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12

13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
14 **COUNTY OF FRESNO**  
15

16 AMERICAN CIVIL LIBERTIES UNION OF  
NORTHERN CALIFORNIA, a nonprofit  
17 corporation, and FIRST AMENDMENT  
COALITION, a nonprofit corporation,  
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Petitioners,  
19

v.  
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21 THE CITY OF FRESNO, and THE FRESNO  
CITY COUNCIL,  
22

Respondents.  
23  
24

Case No. 23CECG04744

**MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF  
RESPONDENTS' MOTION FOR  
JUDGMENT ON THE PLEADINGS**

Date: August 28, 2024  
Time: 1:30 p.m.  
Dept.: 404  
The Hon. Robert M. Whalen, Jr.

Action Filed: November 15, 2023  
Trial Date: None

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1 Respondents CITY OF FRESNO (“City”) and FRESNO CITY COUNCIL (“Council”)  
2 hereby submit the following Memorandum of Points and Authorities in support of their Motion for  
3 Judgment on the Pleadings (“Motion”) as to the Verified Petition for Peremptory Writ of Mandate  
4 and Complaint for Injunctive and Declaratory Relief (“Petition”) of Petitioners AMERICAN CIVIL  
5 LIBERTIES UNION OF NORTHERN CALIFORNIA and FIRST AMENDMENT COALITION  
6 (collectively hereinafter “Petitioners”).

## 7 INTRODUCTION

8 Petitioners have brought suit against Respondents under the Ralph M. Brown Act (“Brown  
9 Act”), alleging the use of a committee of three Council members (less than a quorum) to advise the  
10 Council on budgetary matters during several budgetary cycles going back to the Fiscal Year (“FY”)  
11 2019 budget. (Gov. Code, § 54950, et seq.) While the Petition describes a separate committee for  
12 each fiscal year, Petitioners’ theory of liability is that there has been one singular “standing” budget  
13 committee that failed to comply with the Brown Act’s meeting notice requirements.

14 However, there is no authority for the proposition that if an agency has a temporary (or “ad  
15 hoc”) committee for one budgetary cycle, and then has a similar committee during the next  
16 budgetary cycle, a standing committee is created as a matter of law. Petitioners’ theory of liability  
17 is especially problematic in light of the Fresno City Charter (“Charter”), which provides for a  
18 Mayor-Council (or “Strong Mayor”) system of government, and specifically assigns the creation of  
19 the City’s annual budget to the Mayor.

20 Additionally, Petitioners ignore that there are two different procedures in the City Charter  
21 concerning each annual budget cycle. A simple majority vote is required by Council to adopt a  
22 budget each fiscal year. However, to make changes to a budget after its adoption a supermajority  
23 vote by Council is required through a different process than budget adoption that is outlined in a  
24 specific section of the City Charter. (Charter § 1206.) Thus, there is not one continuous City budget  
25 approval process, that is the same process year after year, as alleged in this lawsuit.

26 Furthermore, to the extent that Petitioners are attempting to premise liability based on past  
27 events, the Petition is barred by the Brown Act’s express limitations period, which requires a “cease  
28 and desist” letter to be sent within nine months of the alleged violation. To the extent that

1 Petitioners’ action is based on ongoing or threatened future violations, there are no allegations of  
2 Brown Act violations occurring now because a Budget Committee exists in 2024. Petitioners cannot  
3 plead any such allegations because there are no facts to support those allegations. As such, the  
4 instant Motion should be granted with prejudice.

5 **BACKGROUND**

6 Under the Charter and Municipal Code (“FMC”), the City operates under a Mayor-Council  
7 form of government, where the Councilmembers are elected by district and the Mayor is separately  
8 elected at-large. (See Request for Judicial Notice [“RJN”] Nos. 1-2, 4-5; [Charter §§ 204, 301,  
9 1503; FMC § 2-101].) For the budget, the Mayor and the Council have separate roles. The Mayor  
10 oversees the preparation of the budget each fiscal year (ending June 30). (RJN Nos. 3-4 [Charter  
11 §§ 400, 1201-1203].) Each department head furnishes to the Mayor “estimates of revenue and  
12 expenditures,” which are reviewed and may be revised. (RJN No. 4 [Charter § 1202].) The  
13 proposed budget is then submitted to the Council “[a]t least thirty days prior to the beginning of  
14 each fiscal year, ...” (RJN No. 4 [Charter § 1203].) However, “[t]he Mayor shall have power of  
15 veto in all actions of Council relating to the budget, including line item budgetary veto authority  
16 over all programs and budgetary units,” which includes “the ability to reduce or eliminate the fiscal  
17 year funding to any program or budget unit.” (RJN No. 3 [Charter § 400(f)].)

