the Current Flawed RHNA Process as to Charter**  
4 **Cities**

5 78. For the current Planning Cycle, recent Housing Laws, including RHNA  
6 Laws, impermissibly delegated legislative authority to HCD to provide unbridled  
7 control and enforcement over the RHNA process and Charter Cities and counties  
8 compliance thereto. This has resulted in *HCD-generated mandates*, not actual State  
9 laws of themselves, development quotas (in the City’s case, 13,368 RHNA Units for  
10 the current Planning Cycle). An administrative agency’s “mandates” are not State  
11 laws and as such, they carry no pre-emptive power over a Charter City’s  
12 Constitutional local decision-making authority.

13 79. In March 2020, SCAG adopted its 6th Planning Cycle RHNA  
14 Allocation Plan SCAG received 1,341,827 housing units, which was distributed to  
15 all 197 SCAG jurisdictions (or cities).

16 80. The 1,341,827 high-density RHNA units represents more than twice the  
17 number of projected housing units needed by the end of this Planning Cycle in 2029,  
18 if Housing Laws were actually followed, the number would really be 651,000  
19 RHNA units. That is to say, Defendants have so flawed the RHNA process, that the  
20 statewide RHNA goal of 1,341,827 that was produced was more than twice as much  
21 than if the Housing and RHNA Laws were actually followed.

22 81. More than half of HCD’s Regional Determination for the SCAG region  
23 is due to a number of flawed factors, including HCD’s use of the wrong population  
24 forecast, erroneous comparable region data, and vacancy rates, as well as the last-  
25 minute substitution of a new methodology that includes overcrowding and cost  
26 burdening factors that HCD did not previously consider. HCD’s use of the wrong  
27 population forecast, regions that are not comparable to Southern California, and  
28 inaccurate and unattainable vacancy rates, as well as a methodology that grossly

1 overestimates the projected housing needs by including overcrowding resulted in  
2 double counting the number of required dwelling units for this Planning Cycle,  
3 which was also all done in violation of RHNA Laws. Such factors were not included  
4 in prior methodologies and such calculations are in violation of statutory law.

5 82. Over the course of 2019, SCAG encouraged public involvement in the  
6 development of its RHNA Methodology for its RHNA allocation, and OCCOG  
7 participated in and contributed to the development of SCAG’s RHNA Methodology  
8 during this time.

9 83. The Orange County member of SCAG, known as “OCCOG,” sent  
10 letters to SCAG regarding its RHNA Methodology and ultimate RHNA allocations,  
11 and reiterated its strong support for the inclusion of local factors (including growth  
12 forecast) as part of the ultimately selected methodology for the allocation of HCD’s  
13 Regional Determine to SCAG’s jurisdictions. OCCOG also noted that HCD ignored  
14 the language in Government Code Section 65584.01(a) by using the State’s  
15 Department of Finance (“DOF”) total regional population forecast instead of  
16 SCAG’s forecast.

17 84. On November 7, 2019, during a meeting of the SCAG Regional  
18 Council, SCAG introduced a surprise and unanticipated substitute methodology for  
19 the RHNA allocation, which had not previously been disclosed to the public. The  
20 substitute methodology was later used by SCAG in its RHNA allocation to each  
21 local government in its jurisdiction.

22 85. SCAG subsequently submitted its Draft Planning Cycle RHNA  
23 Methodology for HCD’s review. On December 19, 2019, SCAG sent HCD a letter  
24 regarding HCD’s final Regional Determination and advised that it had incorporated  
25 the determination in the development of SCAG’s RHNA Methodology under review  
26 by HCD. SCAG reiterated its earlier objections that HCD did not base its  
27 determination on SCAG’s total regional population forecast, as required by  
28

1 Government Code Section 65584.01(a). SCAG also objected to HCD’s failure to  
2 meet with SCAG, as also required by Government Code Section 65584.01(a).

3 86. On January 13, 2020, contrary to law and common sense, HCD sent a  
4 letter to SCAG in which it advised that it had completed its review of SCAG’s  
5 RHNA Methodology and found that it furthered the five statutory objectives of  
6 RHNA. It did not.

7 87. Previous State law provided that only limited portions of State Planning  
8 and Land Use Laws applied to Charter Cities. Charter Cities were free to control  
9 land use matters of local concern, because only local governments would know how  
10 to meet the needs of their city while not disrupting already existing development,  
11 but also not disrupting local sensitive natural environments. The recent amendments  
12 to State Planning and Land Use Laws since 2017, i.e., Housing Laws and RHNA  
13 Laws, force Charter Cities to follow the new law in contravention of the California  
14 Constitution and environmental laws or face excessive penalties.

15 **B. RHNA Reform**

16 88. The California Independent Auditor (defined above as “DOF”) released  
17 a 2022 Report highly critical of the RHNA process, finding the Defendants’ RHNA  
18 determinations, like the 13,368 RHNA Units assigned to the City, are not supported  
19 by evidence. For example, HCD uses a combined vacancy rate of 5% to non-rural  
20 counties, while applying a 4% vacancy rate for rural counties. The DOF questioned  
21 this vacancy rate because it was not sufficiently justified or supported. In turn, this  
22 flawed vacancy rate created substantially higher number of high-density units in the  
23 RHNA allocation while under-calculating the needs of Californians to live in single-  
24 family homes.

25 89. The State, recognizing the vague, arbitrary, and unsupported process to  
26 calculate and allocate RHNA numbers has just recently called for whole scale  
27 reform. It is apparent to the City that the State, through COG/SCAG, has relied on  
28



1 faulty housing data and population projections concerning population growth to  
2 create and then require cities to implement components of their Housing Elements.

3 90. As part of Assembly Bill 101, which is the damning admission by the  
4 State that the RHNA process has been flawed and produces erroneous, unreliable  
5 results, HCD was tasked with preparing a report on RHNA reform and to make  
6 recommendations to the State Legislature by December 31, 2022. In October 2021,  
7 the California State Joint Legislative Audit Committee approved an emergency audit  
8 to examine HCD's RHNA determination process.

9 91. The State's own actions in 2021 and 2022 to address the RHNA  
10 Methodology is an admission enough that the RHNA Laws are flawed, and that  
11 Defendants violated Housing Laws and RHNA Laws when arriving at the RHNA  
12 "mandates," and that such flaws cannot possibly produce "mandates" to be imposed  
13 on Charter Cities like Huntington Beach.

14 **C. Flawed RHNA Process as Applied to Huntington Beach**

15 92. In addition to creating laws that are vague and ambiguous, Defendants  
16 used flawed data in calculating, and then allocating, disproportionately high RHNA  
17 units to Plaintiff(s) for the current Planning Cycle.

18 93. SCAG's RHNA Methodology to determine a jurisdiction's existing  
19 housing need "assigns 50 percent of regional existing need based on a jurisdiction's  
20 share of the region's population within the high quality transit areas ("HQTAs")  
21 based on *future 2045* HQTAs." Public Resources Code Section 21155(b) defines a  
22 HQTC as "a corridor with fixed route bus service with service intervals no longer  
23 than 15 minutes during peak commute hours."

24 94. Public Resources Code Section 21155(b) *does not include future*  
25 *planned facilities within the definition*. SCAG's RHNA Methodology created its  
26 own definition of a HQTA as inclusive of planned HQTC. This move by SCAG  
27 created a conflict with the State's statutory definition. SCAG did this deliberately in  
28 order to load up the City with additional RHNA allocations. The more SCAG could

1 dump high density RHNA units into Huntington Beach, the less SCAG had to  
2 allocate to other cities in the region, thus having to deal with less political fall-out  
3 from other cities.

4 95. In the current, 6<sup>th</sup> Planning Cycle, RHNA Plan, the flawed data and  
5 disproportionately high (13,368) RHNA Units have caused Plaintiff(s) the  
6 impossible task of meeting these exceedingly high demands while trying to balance  
7 other State law(s), other necessary zoning considerations, and community needs.

8 96. California Government Code Sections 65583(a)-(c) set forth an  
9 extensive list of the analyses, information, and programs that are required to be  
10 included in a city's Housing Element component of its General Plan. Among other  
11 things, and most importantly to the issues at hand, the HCD-compliant Housing  
12 Elements must contain an analysis of population and employment trends, and  
13 documentation of projections and quantification of the locality's existing and  
14 projected housing needs, for all income levels. According to HCD, the RHNA-Plan  
15 process requires local governments to be accountable for ensuring that projected  
16 housing needs can be accommodated and provides a benchmark for evaluating the  
17 adequacy of local zoning and regulatory actions to ensure each local government is  
18 providing sufficient appropriately designated land and opportunities for housing  
19 development to address population growth and job generation.

20 97. The City of Huntington Beach informed SCAG on several occasions  
21 that SCAG failed to follow the law in California Government Code Section  
22 65584.04(b)-(f) when it voted to follow an illegal, vague, arbitrary, and capricious  
23 formula that incorrectly allocated an additional approximately 6,000 high-density  
24 RHNA units to Plaintiff(s) for the current Planning Cycle.

25 98. This SCAG vote in 2021 was not based on empirical data, the Housing  
26 Laws, or the RHNA Laws; instead, the vote was based on last-minute political  
27 wrangling between larger, more influential cities pressuring SCAG to take RHNA  
28 units away from their cities and force them into other, less politically influential

1 cities, like Huntington Beach. Plaintiff(s) was not provided requisite Due Process in  
2 participating in this vote.

3 99. It can be demonstrated that the 13,368 RHNA Units allocated to  
4 Plaintiff(s) undermines, and does not promote, the critical objectives of  
5 socioeconomic equity, placement of housing that can be reached quickly by transit,  
6 and achievement of statewide greenhouse gas emissions reduction goals. Housing  
7 Laws require that RHNA Units should be allocated based upon empirical data, not  
8 political gaming. The result of this vague, arbitrary, and capricious allocation of  
9 RHNA is to exaggerate the actual need for housing in Huntington Beach and  
10 corresponding cities. Such politicking in the RHNA process and ultimate  
11 assignment of RHNA Units to the City demonstrates that the Housing Laws and  
12 RHNA Laws were not followed by Defendants, and the fact that it occurred at all  
13 undermines the entire RHNA process and RHNA Laws as legitimate, or a mandate.

14 100. Moreover, the location of Beach Boulevard within the City that was a  
15 basis of SCAG analysis was *incorrectly* identified by SCAG as a High Quality  
16 Transit Area (“HQTA” or High Quality Transit Corridor “HQTC”). This  
17 classification of this area of the corridor is important because with the HQTA  
18 designation, SCAG could justify assigning, or allocating, *more* high density RHNA  
19 Units to the City than it otherwise would. Yet, any observer can see, Beach  
20 Boulevard does *not* meet the definition of a HQTA under State Housing Laws and  
21 RHNA Laws. SCAG’s Final 6<sup>th</sup> Cycle RHNA Allocation Methodology explains  
22 that HQTAs “are based on state statutory definitions of High Quality Transit  
23 Corridors (“HQTCs”) and major transit stops.” Beach Boulevard does not meet that  
24 definition. SCAG did not care. Even after the City pointed out the error, SCAG  
25 persisted in its misclassification of Beach Boulevard as a “HQTC.”

26 101. HCD’s 2018 Statewide Housing Assessment stated that from 2015-  
27 2025, approximately 1.8 million new housing units are needed to meet projected  
28 population and household growth. This is 180,000 new homes annually.

1           102. Governor GAVIN NEWSOM included building 3.5 million homes by  
2 2025 as part of his 2018 campaign for Governor. This is almost double the amount  
3 of housing need calculated in HCD’s 2018 SHA. In February 2020, he stated that  
4 the 3.5 million units was a “stretch goal” and that HCD would release a more  
5 “pragmatic” estimate of housing needs by region via the Statewide Housing Plan  
6 (“SHP”). HCD’s SHP was released in March 2022 and states that California must  
7 plan for 2.5 million homes by 2030, with at least 1 million units for lower income  
8 households.

9           103. In this Planning Cycle, SCAG received its Regional Determination  
10 (approximately 1.3 million units) from HCD on October 15, 2019. SCAG’s  
11 Regional Determination was developed under the rhetoric of the Governor’s  
12 campaign promises for 3.5 million more homes.

13           104. The region where Governor GAVIN NEWSOM lives is known as  
14 “Association of Bay Area Governments” or hereinafter “ABAG;” ABAG received  
15 its Regional Determination of only 441,176 units from HCD on June 9, 2020. This  
16 was “coincidentally” a few months after Governor GAVIN NEWSOM admitted that  
17 3.5 million new homes by 2025 was a “stretch” goal.

18           105. The nationwide average is too low for many reasons. Applying the low  
19 nationwide overcrowding adjustment to, ultimately, the City of Huntington Beach,  
20 where overcrowding is already occurring, produces a RHNA Units for the City that  
21 is far higher than the City could possibly, or reasonably, under Housing Laws and  
22 RHNA Laws, absorb.

23           106. The nationwide average rate for overcrowding was used as a tool for  
24 HCD to artificially inflate SCAG’s RHNA to help achieve Governor GAVIN  
25 NEWSOM’s 3.5 million housing unit campaign promise.

26           107. SCAG knew of this political math and various violations of State laws,  
27 but the Director of SCAG indicated that it would not sue HCD for the violations of  
28 State laws even though SCAG had formally objected to the Regional Determination

1 but only because the State has “unlimited lawyers” and resources, not because a  
2 challenge would not have merit.

3 108. HCD could have used other comparable regions to SCAG such as  
4 Manhattan, Houston, or even ABAG instead of erroneously using the *nationwide*  
5 average.

6 109. However, Governor GAVIN NEWSOM downplayed his campaign  
7 promise once ABAG began its RHNA process so that ABAG cities and their  
8 campaign donor residents could avoid the heavy RHNA load coming down from  
9 HCD that SCAG was facing in 2021.

10 110. The City of Huntington Beach has relied upon SCAG's RHNA  
11 analysis in good faith has made every effort to cooperate with RHNA goals for each  
12 and every planning cycle, even though the City believes that as a Charter City, none  
13 of the RHNA Laws are “mandates” for Huntington Beach, or that the Housing Laws  
14 and RHNA Laws preempt the City’s Constitutional Home Rule authority as a  
15 Charter City.

16 111. In apparent contravention with these principles, it appears that HCD  
17 and COG/SCAG, all unelected and politically unaccountable bodies, have been  
18 unilaterally requiring Plaintiff(s) to increase its housing, thereby increasing demand  
19 for water usage and consumption.

20 112. In recent years, the State has made findings to support imposing  
21 drought-related restrictions on residents and municipalities. Those same findings  
22 resulted in a 26% water consumption *reduction* for Huntington Beach (2015).

23 113. There is no evidence that the State conducted an adequate constraints  
24 analysis such that projects built to accommodate the City’s additional RHNA Units  
25 would conflict with the new State law and regulation regarding water conservation.  
26 (Government Code Section 65584.04 (d)(2).)

27 114. The City appealed the Draft 6th Planning Cycle (2021-2029) RHNA  
28 determination totaling 13,368 units, which consists of 3,652 very-low income units,

1 2,179 low income units, 2,303 moderate income units, and 5,203 above-moderate  
2 income units. The Appeal was based upon empirical data provided by the City that  
3 is comparable to the data used by SCAG and HCD, and which was supported by  
4 evidence, including expert reports. This appeal was, to no one’s surprise, denied by  
5 SCAG.

6 **VI. CAUSES OF ACTION**

7  
8 **FIRST CLAIM FOR RELIEF**  
9 **VIOLATION OF FIRST AMENDMENT OF**  
10 **THE UNITED STATES CONSTITUTION FOR**  
11 **COMPELLED SPEECH**  
12 **(As to ALL DEFENDANTS)**

13 115. The Housing Laws, including RHNA Laws as defined above, go far  
14 beyond regulating conduct and illegally *force*, in tyrannical fashion, the City to not  
15 only conform to the specific political speech of the State, but these laws *force the*  
16 *City Council Members to make specific statements* of “State speech,” specific  
17 findings consistent with “State speech”, and make specific votes pre-approved by  
18 the State regarding, and related to, “need for housing” in violation of the City  
19 Council Members’ and the City’s, First Amendment rights under the U.S.  
20 Constitution. (*Shurtleff v. City of Boston*, (2022) 142 S. Ct. 1583, that governments  
21 have protected First Amendment “speech” and; *Expressions Hair Design v.*  
22 *Schneiderman*, (2017) 137 S. Ct. 1144, finding against the State compelling  
23 “speech”)

24 116. The Housing Laws, including RHNA Laws, essentially require the City  
25 Council Members to replace their free speech, i.e., the verbal expressions of their  
26 freely formed opinions and decision-making thoughts, with the words of the State  
27 that advance the State’s political agenda.

28 117. Indeed, these RHNA Laws demand that the City’s Council engage in  
certain speech while engaged in the local legislative process to say what Governor

1 GAVIN NEWSOM, the Director, HCD, and other State actors want them to say,  
2 including but not limited to, there “is a housing crisis,” that Huntington Beach  
3 “needs more affordable housing,” that the State “needs more affordable housing,”  
4 that “the benefits of high-density development in the City outweigh the negative  
5 impacts of high-density development on the environment,” and so on, despite  
6 objective evidence to the contrary. The Governor, the Director, HCD, and SCAG  
7 use the RHNA Laws regulate, even mandate, *how* the City communicates its stance  
8 on housing, what ultimately the Council Members’ “say” in their vote, and what  
9 Council Members are compelled to say to the public with regard to “housing need”  
10 to justify their vote.