18 It is the role of the Council to review the proposed budget and make such revisions as it may  
19 deem advisable. (RJN No. 4 [Charter § 1203].) The Council holds a public hearing on the proposed  
20 budget, at which time all interested persons shall be heard. (RJN No. 4 [Charter § 1204].) “After  
21 the conclusion of the public hearing the Council shall further consider the proposed budget and  
22 make any revisions thereof that it may deem advisable and on or before June 30, it shall adopt a  
23 balanced budget.” (RJN No. 4. [Charter § 1205].) Under a separate section of the Charter, “[a]t  
24 any meeting after the adoption of the budget, the Council may amend or supplement the budget by  
25 motion adopted by the affirmative votes of at least five members so as to authorize the transfer of  
26 unused balances appropriated for one purpose to another purpose or to appropriate available funds  
27 not included in the budget.” (RJN No. 4 [Charter § 1206].)

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1 **SUMMARY OF ALLEGATIONS**

2 Petitioners allege that on June 21, 2018, the Council took action to create the “Budget  
3 Committee.” (Petition, ¶¶ 8, 28, Ex. A.) The Budget Committee “is composed of at least of three of  
4 the seven City councilmembers at any given time, and, on information and belief, it may also include  
5 one or more city staff members.” (Petition, ¶ 25.) “Upon information and belief, when there are  
6 disparities between the City Mayor’s proposed budget and the Council’s budget priorities, the  
7 Budget Committee holds meetings to reconcile the disparities and prepare a new proposed budget  
8 to present to the full Council.” (Petition, ¶ 26.) According to Petitioners, “[t]he Budget Committee  
9 is a standing committee with continuing subject matter jurisdiction over matters related to the City’s  
10 budget,” but the meetings have never been noticed to the public. (Petition, ¶¶ 10-11.) Petitioners  
11 contend that the Budget Committee is a standing committee because the Council has never voted to  
12 dissolve this committee. (Petition, ¶¶ 11, 32.) Petitioners allege that “the Budget Committee ...  
13 effectively has the final word on the City’s annual budget, which is typically approved by the  
14 Council without significant change to the Budget Committee’s proposal.” (Petition, ¶ 14.)

15 Petitioners allege that “[t]he Budget Committee was established by a vote of the Council on  
16 or about June 21, 2018.” (Petition, ¶ 14.) Petitioners further allege that “[a]t the time of its creation,  
17 the Council formed the Budget Committee to address budgetary matters *such as* the disposition of  
18 \$13.4 million of City revenue for the FY 2019 budget. (Petition, ¶ 33, italics added.) However, the  
19 Meeting Minutes relied upon by Petitioner state that “Councilmember Chavez motioned to move  
20 estimated \$9.9 million August 2019 Sales Tax into the Reserve Fund and move estimated \$3.5  
21 million General Fund Reserve Revenue across each Council District's Infrastructure fund,” and that  
22 the amendment was “to create a sub-committee with Council President Soria, and Councilmembers  
23 Chavez and Caprioglio to discuss the \$3.5 million and \$9.9 million and to come back at the next  
24 budget hearing for discussion and vote.” (Petition, Ex. A [Minutes, p. 21].) On or about June 28,  
25 2018, the Council voted to approve the FY 2019 City budget. (Petition, ¶ 14.)

26 Petitioners allege that “[a]lthough the Budget Committee may be advisory in name, in  
27 practice it effectively has the final word on the City’s annual budget, which is typically approved  
28 by the Council without significant change to the Budget Committee’s proposal.” (Petition, ¶ 14.)

1 “The Council has voted to confirm the assignment of councilmembers to—and existence of—the  
2 Budget Committee on multiple occasions.” (Petition, ¶ 11.) In particular, the Council “voted to  
3 approve Committee Rosters that included the ‘Budget Sub-Committee’ on or about May 2, 2019,  
4 September 19, 2019, January 30, 2020, February 4, 2021, February 10, 2022, and January 19, 2023.  
5 (Petition, ¶ 31.) Petitioners further allege that the Council “has never voted or taken other action to  
6 dissolve the Budget Committee since it was formed in 2018.” (Petition, ¶ 11.)

7 On September 5, 2023, Petitioners requested that the City “cease and desist the unlawful  
8 practice of conducting these critical budget deliberations in secret.” (Petition, ¶ 15, Ex. U.) On  
9 September 18, 2023, the City Attorney responded in a letter, stating that “there is no legal basis for  
10 requiring any further action be taken by the Fresno City Council concerning this matter,” and that  
11 the threats of litigation “are moot” because the Budget Committee “was dissolved on June 23, 2023,  
12 when the Fiscal Year 2023/24 City budget was approved by the City Council.” (Petition, ¶ 16, Ex.  
13 V [Letter, p. 1].) As for FY 25 budget, the matter was “premature and not ripe for judicial review.”  
14 (Petition, Ex. V [Letter, p. 3].)

15 **AUTHORITY FOR MOTION**

16 A defendant or respondent may move for judgment on the pleadings when “the complaint  
17 does not state facts sufficient to constitute a cause of action against that defendant.” (Civ. Proc.  
18 Code § 438(c)(1)(B)(ii).) “Like a demurrer, the grounds for the motion must appear on the face of  
19 the challenged pleading or from any matter of which the court is required to take judicial notice.”  
20 (*Civic Partners Stockton, LLC v. Youssefi* (2013) 218 Cal.App.4th 1005, 1013.) “All allegations in  
21 the complaint and matters upon which judicial notice may be taken are assumed to be true.” (*Rippon*  
22 *v. Bowen* (2008) 160 Cal.App.4th 1308, 1313.) All material facts properly pleaded are deemed  
23 admitted, “but not contentions, deductions or conclusions of fact or law.” (*Baughman v. State of*  
24 *California* (1995) 38 Cal.App.4th 182, 187.)