11 118. More importantly, the high-density development goals of the RHNA  
12 Laws *compel* the City Council to arrive at a pre-ordained, “fixed,” State-contrived  
13 conclusion (of implementing high-density development zoning, i.e., the Defendants’  
14 RHNA Units) even before the City Council has an opportunity through its rightful,  
15 constitutionally provided, legislative process, to hold public hearings and make its  
16 own findings on a proposed zoning issue before adopting a “Statement of  
17 Overriding Consideration.” For the two State laws, RHNA Laws and CEQA, to be  
18 in direct competition or conflict forces local City Council’s in Huntington Beach to  
19 relinquish local decision-making one way or the other.

20 119. There is a chilling effect these sweeping RHNA Laws create on the  
21 City Council’s freedom of speech and ability to articulate their thoughts while  
22 performing their legislative function. As part of the zoning process, the City  
23 Council must now adopt its Housing Element *by necessarily making findings*  
24 *(speech) that RHNA Units imposed on the City by the State must be planned for*  
25 *based on some specific State-supplied concept that the City (not necessarily the*  
26 *State) needs more housing.* If the City Council does not adopt this “State speech,”  
27 by making these findings, the City will be punished by the State. This is a content-  
28 based restriction by the State *on how the City Council speaks* while performing its

1 constitutional legislative function. This compelled speech is a content-based  
2 restriction on how the City Council speaks, violative of the Council Members’ First  
3 Amendment rights.

4  
5 **SECOND CLAIM FOR RELIEF**  
6 **VIOLATION OF FOURTEENTH AMENDMENT OF**  
7 **THE UNITED STATES CONSTITUTION FOR**  
8 **PROCEDURAL DUE PROCESS**  
9 **(As to ALL DEFENDANTS)**

10 120. Plaintiff(s) incorporates paragraphs 1-119 as if fully set forth herein.

11 121. City of HB, as a Municipal Corporation, is a “person” within the  
12 meaning of Fourteenth Amendment, and is entitled to its protection. (*River Vale v.*  
13 *Orangetown*, 403 F.2d 684, 1968 (2d Cir. 1968)). Plaintiff(s), the City of  
14 Huntington Beach, was not created by the State. In fact, the City, invoking Article  
15 XI of the California Constitution, created itself by adopting a Charter and  
16 incorporating as Municipal Corporation. For decades, the U.S. Supreme Court has  
17 viewed Corporations as “persons” entitled to Fourteenth Amendment protections,  
18 and then most recently, First Amendment Protections under *Citizens United v.*  
19 *Federal Election Commission, supra*.

20 122. The Due Process Clause of the Fourteenth Amendment to the U.S.  
21 Constitution provides that no State can “deprive any person of life, liberty, or  
22 property, without due process of law.” (U.S. Const. Amend. XIV§ 1, cl. 3.)

23 123. The procedural component of the Due Process Clause prohibits the  
24 Defendants (and particularly the State’s administrative agencies HCD and SCAG)  
25 from creating processes that deprive municipalities and citizens of rights and  
26 property without providing a fair process before or after the deprivations have  
27 occurred.

28 124. The Fourteenth Amendment safeguards fundamental rights of persons  
and of property against arbitrary and oppressive state action. (*Thomas Cusack Co. v.*



1 *Chicago*, 242 U.S. 526, 37 S. Ct. 190, (1917)). Involvement of State officials may  
2 provide State action essential to show direct violation of City's Fourteenth  
3 Amendment rights, whether an official's actions were officially authorized, or  
4 lawful. (*Flagg Bros., Inc. v. Brooks*, 436 U.S. 149, 98 S. Ct. 172, (1978)).

5 125. The State Legislature amended the RHNA process to *eliminate judicial*  
6 *review* of decisions and determinations by the Director, HCD, and/or SCAG when it  
7 amended Section 65584(c)(4). This violates Plaintiff(s)'s Procedural Due Process  
8 rights because the process begins and ends with HCD.

9 126. In addition, the State's Housing Laws and RHNA Laws are violative of  
10 the City's Procedural Due Process rights insofar as the State claims preemptive  
11 authority over the City's Constitutional Charter City Home Rule authority, yet *there*  
12 *is no State law whatsoever that specifically provides that the City must plan for*  
13 *13,368 units of high density RHNA housing units in this Planning Cycle*. In fact,  
14 this number of 13,368 RHNA Units of high-density development for the City was  
15 created by a flawed administrative process through the Director, HCD, and SCAG,  
16 *and not State law*. Since this number of 13,368 RHNA Units is administratively-  
17 created and not passed by the State Legislature and signed by the Governor into law,  
18 it does not have the force and effect of State law, and therefore can have no pre-  
19 emptive power over the City's Constitutional Charter City Home Rule authority.  
20 How can an administrative agency's administratively created "mandate" preempt a  
21 Charter City's Constitutional authority? It cannot. This "mandate" and the Housing  
22 Laws and RHNA Laws that have produced this absurdity violate Plaintiff(s)'s  
23 Procedural Due Process rights.

24 127. In addition, Defendants did not provide Plaintiff(s) with requisite  
25 Procedural Due process before requiring that the Plaintiff(s) absorb and plan for an  
26 additional 13,368 RHNA Units in Huntington Beach. As detailed in a letter sent to  
27 SCAG by the City of Huntington Beach, in late 2019, SCAG failed to follow the  
28 process provided for by State law, i.e., Government Code Section 65584.04. SCAG

1 had improperly voted to permit an illegal, vague, arbitrary, and capricious RHNA  
2 Methodology that *incorrectly* allocated an additional approximately 6,000 high-  
3 density RHNA Units to the City of Huntington Beach.

4 128. On November 7, 2019, however, during a meeting of the SCAG  
5 Regional Council, SCAG introduced a new, last-minute substitute methodology for  
6 the RHNA allocation, which had not previously been disclosed to the public or to  
7 the City. The 2019 SCAG vote that ultimately resulted in the City being mandated  
8 to plan for 13,368 RHNA Units, was not based upon any empirical data, was in  
9 violation of the law, and was nothing more than last minute political wrangling.  
10 Government Code Section 65584.3 requires that actions taken by the Director,  
11 HCD, and SCAG be done according to a vote based on well-established law and  
12 grounded in general principles of Due Process.

13 129. On January 13, 2020, the Director and HCD formally admonished  
14 SCAG in writing that it's new; last-minute RHNA Methodology was wrongful and  
15 erroneous, claiming that it was failing to further the five statutory objectives of the  
16 RHNA Laws. SCAG disregarded, moved forward, and the flawed 13,368 RHNA  
17 Units was imposed on the City of Huntington Beach.

18 130. The Director acted under color of State law in an official capacity and  
19 within the scope of his official duties when failing to correct the process to  
20 implement the RHNA Units. As a direct and proximate cause of the failure to  
21 provide any pre or post deprivation process, Plaintiff(s) suffered prejudice under  
22 threat of severe civil sanctions.

23 131. Because the State's RHNA process, by way of its RHNA Laws,  
24 violates law, is vague, arbitrary, and capricious regarding the creation of the  
25 mandates of 13,368 RHNA Units violates the City's Due Process and its citizens  
26 have, and will, sustain damages.

27 ///

28 ///

1                                    **THIRD CLAIM FOR RELIEF**  
2                                    **VIOLATION OF FOURTEENTH AMENDMENT OF**  
3                                    **THE UNITED STATES CONSTITUTION FOR**  
4                                    **SUBSTANTIVE DUE PROCESS**  
                                      **(As to ALL DEFENDANTS)**

5            132. Plaintiff(s) incorporates paragraphs 1-131 as if fully set forth herein.

6            133. The protection afforded by the guarantee of substantive due process  
7 interposes a bar to legislation that “manifests a **patently arbitrary classification,**  
8 utterly lacking in rational justification.” (*Flemming v. Nestor*, 363 U.S. 603, 611  
9 (1960)).

10            134. To satisfy Substantive Due Process, a statute must be **sufficiently clear**  
11 **to provide adequate notice of the prohibited or required conduct** referred to  
12 therein.

13            135. Thus, a statute will be deemed void for vagueness if it either forbids or  
14 requires the doing of an act in terms so vague that persons of common intelligence  
15 must necessarily guess to its meaning and differ as to what is required. Although  
16 these principles apply to both civil and criminal statutes, it is recognized that greater  
17 leeway is permitted regarding civil enactments, such as statutory regulation of  
18 economic or business matters, because the consequences of imprecision are  
19 qualitatively less severe. In this case, the penalties amount to near criminal  
20 sanctions.

21            136. In addition, the State’s Housing Laws and RHNA Laws are violative of  
22 the City’s Substantive Due Process rights insofar as the State claims preemptive  
23 authority over the City’s Constitutional Charter City Home Rule authority, yet *there*  
24 *is no State law whatsoever that specifically provides that the City must plan for*  
25 *13,368 units of high density RHNA housing units in this Planning Cycle.* In fact,  
26 this number of 13,368 RHNA Units of high-density development for the City was  
27 created by a flawed *administrative* process through the Director, HCD, and SCAG,  
28 *and not State law.* Since this number of 13,368 RHNA Units is administratively-

1 created and not passed by the State Legislature and signed by the Governor into law,  
2 it does not have the force and effect of State law, and therefore can have no pre-  
3 emptive power over the City's Constitutional Charter City Home Rule authority.  
4 How can an administrative agency's administratively created "mandate" preempt a  
5 Charter City's Constitutional authority? It cannot. This "mandate" and the Housing  
6 Laws and RHNA Laws that have produced this absurdity violate Plaintiff(s)'  
7 Substantive Due Process rights.

8 137. Yet, the State Legislature amended the RHNA process to *eliminate*  
9 *judicial review* of decisions and determinations by the Director, HCD, and/or SCAG  
10 when it amended Section 65584(c)(4). Having zero judicial recourse available to  
11 resolve disputes of law violates Plaintiff(s)' Substantive Due Process rights.

12 138. In addition, the RHNA Laws create patently arbitrary classifications of  
13 cities (like the City of Huntington Beach) that must disproportionately (based on  
14 population and area of the city), shoulder the production of affordable high-density  
15 housing for the entire state.

16 139. For instance, the City of Irvine spanning 66 square miles has a RHNA  
17 number per mile that is far less than Huntington Beach; the City of Santa Ana,  
18 which spans almost 28 square miles has a RHNA number per mile that is far, far  
19 less than Huntington Beach; the City of Anaheim, which spans over 50 square miles  
20 has a RHNA number per mile that is far less than Huntington Beach, and the list  
21 goes on.

22 140. The RHNA process attempts to add some mathematic and pseudo-  
23 scientific components; however most of the process to allocate RHNA is completely  
24 unknown or unascertainable by reading the plain language of the RHNA Laws, and,  
25 executed by an *ad hoc* political process. The RHNA Laws simply do not provide a  
26 real verifiable method used to determine how much housing a particular jurisdiction  
27 should have in the future, then how that number translates into housing units that  
28 each city or county must plan to build within the Planning Cycle.

1 141. As part of AB 101, explained above, is a recent damning admission by  
2 the State Legislature that the Housing Laws and RHNA Laws are fatally flawed.  
3 According to AB 101, HCD is now tasked with preparing a report on potential  
4 RHNA reform and compelled to make recommendations to the State Legislature by  
5 December 31, 2022. In October 2021, the California State Joint Legislative Audit  
6 Committee approved an emergency audit to examine HCD’s Regional  
7 Determination process.

8 142. The request for an audit was based on an assertion that the public had  
9 limited information on the formula that HCD uses to calculate the regional RHNA  
10 numbers, and cited confusion and mistrust among regional planning bodies and  
11 jurisdictions, and the need for an independent and objective review of the process.

12 143. Because the State’s RHNA process, by way of its RHNA Laws,  
13 violates law, is vague, arbitrary, and capricious regarding the creation of the  
14 mandates of 13,368 RHNA Units violates the City’s Due Process and its citizens  
15 have, and will, sustain damages.

16  
17 **FOURTH CLAIM FOR RELIEF**  
18 **VIOLATION OF THE COMMERCE CLAUSE OF**  
19 **THE UNITED STATES CONSTITUTION**  
20 **(As to ALL DEFENDANTS)**

21 144. Plaintiff(s) incorporates paragraphs 1-143 as if fully set forth herein.

22 145. The limitation on the power of the states to act, referred to as the  
23 “dormant” commerce clause doctrine, subjects State legislation to a two-pronged  
24 inquiry. Where the activity is exclusively in interstate commerce without intrastate  
25 aspects, the commerce and supremacy clauses of the U.S. Constitution  
26 prohibit state regulation or interference with that activity. It is equally axiomatic that  
27 where the activity and its effect is wholly intrastate, the states retain full authority  
28 under their police powers to regulate the activity.

1           146. The power that reposes in Congress under the commerce clause  
2 extends to three categories of commercial activities: first, the use of the channels of  
3 interstate commerce; second, protection of the instrumentalities of interstate  
4 commerce or persons or things in commerce; third, those activities affecting  
5 interstate commerce. (*Perez v. United States*, 402 U.S. 146 (1971))

6           147. An activity does not need to have a direct effect on interstate commerce  
7 to fall within the commerce power, as long as the effect is substantial and economic.  
8 (*Wickard v. Filburn*, 317 U.S. 111 (1942)). If the cultivation of wheat on a private  
9 farm for private consumption can be drawn into scrutiny under the Commerce  
10 Clause, so too should the State’s mandates to plan for approximately 1,300,000 units  
11 of high-density housing throughout the State.

12           148. Laws that have an interstate effect by impacting supply and demand for  
13 housing, raw material, and accessibility to housing, is a violation of the Commerce  
14 Clause.

15           149. The State has improperly engaged in attempting to discriminate and  
16 manipulate housing supply and housing prices by attempting to offering cheaper,  
17 more abundant housing than other states. In addition, the requirement imposed upon  
18 cities to build housing will have an effect on the supply chain throughout the United  
19 States.

20           150. If a state law or local regulation discriminates against interstate  
21 commerce in favor of the locality, it is *per se* invalid, save a narrow class of cases in  
22 which the municipality can demonstrate, under rigorous scrutiny, that it has no other  
23 means to advance a legitimate local interest. “If a restriction on commerce is  
24 discriminatory, it is virtually *per se* invalid.” This is what the Defendants are doing.

25           151. Defendants are forcing Plaintiff(s), like other cities in California, to use  
26 and divert building supplies and materials from other States to plan for and build  
27 additional housing units in the State based on arbitrary and flawed RHNA  
28 Methodology. This has a discriminatory effect in the market of supplies and housing

1 and therefore on interstate commerce. Defendants have demonstrated their intent by  
2 this scheme to favor developers in California over developers in other states, to  
3 ensure that developers in California are favored in the marketplace and receive  
4 favorable monetary benefits. These efforts by the Defendants violate the Commerce  
5 Clause.

6 **FIFTH CLAIM FOR RELIEF**  
7 **VIOLATION OF CALIFORNIA CONSTITUTION, ARTICLE XI**  
8 **CHARTER CITY AUTHORITY**  
9 **(As to ALL DEFENDANTS)**

10 152. Plaintiff(s) incorporates paragraphs 1-151 as if fully set forth herein.

11 153. California Government Code Sections 65583 through 65588 (defined  
12 above as “RHNA Laws”) unconstitutionally overreaches into Charter City Home  
13 Rule Authority.

14 154. Section 5(a) of Article XI of the California Constitution provides that a  
15 Charter City shall not be governed by State law in respect to “Municipal Affairs.”  
16 Rather, “so far as ‘Municipal Affairs’ are concerned,” Charter Cities’ laws are  
17 “supreme and beyond the reach of [State] legislative enactment.” (*California Fed.*  
18 *Savings & Loan Assn. v. City of Los Angeles* (1991) 35 Cal.3d 1, 12.)

19 155. Regulation of local land use and local zoning are vital and core  
20 functions of local government, and are therefore “Municipal Affairs” of a Charter  
21 City. (*City of Irvine v. Irvine Citizens Against Overdevelopment* (1994) 25  
22 Cal.App.4th 868, 874).

23 156. “Municipal Affairs” or the “Municipal Affairs Doctrine”<sup>15</sup> is a  
24 California Constitutional recognition of Charter Cities’ exclusive authority over its  
25 municipal affairs to the exclusion of general State laws. (California Constitution,

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26 <sup>15</sup> Generations of legislative enactments and judicial interpretations provide that  
27 under Article XI, Section 5(a) of the California Constitution, a Charter City is  
28 authorized to make and enforce all local laws and regulations, and to be free from  
State legislation, over local land use/zoning, city property, funds, tax levies and  
other municipal functions.

1 Art. XI, §5(a).) As a Charter City, the City of Huntington Beach has supreme  
2 authority over its Municipal Affairs. Most importantly, the City’s regulation of  
3 local land use and zoning within its borders. The California Supreme Court has  
4 clearly recognized this general rule: Cities and counties may make and enforce  
5 within their limits all local, police, sanitary and other ordinances and regulations not  
6 in conflict with general laws. This is the genesis of zoning laws. The zoning  
7 schemes were created as part of police power to protect against nuisances.