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1 **ARGUMENT**

2 **I. THERE WAS NO SINGULAR AND STANDING BUDGET COMMITTEE**

3 With respect to whether an advisory committee is a “legislative body,” the Brown  
4 Act provides as follows:

5 A commission, committee, board, or other body of a local agency, whether permanent or  
6 temporary, decision making or advisory, created by charter, ordinance, resolution, or formal  
7 action of a legislative body. However, advisory committees, composed solely of the  
8 members of the legislative body that are less than a quorum of the legislative body are not  
9 legislative bodies, except that standing committees of a legislative body, irrespective of their  
10 composition, which have a continuing subject matter jurisdiction, or a meeting schedule  
11 fixed by charter, ordinance, resolution, or formal action of a legislative body are legislative  
12 bodies for purposes of this chapter.

13 (Gov. Code, § 54952, subd. (b).)

14 It appears that Petitioners have taken two positions with respect to the “Budget Committee.”  
15 The first position is that this committee was not advisory. (Petition, ¶ 14.) The second position is  
16 that even if advisory, it was a singular standing committee rather than a succession of temporary  
17 committees for each budget cycle, because it allegedly had continuing subject matter jurisdiction  
18 over the City’s budget. (Petition, ¶ 11.) As a matter of law, neither result is possible.

19 **A. The Committees Were Advisory and Had No Control Over the Budget**

20 The Brown Act is clear that “advisory committees, composed solely of the members of the  
21 legislative body that are less than a quorum of the legislative body are not legislative bodies.” (Gov.  
22 Code, § 54952, subd. (b).) However, Petitioners then allege that “[a]though the Budget Committee  
23 may be advisory in name, in practice it effectively has the final word on the City’s annual budget,  
24 which is typically approved by the Council without significant change to the Budget Committee’s  
25 proposal.” (Petition, ¶ 14.) According to Petitioners, on multiple occasions budget committees have  
26 “heard, discussed, deliberated, or took action” on matters related to the budget. (Petition, ¶¶ 34, 58,  
27 60.) However, allegations such as “effectively has the final word” are conclusions rather than facts,  
28 and thus are not accepted as true. (*Baughman v. State of California, supra*, 38 Cal.App.4th at 187.)  
As a matter of fact and law, a budget committee could not have had “the final word” on any budget.

Under the Charter, a budget committee cannot take “action” on a budget, or otherwise have  
“the final word,” as it can neither prepare nor adopt a budget. Petitioners’ allegations have ignored

1 the structure of the City of Fresno’s “Strong Mayor” form of government, which is completely  
2 different from most cities where the city manager is appointed by the City Council (a “Council-  
3 Manager” form of city government), such as Selma and Reedley. (Gov. Code, §§ 34855, 36501,  
4 36801.) However, under the City’s “Strong Mayor” form of government, the Mayor (separately  
5 elected at-large) oversees the preparation of the City’s budget each fiscal year, and has veto power  
6 in all actions of Council relating to the budget. (RJN No. 3 [Charter § 400].) The City Council  
7 reviews the proposed budget and makes revisions as it may deem advisable. (RJN No. 4 [Charter §  
8 1203].) The City Council is required to hold a public hearing on the proposed budget, and then the  
9 Council can consider further revisions on or before June 30, the deadline to adopt the budget. (RJN  
10 No. 4 [Charter §§ 1204-1205].) Also, to amend or supplement the budget after its adoption takes a  
11 supermajority of five Councilmembers. (RJN No. 4 [Charter § 1206].) Therefore, under the  
12 Charter, a budget committee could not have given anything other than advice.

13       There is case authority directly on point that negates Petitioners’ attempt to characterize an  
14 advisory committee as some sort of *de facto* decision maker. In *Taxpayers for Livable Communities*  
15 *v. City of Malibu* (2005) 126 Cal.App.4th 1123 (“*City of Malibu*”), the Coastal Commission released  
16 a draft of one component of the Malibu’s Local Coastal Program, a Land Use Plan (“LUP”). (*Id.* at  
17 1125.) Thereafter, two of the five members of the city council “held a number of private meetings  
18 with various individuals, constituents, and city staff to ‘go over the City’s response to the Coastal  
19 Commission’s draft LUP.’” (*Id.* at 1125-1126.) At a regular meeting of the city council, the two  
20 councilmembers submitted their recommendations on how Malibu should respond to the draft LUP.  
21 (*Id.*, at 1126.) In affirming the trial court’s ruling that the two councilmembers did not constitute a  
22 “legislative body,” the Court of Appeal found that even though these councilmembers were the sole  
23 members for the city council’s standing committee for land use and planning, this committee did  
24 not have jurisdiction over Malibu’s response to the Coastal Commission; instead, the City Council  
25 reserved to itself jurisdiction over this response. (*Id.* at 1127-1128.) Additionally, the two  
26 councilmembers could not bind the city council because the council kept for itself all future  
27 decisions involving the LUP until the matter was resolved. (*Id.* at 1128-1129.)

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1 The same logic from *City of Malibu* applies here, as any of the budgets could have been  
2 passed without the affirmative vote of any budget committee member, and if a budget amendment  
3 was ever suggested by a committee, at least two other Councilmembers were needed for approval.  
4 (RJN No. 4 [Charter § 1206].) Therefore, a litigant cannot simply make conclusory allegations of  
5 a committee having “the final word” on a matter, in contravention of both fact and law. Indeed, the  
6 Court of Appeal in *City of Malibu* found that since the two councilmembers were found not to be a  
7 legislative body (or “other body”), the allegations that the two councilmembers had  
8 “decisionmaking power,” and that the council “rubber-stamped” the recommendations of the two  
9 councilmembers, were resolved against the appellants. (*Id.* at 1129.)

10 Furthermore, the vacancy of Petitioners’ conclusory allegations are illustrated in several  
11 exhibits to the Petition. First, Petitioners do not accurately describe the first “Budget Committee”  
12 in 2018. The meeting minutes state that “Councilmember Chavez motioned to move estimated \$9.9  
13 million August 2019 Sales Tax into the Reserve Fund and move estimated \$3.5 million General  
14 Fund Reserve Revenue across each Council District’s Infrastructure fund,” and that the amendment  
15 was “to create a sub-committee with Council President Soria, and Councilmembers Chavez and  
16 Caprioglio to discuss the \$3.5 million and \$9.9 million and to come back at the next budget hearing  
17 for discussion and vote.” (Petition, Ex. A [Minutes, p. 21].) On June 28, 2018, the Council voted  
18 to approve the FY 2019 budget. (Petition, Ex. L.) The two matters for which the “sub-committee”  
19 was created to discuss were debated, and the votes were not unanimous. (Petition, Ex. L [Minutes,  
20 pp. 17-18].) This demonstrates a limited and temporary role, contradicting Petitioners’ portrayal of  
21 the Council creating a committee to make final decisions on the budget on a continuing basis.

22 Also, Exhibit M to the Petition contains minutes from the November 29, 2018 Council  
23 meeting, which noticed an amendment (19<sup>th</sup>) to the FY 2019 budget resolution (2018-157) adopted  
24 on June 28, 2018. (Petition, Ex. M [Minutes, pp. 7-10]; see also Ex. L (Minutes, pp. 15-16].) Again,  
25 these minutes reflect an open budgetary discussion and public participation. The same can be said  
26 for Exhibit P, which consists of minutes from the April 23, 2020 Council meeting, addressing  
27 COVID-19 Emergency Response Funds. (Petition, Ex. P [Minutes, pp. 2-4].) While there was  
28 direction for a “Budget Subcommittee” review the matter, the matter would be “coming back to the

1 Council for final approval of the proposal.” (Petition, Ex. P [Minutes, p. 4].) Therefore, no budget  
2 committee ever had “the final word” on any particular provision in a budget.

3 Based on the foregoing, the budget committees described in the Petition could not have been  
4 anything other than advisory. As such, Petitioners’ argument to the contrary must be rejected.

5 **B. The Budget Committees Were Dissolved By Operation of Law**

6 Because the budget committees were advisory, and there is no allegation that any budget  
7 committee had a fixed meeting schedule, the question is whether the “Budget Committee,” as  
8 alleged, amounted to a singular committee with “continuing subject matter jurisdiction” over the  
9 City’s budget. (Petition, ¶ 11; see also § 54952, subd. (b).) Similar to the advisory committee issue  
10 above, Petitioners’ allegations fall flat when compared to the legal framework for the City’s budget.

11 Under Municipal Code section 2-316, “[a]ll special committees shall be appointed by the  
12 presiding officer, unless otherwise directed by the Council.” (RJN No. 7.) However, Petitioners do  
13 not allege that the “Budget Committee” is a “special committee” that was “appointed by the  
14 presiding officer” of the Council. Instead, Petitioners allege that “[t]he Council has voted to confirm  
15 the assignment of councilmembers to—and existence of—the Budget Committee on multiple  
16 occasions.” (Petition, ¶ 11.) Specifically, the Council “voted to approve Committee Rosters that  
17 included the ‘Budget Sub-Committee’ on or about May 2, 2019, September 19, 2019, January 30,  
18 2020, February 4, 2021, February 10, 2022, and January 19, 2023.” (Petition, ¶ 31.) As discussed  
19 below, just because Petitioners call the Budget Committee a “standing committee” with “subject  
20 matter jurisdiction” does not make it so, as the only thing the Petition represents is that on certain  
21 occasions during specific budget cycles, a temporary committee was called upon to review a matter.