8 157. State management of zoning taking away local control will take away  
9 the core functions of municipality to protect health safety and welfare. Allowing  
10 development without ability of discretionary approvals and conditional zoning,  
11 create health safety and welfare concerns as well as public and private nuisance.  
12 (Cal. Const., Art. XI, § 7).

13 158. The State Legislature has clearly recognized the primacy of local  
14 control over land use. The State Legislature has specified certain minimum  
15 standards for local zoning regulations, but has carefully expressed its intent to retain  
16 the maximum degree of local control. (*IT Corp. v. Solano County Bd. of*  
17 *Supervisors* (1991) 1 Cal.4th 81, 89.)

18 159. The principal of local autonomy over local zoning and land use is  
19 **guaranteed** to Charter Cities by Article XI, Section 5(a) of the California  
20 Constitution. That provision grants Huntington Beach, as Charter City, exclusive  
21 authority devoid of any State control, to “make and enforce all ordinances and  
22 regulations in respect to **Municipal Affairs**,” such that with respect to “Municipal  
23 Affairs,” City authority “shall supersede all [State] laws inconsistent therewith.”  
24 (Emphasis added.)

25 160. Plaintiff(s) has exercised this authority to its maximum extent through  
26 Charter Section 103, which grants Plaintiff(s) “the power to make and enforce all  
27 laws and regulations in respect to Municipal Affairs, subject only to such  
28 restrictions and limitations as may be provided in this Charter or in the Constitution



1 of the State of California.” The State must meet a three-part test for any imposed  
2 limitations, which is not the case here.

3 161. For the current Planning Cycle, recent legislation in the form of  
4 Housing Laws and RHNA Laws as defined above, have not only suddenly stripped  
5 the City of its former Charter City authority to making local zoning decisions and  
6 plan for itself, the Housing Laws and RHNA Laws also impermissibly delegate  
7 (legislative) authority to HCD to make its own rules, methods, and formulas, and to  
8 provide unbridled oversight and draconian-level enforcement over the City through  
9 the RHNA process. In other words, the Defendants through legislative action have  
10 illegally commandeered the City’s rightful, independent Constitutional authority to  
11 zone for itself as a Charter City under Article XI, Section 5(a).

12 162. Cities are now required to plan for State-mandated sites for housing, or  
13 face severe penalties from the State.

14 163. Prior to 2017, this RHNA process did not apply to Charter Cities.  
15 However, a flurry of recent housing bills beginning in 2017 originating in both  
16 houses of the State Legislature have changed the process from one of City Council’s  
17 exercising their free speech, rightful legislative authority, and decision-making  
18 power, to illegal State-controlled zoning of cities; from local democracy and public  
19 input and participation to an illegal State-level centralized system of mandates and  
20 punitive action against cities for non-compliance; from a constitutionally  
21 harmonious process of zoning and planning, to an unconstitutional stripping of a  
22 Charter City’s constitutional rights.

23 164. In 2017, approximately 150 housing bills were proposed during the  
24 legislative session. A package of 15 bills were signed by the Governor related to  
25 funding for housing, streamlining development approvals and increasing  
26 accountability for meeting the requirements of Housing Element Law.

27 165. These included bills are new requirements adding additional outreach  
28 and reporting, modifying the way the RHNA is calculated, increasing the number of

1 topics to be considered in the allocation methodology such as adding a nebulous  
2 concept of “furthering fair housing” as a required objective for RHNA and local  
3 Housing Elements and giving HCD (on behalf of the State of California) unfettered  
4 discretion and the ability to sue individual cities for not meeting requirements in  
5 addition to severe fines that may be imposed.

6 166. In March 2020, SCAG adopted its 6th Planning Cycle RHNA  
7 Allocation Plan, which covers the planning period October 2021 through October  
8 2029. For the 6th Planning Cycle, SCAG received a need of 1,341,827 housing  
9 units, which was distributed to all 197 SCAG jurisdictions.

10 167. These Housing Laws and RHNA Laws impede upon Charter City  
11 authority to create land use policy that is clearly a local matter. These laws  
12 unconstitutionally interfere with the City’s Charter authority to enforce local zoning  
13 laws and regulations, including the ability to protect the health, safety and welfare of  
14 Huntington Beach residents by creating local zoning schemes that correspond to  
15 local needs for land use and management as well as elected officials’ duties to carry  
16 out their respective oaths of office in creating local land use legislation.

17 168. Because the RHNA process has now been weaponized by Defendants  
18 in land use planning, cities are no longer allowed to prioritize local resource  
19 allocation, or decide how to address identified existing and future housing needs.  
20 Instead, cities are forced to accept State-level flawed data and assumptions about  
21 population, employment and household growth and rezone property and re-develop  
22 the City in favor of high-density housing.

23 169. Housing and RHNA Laws require this City, against or irrespective of  
24 the City Council’s will, to rezone property to the detriment of private property  
25 owners, without providing Due Process to affected owners is unconstitutional.

26 170. Previous State law provided that only limited portions of State Planning  
27 and Land Use laws applied to Charter Cities. Charter Cities were free to control  
28 land use matters of local concern. The recent amendments to the Housing and

1 RHNA Laws, the way those laws are not followed by Defendants, and the way that  
2 those laws allow an administrative agency (HCD) to make zoning decisions in  
3 Huntington Beach instead of the City Council, strip Charter Cities of their Article XI  
4 rights under the California Constitution.

5  
6 **SIXTH CLAIM FOR RELIEF**  
7 **VIOLATION OF RHNA LAWS**  
8 **(As to ALL DEFENDANTS)**

9 171. Plaintiff(s) incorporates paragraphs 1-170 as if fully set forth herein.

10 172. In arriving at RHNA units allocations for, and imposing them upon,  
11 cities, like the 13,368 RHNA Units imposed on Plaintiff(s), Defendants violated  
12 various provisions of State law in the California Government Code Sections 65583  
13 through 65588 (defined above as “RHNA Laws”). Such violations are, including but  
14 not limited to, those set forth herein.

15 173. For the current Planning Cycle, the State’s HCD assigned the entire  
16 SCAG region a total of 1,341,827 RHNA units, based on the region’s existing, and  
17 projected, housing needs, to be allocated by SCAG among the local governments  
18 located within the SCAG region. The City is one of those local governments.  
19 However, HCD, through SCAG, violated RHNA Laws in executing and  
20 implementing their own RHNA determinations, which resulted in Defendants  
21 illegally and erroneously imposing 13,368 RHNA Units on Plaintiff(s) for the  
22 current Planning Cycle.

23 174. To illustrate, the Orange County member of SCAG, known as  
24 “OCCOG,” sent a letter to SCAG in 2019 regarding proposed RHNA  
25 Methodology options available to distribute the Regional Determination among  
26 SCAG’s local governments. Among other points, OCCOG advised that local input  
27 was the most important factor in selecting a RHNA Methodology and requested  
28 the adoption of such a methodology only *after* HCD provides its Regional  
Determination to SCAG. OCCOG also advised that it opposed the reallocation of

1 the “above moderate” housing category to other income categories, and raised  
2 other issues to be addressed in SCAG’s Regional Determinations. SCAG ignored  
3 OCCOG’s requests and proceeded down an illegal path.

4 175. Among other things, HCD did not base its Regional Determination on  
5 SCAG’s regional population forecast as stated in its Regional Transportation  
6 Plan/Sustainable Community Strategy (“RTP”/”SCS”), which is inconsistent with  
7 Government Code section 65584.01(a). This was a violation of the RHNA Laws.

8 176. In addition, HCD did not utilize SCAG’s regional population forecast  
9 in its determination, as required under Government Code section 65584.01(a).  
10 Instead, HCD utilized the DOF’s population projection, in violation of the State’s  
11 Housing Laws and RHNA Laws. This was in violation of the RHNA Laws.

12 177. In addition, HCD did not use comparable regions when evaluating  
13 household overcrowding and cost-burden rates, instead utilizing national averages,  
14 which is inconsistent with the statutory language of SB 828, Government Code  
15 Sections 65584.01 and 65584.05; another instance of the Defendants violating their  
16 own State laws.

17 178. In addition, the California Independent Auditor released a 2022  
18 Report highly critical of the RHNA process, finding the Defendants’ RHNA  
19 determinations, like the 13,368 RHNA Units of high-density housing assigned to  
20 the City, are not supported by evidence. For example, HCD uses a combined  
21 vacancy rate of 5% to non-rural counties, while applying a 4% vacancy rate for  
22 rural counties. The DOF questioned and investigated this vacancy rate because it  
23 was not sufficiently justified or supported. In turn, this flawed vacancy rate used by  
24 HCD in making its Regional Determinations created substantially higher number  
25 of high-density units, while under-calculating the needs of Californians to live in  
26 single family homes.

27 179. State law that had been proposed as and is known, as “SB 828”  
28 requires HCD through COGs to provide data on the overcrowding rate for a

1 comparable housing market, as well as data on the percentage of households that  
2 are cost-burdened. HCD utilized unreasonable comparison points to evaluate  
3 healthy housing market vacancy rates, using an overall 5% total vacancy rate for  
4 both for-sale and rental housing markets, rather than a 5% rate for the rental housing  
5 market. SB 828 also requires COGs to provide the vacancy rates in existing stock, as  
6 well as the vacancy rates for healthy housing market functioning and regional  
7 mobility.

8 180. HCD's evaluation of replacement housing needs was based on an  
9 arbitrary internal standard, rather than housing demolition data provided by DOF.

10 181. HCD did not exclude anticipated household growth on tribal land,  
11 despite the fact that tribal lands are sovereign nations and not subject to state land  
12 use law. HCD utilized an unreasonable adjustment for cost-burden statistics.  
13 HCD's data and use of data were not current.

14 182. Defendants, in particular, HCD, even after repeated warnings from  
15 local jurisdictions, refused to follow State Housing Laws and RHNA Laws and  
16 instead arrived at, and imposed SCAG, which then imposed on OCCOG, and  
17 ultimately to the City of Huntington Beach, arbitrary and unlawful RHNA Units  
18 numbers of 13,368.

19 **SEVENTH CLAIM FOR RELIEF**  
20 **VIOLATION OF CALIFORNIA CONSTITUTION**  
21 **SEPARATION OF POWERS**  
22 **(As to ALL DEFENDANTS)**

23 183. Plaintiff(s) incorporates paragraphs 1-182 as if fully set forth herein.

24 184. The State has *impermissibly delegated its authority* to administrative  
25 agencies the Director, HCD, and SCAG, which have created administrative  
26 regulations that, according to the State, have the effect of law regarding the process  
27 to certify Housing Elements. Failure to follow these administrative regulations  
28 means the City's Housing Element may not be certified. Failure to certify the  
Housing Element subjects a City to excessive fines and penalties under the Housing

1 Laws and RHNA Laws. Under this impermissible delegation, the unelected  
2 officials of HCD, including the Director, and SCAG, essentially act as and  
3 unaccountable shadow legislature, arbiter of disputes, and the enforcement agency –  
4 all without any accountability to the public.

5 185. In addition, because the Defendants, through the deployment of its  
6 Housing Laws and RHNA Laws, has *commandeered* the City’s local zoning  
7 authority to re-develop Huntington Beach to accommodate the 13,368 RHNA Units.  
8 The State is thereby *forcing* the City to act contrary to the health, safety, and well-  
9 being of its citizens, to devalue of their private property, and to harm the City’s  
10 environment. The Defendants are essentially *mandating* by law that the City act to  
11 deprive its citizens of their Due Process in the devaluation of their adjacent  
12 properties associated with new high-density zoning, where the 13,368 RHNA Units  
13 is a foregone conclusion as determined by the Director, HCD and SCAG, leaving  
14 the citizens of the community most impacted without a voice at all and without legal  
15 recourse.

16 186. These onerous State laws, in particular the Housing Laws and RHNA  
17 Laws, send re-development mandates down from on high in violation of the City  
18 Council’s First Amendment rights and the City’s residents’ rights under Due  
19 Process of law. Neither the City Council nor the City should not be compelled, or  
20 mandated, to act as an agent of the State, to do the State’s bidding, and to act against  
21 the best interests of its citizens and their private property. The City should not be  
22 caught in the middle and compelled to disrupt the quiet enjoyment of living of the  
23 City’s citizens, and the City should not, like a helpless agent of the State, be  
24 compelled to redevelop the City at the command of the State without any input from  
25 the citizens. In sum, the City should not be compelled to carry out the State’s  
26 violations of the City’s citizens’ Due Process.

27 187. Moreover, RHNA Laws, by their own terms, *attempt to preclude*  
28 judicial relief. The RHNA process eliminated judicial review when it amended

1 Section 65584(c)(4) in 2004, and impermissibly delegated executive authority to  
2 HCD to create administrative “laws” that are enforced by HCD with no review by  
3 the courts. Not allowing judicial review to challenge a State Law is a violation of  
4 Separation of Powers.

5 188. By the RHNA Laws, the State has improperly intruded upon a core  
6 zone of executive authority, impermissibly impeding the exercise of executive  
7 functions, and the State retains undue legislative control over a legislative  
8 appointee’s executive actions, compromising the ability of the legislative appointees  
9 to perform their executive functions independently, without legislative coercion or  
10 interference. *Marine Forests Society v. California Coastal Com.*, 36 Cal. 4th 1  
11 (2005).

12 189. **The State has impermissibly delegated legislature authority** to  
13 HCD, which then created administrative regulations that claim to have the effect of  
14 law regarding the process to certify Housing Elements. Failure to follow these  
15 administrative regulations means a City’s Housing Element will not be certified. If  
16 not certified, the City can face excessive putative fines and penalties including the  
17 requirement to plan for and rezone property (in the case of the City of Huntington  
18 Beach, completely re-develop) to accommodate the State’s RHNA mandates.

19 **EIGHTH CLAIM FOR RELIEF**  
20 **VIOLATION OF THE CALIFORNIA CONSTITUTION**  
21 **ILLEGAL BILL OF ATTAINDER**  
22 **(As to ALL DEFENDANTS)**

23 190. Plaintiff(s) incorporates paragraphs 1-189 as if fully set forth  
24 herein.

25 191. In the current Planning Cycle, in addition to being subjected to a flawed  
26 RHNA mandate of 13,368 units, the City was also subjected to the Defendants  
27 singling out Huntington Beach punishment. The State Legislature passed SB 1333,  
28

1 which was a 2018 law designed by the State high density housing advocates to  
2 deprive Charter Cities of historic local authority to zone.

3 192. SB 1333 was in direct response to, and the State cites, the City's  
4 *Kennedy Commission v. City of Huntington Beach*<sup>16</sup> a case in which the City  
5 prevailed on the merits against the Kennedy Commission on Charter City authority,  
6 i.e., that not all of the State's housing laws applied to Charter Cities.<sup>17</sup> SB 1333 was  
7 the State's response to Huntington Beach's independent, constitutionally protected,  
8 right to locally zone.

9 193. After the City prevailed on a State housing law challenged based on its  
10 rightful Charter City authority, in addition to the State Legislature taking action on  
11 SB 1333 to deprive Charter Cities of their constitutional rights, various State actors,  
12 including Governor GAVIN NEWSOM began to call out Huntington Beach in press  
13 releases and other public communications as a target for State punishment.

14 194. In 2019, at a Press Conference, Governor GAVIN NEWSOM  
15 proclaimed that as part of his new housing laws package, he sought to punish cities  
16 like Huntington Beach, as he said "the State's vision [for housing] will be realized at  
17 the local level" and "ask the folks down in Huntington Beach."<sup>18</sup> On February 15,  
18 2023, the Office of the Governor of California tweeted on social media "Huntington  
19 Beach is playing chicken with housing. The state will hold them accountable.  
20 California law lets judges appoint a state agent to do their housing planning for them  
21 – HB can do it themselves or the court will take control."<sup>19</sup>

22  
23  
24 <sup>16</sup> *Kennedy Commission v. City of Huntington Beach*, 16 Cal App. 5th 841 (2017)

25 <sup>17</sup> Online: SB 1333 Legislative Text:  
26 <https://alcl.assembly.ca.gov/sites/alcl.assembly.ca.gov/files/SB%201333%20analysis.pdf>

27 <sup>18</sup> Online: YouTube: <https://www.youtube.com/watch?v=JSy2VOGkBF8> at  
28 **45:30**

<sup>19</sup> Online: Twitter: <https://twitter.com/CAGovernor/status/1625898020683538432>



1           195. While Defendants hide behind the veil of attempting to increase  
 2 statewide housing supply, **Defendants target already highly developed areas** like  
 3 Huntington Beach for complete re-development. Defendants have *not* narrowly  
 4 tailored its RHNA Laws to; for instance, create positive housing development  
 5 *incentive programs that focus on the undeveloped areas* throughout California. It  
 6 has been reported, “according to the 2010 Census, 95 percent of Californians live on  
 7 just 5.3 percent of the land in the state.”<sup>20</sup> In other words, over 90 percent of  
 8 California is undeveloped and unoccupied.