22 The problem with the Petition is that it completely ignores the fact that the City is a charter  
23 city with its own way of handling the budget. By law, each fiscal year has a different City budget,  
24 and each budget process ends by June 30. (Charter §§ 1201, 1205.) The Mayor, who is directly  
25 elected at-large and separate from the Council, oversees the preparation of the City’s budget. (RJN  
26 Nos. 2-3 [Charter §§ 301, 400].) The City Council reviews the proposed budget, holds a public  
27 hearing, and then can consider further revisions on or before June 30. (RJN No. 4 [Charter §§ 1203-  
28 1205].) Still, the Mayor still has veto power over the budget. (RJN No. 3 [Charter § 400].) Thus,

1 it makes no sense to conclude that a committee formed to study and advise on a matter during a  
2 particular budget cycle would have “continuing subject matter jurisdiction.”

3 In their Petition, Petitioners offer two arguments in support of their conclusion that the City  
4 has had a standing “Budget Committee” since June 18, 2018. Petitioners first contend that the  
5 Budget Committee is a standing committee because the Council has never voted to dissolve this  
6 committee. (Petition, ¶¶ 11, 32.) However, this argument improperly elevates form over substance,  
7 especially when there is no requirement to follow the form of express dissolution. (See Civ. Code,  
8 § 3528.) As discussed above, the Council did not take action in June of 2018 to form a standing  
9 committee. Instead, a week prior to the approval of the FY 2019 budget, the Council created a  
10 committee to make recommendations as to two specific budgetary items. (Petition, ¶ 31, Ex. A  
11 [Minutes, p. 21].) Since the FY 2019 budget was adopted on June 28, 2018, the matter was  
12 concluded by law, and the Council was not required to formally dissolve the committee. (Charter §  
13 1205; see also Civ. Code, § 3532 [“The law neither does nor requires idle acts.”].)

14 Petitioners then allege “[u]pon information and belief” that the “Budget Subcommittee”  
15 continued to exist as a “standing committee with continuing subject matter jurisdiction over  
16 budgetary matters” without holding noticed meetings. (Petition, ¶¶ 37-38.) As evidence for this  
17 proposition, Petitioners identify a Council meeting on November 29, 2018, where there was a  
18 “budget update” regarding an “unexpected carry-over of \$8.8 million dollars,” and it was proposed  
19 by Councilmember Soria that “a subset of the funds go to unmet needs in the City parks.” (Petition,  
20 ¶ 40.) According to Petitioners, “City staff was waiting on the approval of the list from the Budget  
21 Committee before moving forward with these projects.” (Petition, ¶ 40.) It is true that the Council  
22 may amend or supplement the budget after its adoption, with supermajority of five Councilmembers.  
23 (RJN No. 4 [Charter § 1206].) However, there are at least two problems with these allegations.

24 First, there is no reference to a budget committee in the meeting minutes regarding the  
25 amendment to the budget resolution. (Petition, ¶ 41, Ex. M [Minutes, pp. 7-10].) Second, even  
26 assuming the unsupported allegations as true, the matter as alleged related to a specific allocation  
27 of money to be applied, at least in part, to specific needs for City parks. (Petition, ¶ 40.) This would  
28 have been a specific task for a budget committee to address, and it cannot be concluded that general

1 subject matter jurisdiction over the budget existed. Indeed, there were eighteen previous  
2 amendments to the FY 2019 budget, none of which are alleged to have involved a budget committee.  
3 Thus, Petitioners’ allegations do not plead the existence of a standing committee.

4 Moving forward, Petitioners allege that a “Budget Sub-Committee” of three  
5 Councilmembers was “approved” on or about May 2, 2019. (Petition, ¶ 31, Ex. B [Minutes, pp. 9-  
6 10].) The meeting minutes, though, do not indicate a standing committee, as the agenda item was  
7 described as “Council Boards and Commissions Communications, Reports, Assignments and/or  
8 Appointments, Reappointments, Removals to/from City and non-City Boards and Commissions.”  
9 (Petition, Ex. B [Minutes, p. 10].) Given that the FY 2020 budget was due to be adopted by June  
10 30, 2019, it only makes sense that a committee would be formed to assist and advise on the budget  
11 to be adopted. Petitioners did not point to anything specific that this committee did for the  
12 preparation of the FY 2020 budget. (Petition, ¶¶ 58-59.) Therefore, there is no basis to conclude  
13 that this committee was meant to constitute a standing committee over future budgets.

14 As for the FY 2021 budget, Petitioners allege that a “Budget Sub-Committee” (with  
15 Councilmembers Soria, Chavez, Caprioglio) was approved on or about September 19, 2019.  
16 (Petition, ¶ 31, Ex. C [Minutes, p. 27].) Another approval took place on January 20, 2020. (Petition,  
17 Exs. D, H.) With respect to the activity of this committee, Petitioners allege that on April 23, 2020,  
18 the Council considered a resolution directing appropriations to the COVID-19 Emergency Response  
19 Fund to create a “Consumer Grant Program.” (Petition, Ex. P. [Minutes, p. 2].) Councilmember  
20 Karbassi “suggested the program go before the Council Budget Subcommittee first,” and  
21 “Councilmember Soria directed the Administration to work with the Council Budget Subcommittee  
22 on the allocation before coming to Council for final approval of the proposal.” (Petition, Ex. P.  
23 [Minutes, p. 3-4].) Similar to the matters described above, this assignment was specific to the  
24 proposed grant program and did not grant subject matter jurisdiction over the budget generally.