9           196. In addition to a lack of seriousness by the State in actually creating  
 10 more housing where it would be productive to do so in undeveloped areas of the  
 11 State, Defendants have also carved out “favored” portions of the State to *skirt the*  
 12 *very same Housing Laws, including RHNA, that are imposed on Huntington Beach.*  
 13 In a 2019 article, entitled “*Huntington Beach Sued While Marin County Exempted*  
 14 *from Affordable Housing Requirements*” it was reported that in order to protect  
 15 Governor GAVIN NEWSOM’s home county of Marin from RHNA development.  
 16 Marin County is “enjoying a moratorium on affordable housing building  
 17 requirements until 2028.” To accomplish this, “sneaky language inserted into a  
 18 2017 budget trailer bill allowed Marin County to maintain its extra restrictions on  
 19 how many homes developers can build, giving the finger to the California Anti-  
 20 NIMBY Statute.”<sup>21</sup>

21           197. As detailed in a letter sent to SCAG by the City of Huntington Beach,  
 22 SCAG failed to follow the process outlined in California Government Code Section

23 \_\_\_\_\_  
 24 <sup>20</sup> Online: Daily News, “*Land Use Regulations are obstacles to the California*  
 25 *Dream*” April, 3, 2019: <https://www.dailynews.com/2019/04/03/land-use-regulations-are-obstacles-to-the-california-dream>

26 <sup>21</sup> Online: California Globe, “*Huntington Beach Sued While Marin County*  
 27 *Exempted From Affordable Housing Requirements*” January 31, 2019:  
 28 <https://californiaglobe.com/articles/huntington-beach-sued-while-marin-county-exempted-from-affordable-housing-requirements>

1 65584.04(b)-(f) when it voted to follow an arbitrary and capricious formula that  
2 incorrectly allocated an additional 6,000 RHNA Units than it otherwise would have  
3 under the RHNA Methodology to Plaintiff(s).

4 198. This SCAG vote was not based on empirical data or the RHNA Laws,  
5 but was instead based on last minute political wrangling. Government Code  
6 65584.3(a) requires that actions taken by SCAG be done according to a vote  
7 provided for in established rules following general principles of Due Process.

8 199. These RHNA Laws that add additional outreach and reporting,  
9 modifying the way the RHNA is calculated, increasing the number of topics to be  
10 considered in the allocation methodology such as adding a nebulous concept of  
11 “furthering fair housing” as a required objective for RHNA and local housing  
12 elements and giving Defendants unfettered discretion and the ability to sue  
13 individual cities for not meeting requirements in addition to severe fines that may be  
14 imposed.

15 200. The requirement for the City to zone for 13,368 RHNA Units is so  
16 disproportionately high to other jurisdictions, the City believes that per square mile  
17 of City land, the 13,368 is the *highest RHNA number* of any other city throughout  
18 the entire State of California for the current Planning Cycle.<sup>22</sup> An issue such as  
19 housing that the State purports is a matter of “Statewide Concern,” should be dealt  
20 with evenly and consistently throughout the State. The fact that some regions, like  
21 Marin County, essentially get a pass on producing housing, while cities like  
22 Huntington Beach disproportionately shoulder high volumes of high-density

23  
24  
25 <sup>22</sup> The City of Huntington Beach is approximately 28 square miles, much of it is  
26 environmentally sensitive Wetlands and marshes – so the developable amount of  
27 land in Huntington Beach is far less. At 13,368 units, that is approximately 472  
28 units per square mile. This number would be *much higher* if all of the undevelopable  
Wetlands, marshes, and other sensitive environmental areas were removed from the  
calculation.

1 mandates, shows that these RHNA Laws are nothing more than an illegal Bill of  
2 Attainder.

3 201. If RHNA is a State-mandate, and the State is found to have increased  
4 the number of the City’s RHNA to 13,368 based on either a flawed methodology, or  
5 misguided directives from the States executive, or political gamesmanship, or as  
6 punishment to the City, such an unfounded RHNA mandate amounts to an illegal  
7 Bill of Attainder for Huntington Beach.

8  
9 **NINTH CLAIM FOR RELIEF**  
10 **VIOLATION OF CALIFORNIA ENVIRONMENTAL QUALITY ACT**  
11 **PUBLIC RESOURCES CODE SECTIONS 21000 ET. SEQ. (CEQA)**  
12 **(As to ALL DEFENDANTS)**

13 202. Plaintiff(s) incorporates paragraphs 1-201 as if fully set forth  
14 herein.

15 203. RHNA Laws require the City to make a “Hobson’s Choice,” i.e., that  
16 the local legislature, the City Council, is required to adopt a “Statement of  
17 Overriding Consideration” pursuant to California Environmental Quality Act  
18 (“CEQA”) in order to justify, as a matter of environmental impact, the massive  
19 increase in high density housing, or not adopt a “Statement of Overriding  
20 Consideration” required by CEQA (because the high density zoning is not justified  
21 in light of requisite environmental concerns) and not zone for the massive high  
22 density housing mandated by the RHNA Laws and Defendants, but then face  
23 crippling penalties and lawsuits from Defendants. The RHNA Laws (and Housing  
24 Laws) are pitted against CEQA, thereby putting the City Council in an impossible,  
25 irreconcilable impasse.

26 204. More importantly, the high-density development goals of the RHNA  
27 Laws *compel* the City Council to arrive at a pre-ordained, “fixed,” State-approved  
28 conclusion (of implementing high-density development zoning, i.e., the Defendants’  
RHNA Units) even before the City Council’s consideration by way of conducting

1 local public hearings before adopting a “Statement of Overriding Consideration” as  
2 required by CEQA. For the two State laws, RHNA Laws and CEQA, to be in direct  
3 competition or conflict forces local City Council’s in Huntington Beach to  
4 relinquish local decision-making one way or the other. Following the Housing and  
5 RHNA Laws forces the City Council to essentially violate CEQA, or lie about a  
6 Statement of Overriding Consideration in order to satisfy the Housing and RHNA  
7 Laws. This violates CEQA.

8  
9 **TENTH CLAIM FOR RELIEF**  
10 **VIOLATION OF CALIFORNIA CONSTITUTION**  
11 **ARTICLE IV, SECTION 16**  
12 **(As to ALL DEFENDANTS)**

13 205. Plaintiff(s) incorporates paragraphs 1-204 as if fully set forth  
14 herein.

15 206. The State Legislature passed Assembly Bill 1537<sup>23</sup> in 2014, which  
16 creates a Special Statute for the Counties of Marin, Sonoma, San Francisco,  
17 Oakland and Fremont under the State Housing Laws, including RHNA Laws.

18 207. In addition, and in extension to AB 1537, the State Legislatures passed  
19 Senate Bill 106, which extended the Special Statute time-period for the Counties of  
20 Marin, Sonoma, San Francisco, Oakland and Fremont under the State Housing  
21 Laws, including RHNA Laws, to 2028.

22 208. Because of the foregoing Special Statutes, which are unconstitutional in  
23 California, regions like Marin County have been able to skirt having to implement  
24 the RHNA Laws in the way the City is being forced to by planning for large  
25 volumes of high-density housing development. Marin County’s elected officials  
26 lobbied for, and prevailed on, a reduced density requirement pursuant to RHNA  
27 Laws, which has the effect of giving it the lowest housing allocation as a percentage

28 <sup>23</sup> Online: LegInfo: [http://www.leginfo.ca.gov/pub/13-14/bill/asm/ab\\_1501-1550/ab\\_1537\\_cfa\\_20140516\\_114048\\_asm\\_floor.html](http://www.leginfo.ca.gov/pub/13-14/bill/asm/ab_1501-1550/ab_1537_cfa_20140516_114048_asm_floor.html)

1 of population in the Bay Area. Marin County is only required to create enough new  
2 housing for 0.9% of its 2017 population compared to the regional average of 2.4%.

3 209. Under Cal Const., Art. IV § 16, these are unconstitutional Special  
4 Statutes, which has given special treatment to regions of California like Marin  
5 County under the RHNA Laws, and as such, are invalid.

6 **ELEVENTH CLAIM FOR RELIEF**

7 **FRAUD**

8 **(As to ALL DEFENDANTS)**

9 210. Plaintiff(s) incorporates paragraphs 1-209 as if fully set forth herein.

10 211. For years, the State, including State actors such as Governor  
11 GAVIN NEWSOM, HCD, the Director, and SCAG have claimed that there is a  
12 “housing crisis,” that housing is not affordable and that more housing needs to  
13 be developed in order to deal with the “housing crisis.” The State, including  
14 State actors such as Governor GAVIN NEWSOM, have told the public and  
15 cities that the homelessness crisis, among other societal concerns, is a symptom  
16 of the “housing crisis.”

17 212. The State, including State actors such as Governor GAVIN  
18 NEWSOM, HCD, the Director, and SCAG have also told the public and cities  
19 that if cities were forced to plan for and build more affordable housing, then  
20 housing prices would drop, becoming more affordable, and the homelessness  
21 situation would be cured.

22 213. The public and cities, for years, relied upon the statements made by  
23 the State, including actors such as Governor GAVIN NEWSOM, HCD, the  
24 Director, and SCAG believed that planning for more housing and building more  
25 housing might be a solution to the stated problems.

26 214. In reality however, the statements made by the State, including  
27 actors such as Governor GAVIN NEWSOM, HCD, the Director, and SCAG  
28 were not true and the State and actors such as Governor GAVIN NEWSOM,

1 HCD, the Director, and SCAG knew they were no true.

2 215. In fact, for the City of Huntington Beach, rents have only *increased*  
3 since the State's push for cities to plan for, and build, more high-density housing  
4 has occurred. For example, the City's rents were fairly stable for years until  
5 after 2017, when the State's new Housing Laws including RHNA Laws were  
6 passed. The State's population has *decreased* during that same timeframe, and  
7 the City's population has also decreased.

8 216. In addition, Governor GAVIN NEWSOM, HCD, the Director, and  
9 SCAG have claimed repeatedly that housing, homelessness, and urban development  
10 is a matter of "Statewide Concern."

11 217. In reality however, these statements made by the State, including  
12 actors such as Governor GAVIN NEWSOM, HCD, the Director, and SCAG  
13 were not true and the State and actors such as Governor, GAVIN NEWSOM,  
14 HCD, the Director, and SCAG knew they were no true.

15 218. Governor GAVIN NEWSOM, HCD, the Director, and SCAG knew  
16 or should have known about the *flawed* high density RHNA process that created  
17 overinflated projected housing needs resulting in a State mandate that the  
18 Plaintiff(s) zone for 13,368 units of high density housing that can be built within  
19 an eight-year cycle.

20 219. In addition, Governor GAVIN NEWSOM, HCD, the Director, and  
21 SCAG knew or should have known about the *flawed* high density RHNA  
22 calculations that led to the requirement that the City zone for the allocation of  
23 13,368 high density units (determined by HCD and SCAG) to the Plaintiff(s).  
24 HCD through SCAG failed to follow the process outlined in California  
25 Government Code Section 65584.04(b)-(f).

26 220. As detailed in a letter sent to SCAG by the City of Huntington  
27 Beach, HCD through SCAG failed to follow the process outlined in California  
28 Government Code Section 65584.04(b)-(f) when it chose in 2021 to arbitrarily

1 and capriciously “dump” an *additional* 6,000 high-density RHNA Units on the  
2 City of Huntington Beach.

3 221. Governor GAVIN NEWSOM, HCD, the Director, and SCAG have  
4 made intentional misrepresentations about the need for additional housing units.  
5 Under concealment of material facts known to Defendant(s) with regard to  
6 population and the methodology used to create and allocate the various high density  
7 RHNA unit numbers, including the City’s 13,368 units, Defendant(s) have deprived  
8 the City of its legal rights, and has forced the City to rely upon the intentional  
9 misrepresentations to plan for building over 13,368 additional, unnecessary, high  
10 density units.

11 222. In reality however, the statements made, and the issuance of the  
12 13,368 high density RHNA “mandate” by the State, including actors such as the  
13 Governor GAVIN NEWSOM, HCD, the Director, and SCAG were not true and  
14 the State and actors such Governor, GAVIN NEWSOM, HCD, the Director, and  
15 SCAG knew they were no true.

16 223. The California DOF Independent Auditor released a Report in 2022  
17 on the RHNA process, finding RHNA determinations are “*flawed*” and not  
18 supported by evidence.

19 224. These flawed and patently false RHNA determination of 13,368  
20 high-density units for the City and representations by Governor GAVIN  
21 NEWSOM, HCD, the Director, and SCAG were done to induce Plaintiff(s) to  
22 act upon it and plan to build 13,368 high-density units.

23 **VII. PRAYER FOR RELIEF**

24 WHEREFORE, Plaintiff on behalf of itself and those similarly situated  
25 respectfully ask this Court to grant Plaintiff the following relief:

26 1. Declaratory Judgment that California Government Code Sections  
27 65583, 65583.1, 65583.2, 65583.3, 65584, 65584.01, 65584.02, 65584.03,  
28 65584.04, 65584.045, 65584.05 65584.06, 65584.07, 65584.09, 65584.2, 65585.

1 (“Regional Housing Needs Assessment Laws” or RHNA Laws. (“RHNA Laws”)  
2 violate the First Amendment of U.S. Constitution as the RHNA Laws compel and  
3 therefore violate the free speech of Plaintiff(s); and

4 2. An Injunction against Defendants from enforcement of the RHNA  
5 Laws against Plaintiff(s) as violative of the First Amendment; and

6 3. Declaratory Judgment that the RHNA Laws that produced a “mandate”  
7 that the City zone for 13,368 high density RHNA Units imposed on Plaintiff(s) by  
8 the Defendants, violates Plaintiff(s)’ rights under Procedural Due Process and  
9 Substantive Due Process of the U.S. Constitution; and

10 4. An Injunction against Defendants from enforcement of the RHNA  
11 Laws against Plaintiff(s) as violative of Plaintiff(s)’ rights under Procedural Due  
12 Process and Substantive Due Process of the U.S. Constitution; and

13 5. Declaratory Judgment, and Relief, that the RHNA Laws, combined  
14 with Government Code Sections 65000 through 66300 (together “Housing Laws”)   
15 creates an undue burden on interstate commerce in violation of Article 1, Section 8,  
16 Clause 3 of the U.S. Constitution, (“Commerce Clause”); and

17 6. An Injunction against Defendants from enforcement of the RHNA  
18 Laws as violative of the Commerce Clause against Plaintiff(s) and other cities  
19 similarly situated; and

20 7. Declaratory Judgment that the RHNA Laws that produced a “mandate”  
21 that the City zone for 13,368 high density RHNA Units imposed on Plaintiff(s) by  
22 the Defendants, violates the City’s Charter City Home Rule Authority pursuant to  
23 Article XI of the California Constitution; and

24 8. Injunction against Defendants from enforcement of the RHNA Laws  
25 against Plaintiff(s) as violative of the California Constitution; and

26 9. Declaratory Judgment that the State’s “mandate” of 13,368 high  
27 density RHNA Units allocated to Plaintiff(s) by the Defendants, violates RHNA  
28 Laws.



1           10. Injunction against Defendants from enforcement of the mandated  
2 allocation of 13,368 high density RHNA Units on Plaintiff(s); and

3           11. Declaratory Judgment that the State’s “mandate” of 13,368 high  
4 density RHNA Units allocated to Plaintiff(s) by the Defendants amounts to an  
5 illegal Bill of Attainder in violation of the California Constitution; and

6           12. Injunction against Defendants from enforcement of the mandated  
7 allocation of 13,368 high density housing units to Plaintiff as an illegal Bill of  
8 Attainder in violation of the California Constitution; and

9           13. Declaratory Judgment, and Relief, that RHNA Laws impermissibly  
10 delegated legislative authority to an administrative agency, HCD, which cannot be  
11 scrutinized by a court of law, in violation of the Constitutional doctrine of  
12 Separation of Powers; and

13           14. Injunction against Defendants from enforcement RHNA Laws against  
14 Plaintiff(s) and other cities similarly situated as a violation of the Constitutional  
15 doctrine of Separation of Powers; and

16           15. Declaratory Judgment, and Relief, that the RHNA Laws are in direct  
17 conflict with the California Environmental Quality Act (CEQA) and the City must  
18 be able to follow the State’s CEQA law without violating RHNA Laws or Housing  
19 Laws if the Plaintiff(s) makes appropriate CEQA findings; and

20           16. Declaratory Judgment, and Relief, that AB 1537 and SB 106 are a  
21 Special Statutes as proscribed by Article IV, Section 16 of the California  
22 Constitution, having given special treatment to Marin County under the RHNA  
23 Laws, and as such, invalid; and

24           17. Enjoin Defendants from enforcing the RHNA Laws against Plaintiff(s)  
25 and those cities similarly situated, and from Defendants issuing any future orders or  
26 rules similar to the invalid ones described in this Action; and

27           18. Declaratory Judgment, and Relief, that the Governor, the State  
28 Legislature, and/or HCD has through its Director, made intentional

1 misrepresentations, including but not limited to, those statements averred herein. In  
2 doing so, Defendant(s) have deprived the Plaintiff(s) of legal rights; and

3 19. Grant a Preliminary Injunction enjoining the enforcement and further  
4 enforcement of RHNA Laws against Plaintiff(s) and all other cities similarly  
5 situated; and

6 20. Any other such further relief to which Plaintiff(s) may be entitled as a  
7 matter of law or equity or which this Court determines to be just and proper.

8

9 Dated: March 9, 2023

MICHAEL E. GATES, CITY ATTORNEY

10

11

By: /s/ MICHAEL E. GATES

12

MICHAEL E. GATES, CITY ATTORNEY

13

Attorney for Plaintiffs,

14

CITY OF HUNTINGTON BEACH, and

15

HUNTINGTON BEACH CITY COUNCIL, and

16

MAYOR TONY STRICKLAND, and

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MAYOR PRO TEM GRACEY VAN DER

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MARK

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