25 The Petition is similarly scant regarding the FY 2022 budget. Petitioners allege that on  
26 February 4, 2021, the Council took action on the City’s committees and the Budget Sub-Committee  
27 had a new set of Councilmembers (Soria, Bredefeld, and Esparza). (Petition, ¶ 31, Ex. E [Minutes,  
28 p. 15], Ex. I.) Petitioners’ allege that “[t]he Budget Committee met on or about May 6, 2021, to

1 hear a proposal to establish appropriations for a ‘Homeless Housing Project.’” (Petition, ¶ 75, Ex.  
2 R.) Similar to Petitioners’ previous allegations, all this shows is that a committee for a specific  
3 budget cycle addressed a specific matter. This is the definition of a temporary committee.

4 Also, for the FY 2023 budget, the only specific allegation is that the “Budget Sub-  
5 Committee” was approved on February 10, 2022. (Petition, ¶ 31, Ex. F [Minutes, p. 10].) There is  
6 nothing about what this committee supposedly did with respect to the budget. This lack of pleading  
7 further serves to demonstrate that the “Budget Committee” was not a continuing standing  
8 committee, but rather always was a temporary committee for a specific budget.

9 For FY 2024, Petitioner attempts to characterize the committee for this budget cycle as a  
10 standing committee because the Council purportedly made this change on January 19, 2023.  
11 (Petition, ¶¶ 81-82, Ex. K.) This is an incorrect assessment of the record. The supplemental agenda  
12 packet states in red print “Recommend that this be a standing committee, with members Maxwell,  
13 Perea, Karbassi,” with the previously recommended committee members (Esparza, Maxwell, and  
14 Arias) stricken. (Petition, Ex. K [Supplement Packet, p. 2].) However, there is nothing in the  
15 Petition showing that this recommendation was specifically adopted by the Council. More  
16 importantly, even if the Council decided to have the FY 2024 budget committee conduct itself as a  
17 standing committee, this does not mean that the law required this result. The same can be said about  
18 Petitioners’ description of the Council’s discussion of the proposed “Public Transparency Act” in  
19 2021. Just because the Council debated creating a standing committee does not mean that one was  
20 created, or that the law required such a creation. (Petition, ¶¶ 65-74.)

21 The vacancy of Petitioners’ theory of liability is illustrated in its “cease and desist letter,”  
22 where they relied heavily on an Attorney General Opinion from 1996. (Petition, Ex. U [Letter at p.  
23 4, citing 79 Ops. Cal. Att’y Gen. 69 (1996)].) In this Opinion, the Attorney General’s office  
24 considered a request from a member of the Assembly about whether a water district’s committee is  
25 subject to the Brown Act “if the committee has the responsibility of providing advice concerning  
26 budgets, audits, contracts, and personnel matters to and upon request of the legislative body(.)” (Op.  
27 at p. 1.) The district’s seven member board established a subcommittee of three members to advise  
28 the board on administrative matters as needed. (Op. at p. 2.) This committee did not have a fixed

1 meeting schedule but “generally” met monthly, operating under the following rule:

2

3 The Administrative Committee shall consist of the three Directors appointed by the Chair  
4 and approved by the Board. This committee shall not exercise continuing subject matter  
5 jurisdiction. Its purpose shall be to advise the Board on administrative matters as  
6 appropriate. The Board of Directors shall not fix the meeting schedule of this committee.  
7 The committee may meet on the call of the chair or as decided by the members. Action taken  
8 by the Administrative Committee shall be subject to final Board approval. (*Italics added.*)  
9 (Op., at p. 2.)

10 Quoting the Webster’s Dictionary, the Attorney General noted that a “standing committee”  
11 is “commonly defined as ‘a committee to consider subjects of a particular class during a stated  
12 period; specif[ically] a permanent committee of a legislative body.’” (Op. at p. 4, quoting Webster's  
13 Third New Internat. Dict. (1971) p. 2224.) “‘Permanent’ may be commonly defined as ‘to endure,  
14 remain.’” (Op. at p. 4, quoting Webster's Third New Internat. Dict. (1971) p. 1683.) In finding that  
15 the committee, as described, was a standing committee, the Attorney General found that “this  
16 subcommittee does not have a limited term, and it is not an ad hoc committee charged with  
17 accomplishing a specific task in a short period of time.” (Op. at p. 4.)

18 There are numerous material differences between the committee in this opinion and what  
19 the Petition describes. First, instead of a committee to advise on certain aspects of an annual budget,  
20 this committee provided advice concerning “budgets, audits, contracts, and personnel matters ...”  
21 (Op. at p. 1.) Unlike the City’s budget, which by law ends no later than June 30 annually, matters  
22 such as “audits, contracts, and personnel matters” are not so delineated and thus do not have limited  
23 terms. A budget committee cannot be said to be enduring because every budget has a deadline for  
24 its adoption each fiscal year. What the Petition shows is not an enduring or remaining committee,  
25 but the creation of new committees. This is vastly different than a committee of long duration that  
26 generally met monthly. Therefore, the cited Attorney General opinion is not helpful to Petitioners.

27 As Petitioners have no pertinent case authority that supports their position, and are instead  
28 reliant on an inapposite Attorney General opinion, they are left with the “court of public opinion.”  
Indeed, most of the background of Petitioners’ cease and desist letter was taken from two articles  
written in *Fresnoland* in 2023. (Petition, Ex. U [Letter, pp. 1-2, fn. 2-3, 5-11.) According to one of  
the articles, “[t]he budget committees of the Los Angeles, San Diego, San Francisco, Sacramento,



1 Long Beach, Oakland, Anaheim, and Bakersfield city councils all hold their meetings in public.”  
2 (Petition, Ex. U [Letter, p. 2, fn. 11.) Petitioners’ argument is that if other cities have public budget  
3 committee meetings, the City must have done something wrong. This is patently insufficient for a  
4 court of law, especially as no facts or circumstances are provided regarding the other cities.

5 The Brown Act expressly allows temporary advisory committees to be formed and function  
6 without the necessity of noticed public meetings. (Gov. Code, § 54952, subd. (b).) This is a clear  
7 legislative priority that provides public agencies flexibility without removing the public’s right to  
8 be notified when a matter is going before the actual decision making body. None of the committees  
9 described in the Petition had a set meeting schedule, and the purpose for all of them ended when the  
10 budgets were adopted. This is not the type enduring or remaining committee described by the  
11 Attorney General, so there is no legal basis for Petitioners to group together temporary committees  
12 and claim that these committees were in reality a singular “standing” committee. Without any  
13 pertinent legal authority supporting Petitioners’ position, it must be rejected.

14 **II. PETITIONERS CANNOT BASE LIABILITY ON PAST ACTIONS**

15 Even if is assumed that Petitioners have plead the existence of a standing committee, they  
16 cannot have this Court “determine the applicability of [the Brown Act] to past actions of the  
17 legislative body” based on alleged violations that are time barred. Gov. Code, (§ 54960.2, subd.  
18 (a).) As referenced above, Brown Act liability can only come is a litigant sends a demand letter to  
19 the agency. A “cease and desist” letter is required to be sent “within nine months of the alleged  
20 violation” before a litigant files an action “to determine the applicability of this chapter to past  
21 actions of the legislative body.” (Gov. Code, § 54960.2, subd. (a)(1)-(2).) The timely demand  
22 requirement is mandatory, as Section 54960.2(a) expressly states that a court action may proceed  
23 “only if all of the following conditions are met,” including the pre-filing demand letter.

24 In this case, Petitioner sent what was expressly described as a “cease and desist” letter on  
25 September 5, 2023. (Petition, ¶ 83, Ex. U.) Therefore, the alleged violation must have taken place  
26 on or after December 5, 2022. (Gov. Code, § 54960.2, subd. (a)(2).) According to the Petition, the  
27 “alleged violation” purportedly occurred on June 21, 2018, when the Budget Committee was  
28 allegedly created and operated continuously thereafter as a “standing committee with continuing

1 subject matter jurisdiction over matters related to the City’s budget.” (Petition, ¶ 11.) However,  
2 Petitioners failed to send the statutorily-required “cease and desist” letter until September 5, 2023,  
3 more than five years after the purported violation allegedly first arose. This is not even close, and  
4 it is instructive that Petitioners’ action would be time-barred even if considered under the three-year  
5 statute for an action upon a liability created by statute. (See Code Civ. Proc., § 338, subd. (a).)

6 As the Petition alleges a series of violations starting in 2018, it is fundamentally “litigation  
7 to determine the Brown Act’s applicability to past actions of the legislative body” and thus  
8 Petitioners were required to comply with the mandatory requirements of Section 54960.2. There is  
9 a clear legislative intent in the Brown Act for litigants to bring alleged violations to the agency’s  
10 attention within a short time period so that the matter to be litigated is not remote in time. Thus,  
11 even assuming any merit to the pleadings, Petitioners’ action is time-barred.

12 **III. THERE IS NO BASIS FOR PROSPECTIVE RELIEF**

13 Even if Section 54960.2 does not completely bar this action, the only alleged violations  
14 within the nine-month time frame are a series of meetings of the Budget Committee for the FY 2024  
15 budget “starting on or about June 16, 2023.” (Petition, ¶ 76.) Petitioners contend that Section  
16 54960.2 does not mandate a demand letter for challenges to ongoing or threatened future violations.  
17 The Brown Act does authorize “injunctive relief that is based on, in relevant part, a showing of ‘past  
18 actions and violations that are related to present or future ones’...” (*Shapiro v. San Diego City*  
19 *Council* (2002) 96 Cal.App.4th 904, 917, quoting *Regents of University of California v. Superior*  
20 *Court* (1999) 20 Cal.4th 509, 526, fn. 6.) However, there must be a “likelihood that such conduct  
21 [will] recur in the future and that injunctive relief [is] warranted.” (*Id.*)

22 No such likelihood can be discerned from the Petition, as both the Charter and the exhibits  
23 to the Petition demonstrate that there is no ongoing or future activity for a budget committee. While  
24 the Petition contains allegations related to the FY 24 budget which was adopted almost a year ago,  
25 thus dissolving the budget committee for this budgetary cycle. (RJN No. 4 [Charter § 1205].)  
26 However, there is nothing in the Petition about the creation of a committee for the FY 25 budget,  
27 and there is no code section, resolution, policy, or anything else that provides for a budget  
28 committee. While Petitioners have the ability to amend or supplement the Petition, they have not

1 done so. Therefore, Petitioners can only speculate that another budget committee will be formed.

2 Petitioners’ position finds no support in *Center for Local Government Accountability v. City*  
3 *of San Diego* (2016) 247 Cal.App.4th 1146. In this case, the Court of Appeal addressed “a long-  
4 standing ordinance providing for only one non-agenda public comment period over the course of its  
5 two-day regular weekly meetings” that was found to violate section 54954.3. (*Id.* at 1149.) The  
6 Court of Appeal then found that the plaintiff was challenging an ongoing or threatened future action  
7 “because the adoption of the ordinance did not have a one-time or determinate effect,” but instead  
8 “the ordinance’s effect extended to every regular weekly meeting and would have continued  
9 extending to every regular weekly meeting but for the City’s postlitigation enactment of another  
10 ordinance altering the City’s practice.” (*Id.* at 1156.) The matter was not considered moot because  
11 “[t]he City still considers its two-day regular weekly meetings to be one continuous meeting, rather  
12 than two separate meetings, for Brown Act purposes.” (*Id.* at 1157.)

13 Unlike the ordinance in *Center for Local Government Accountability*, all of the budget  
14 committees described in the Petition had limited timeframes under the Charter. Since there is no  
15 ordinance, resolution, or policy requiring a budget committee, or any evidence that a future  
16 committee will be formed, *Center for Local Government Accountability* is not applicable.  
17 Therefore, the Petition fails to plead threatened or alleged or ongoing activity that allegedly violates  
18 the Brown Act, and there are no facts to support any such allegations by Petitioners.

19 **CONCLUSION**

20 Based on the foregoing, Respondents respectfully request that the Court grant the instant  
21 Motion in its entirety, with prejudice and without leave to amend, and that the Court enter Judgment  
22 in Respondents’ favor.

23 DATED: May 30, 2024

ALESHIRE & WYNDER, LLP  
ANTHONY R. TAYLOR  
MICHAEL R. LINDEN

26 By: 

27 MICHAEL R. LINDEN  
Attorneys for Respondents  
28 CITY OF FRESNO, et al.

1 **PROOF OF SERVICE**

2 *American Civil Liberties Union, et al. v. City of Fresno, et al.*  
3 **Fresno County Superior Court Case No. 23CECG04744**

4 **STATE OF CALIFORNIA, COUNTY OF FRESNO**

5 At the time of service, I was over 18 years of age and not a party to this action. I am  
6 employed in the County of Fresno, State of California. My business address is 2440 Tulare Street,  
Suite 410, Fresno, CA 93721.

7 On May 30, 2024, I served true copies of the following document(s) described as  
8 **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF RESPONDENTS’  
MOTION FOR JUDGMENT ON THE PLEADINGS** on the interested parties in this action as  
follows:

9 Angélica Salceda, Esq.  
10 AMERICAN CIVIL LIBERTIES UNION  
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11 39 Drumm Street  
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12 Telephone: (415) 621-2493  
E-mail: [asalceda@aclunc.org](mailto:asalceda@aclunc.org)

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13 David Loy, Esq.  
14 FIRST AMENDMENT COALITION  
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*Attorneys for Plaintiff*  
FIRST AMENDMENT COALITION

16 **BY MAIL:** I enclosed the document(s) in a sealed envelope or package addressed to the  
17 persons at the addresses listed in the Service List and placed the envelope for collection and mailing,  
18 following our ordinary business practices. I am readily familiar with the practice of Aleshire &  
Wynder, LLP for collecting and processing correspondence for mailing. On the same day that  
19 correspondence is placed for collection and mailing, it is deposited in the ordinary course of business  
with the United States Postal Service, in a sealed envelope with postage fully prepaid. I am a  
20 resident or employed in the county where the mailing occurred. The envelope was placed in the  
mail at Fresno, California.

21 **BY E-MAIL OR ELECTRONIC TRANSMISSION:** I caused a copy of the document(s)  
22 to be sent from e-mail address [rramirez@awattorneys.com](mailto:rramirez@awattorneys.com) to the persons at the e-mail addresses  
listed in the Service List. I did not receive, within a reasonable time after the transmission, any  
23 electronic message or other indication that the transmission was unsuccessful.

24 I declare under penalty of perjury under the laws of the State of California that the foregoing  
is true and correct.

25 Executed on May 30, 2024, at Fresno, California.

26  
27   
28 Shelly Ramirez