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14  
15 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
16 **FOR THE COUNTY OF FRESNO**

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

19  
20 Petitioners,

21 v.

22 THE CITY OF FRESNO, and THE HONORABLE  
MEMBERS OF THE FRESNO CITY COUNCIL,

23 Respondents.  
24  
25  
26  
27  
28

CASE NO. 23CECG04744

**PETITIONERS' OPPOSITION TO  
RESPONDENTS' MOTION FOR  
JUDGMENT ON THE  
PLEADINGS**

Date: August 28, 2024

Time: 1:30 p.m.

Dept.: 404

Judge: Hon. Robert Whalen

Petition Filed: November 15, 2023

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**TABLE OF AUTHORITIES**

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**CASES**

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19 Cal. Att’y Gen., *The Brown Act: Open Meetings for Local Legislative*  
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1 **I. INTRODUCTION**

2 On the facts pleaded, the City of Fresno has formulated its final budget proposal in secret  
3 for years. Petitioners allege that from 2018 to 2023, the City Council’s Budget Committee met  
4 behind closed doors to produce a final budget proposal reconciling the Mayor’s draft budget with  
5 the Council’s wishes. Although the City Council formally approved the budget in open session,  
6 the meetings that produced the final proposal took place in secret. Unlike other large cities, Fresno  
7 deprived the public of any meaningful opportunity to participate in meetings discussing the budget  
8 until final approval, in clear violation of the Brown Act, which guarantees the people’s right to see  
9 how the political sausage is made in committee, not just how it is served to the Council.

10 The Petition alleges that the Budget Committee has met repeatedly to produce a final  
11 budget proposal year after year. As a result, the Petition states a claim that the Budget Committee  
12 is a legislative body governed by the Brown Act because it is a standing committee with  
13 continuing subject matter jurisdiction over Fresno’s budgeting process. Respondents cannot defeat  
14 that claim merely by labeling the Budget Committee as “ad hoc” when the facts pleaded show that  
15 it has in fact addressed similar budgetary matters year after year. Otherwise, agencies could  
16 routinely subvert California’s mandate of government transparency by conveniently labeling all  
17 standing committees as “ad hoc” and dissolving and reforming them at will.

18 This action is proper because there are no preconditions to Brown Act claims for  
19 prospective relief to prevent future violations, and for purposes of their claim for retrospective  
20 relief to decide if the Budget Committee violated the Brown Act in June 2023, Petitioners sent a  
21 cease and desist letter in September 2023, well within nine months of that alleged violation.

22 This action is not moot because it presents live disputes over whether Respondents violated  
23 the Brown Act in June 2023 and whether they will continue to violate the Brown Act in the future.  
24 Respondents cannot avoid a decision on the merits merely by contending they have “discontinued”  
25 secret Budget Committee meetings when they refuse to concede that they violated the Brown Act  
26 and continue to double down on their legal position that they can form and dissolve allegedly “ad  
27 hoc” committees at will, in violation of the Act’s transparency requirements. Thus, Respondents’  
28 motion should be denied.

1 **II. FACTUAL ALLEGATIONS**

2 **A. The Budget Committee’s History of Secret Meetings**

3 Petitioners sued the City of Fresno and members of the Fresno City Council for violating  
4 the Brown Act by holding secret meetings of the Budget Committee. Pet. ¶¶ 7–17.

5 Under Fresno’s charter, the Mayor prepares “the proposed annual City budget” and  
6 submits it to the “Council for its deliberation and approval.” Fresno, Cal., Charter § 400(d) (1993).  
7 As a matter of course, the Council makes and votes on motions to change the proposed budget.  
8 Pet. ¶ 26. If the approved motions create a deficit, the Budget Committee reconciles the Mayor’s  
9 proposed budget with the Council’s motions, making recommendations to fund some programs  
10 and de-fund others, ultimately presenting a balanced budget for Council approval. *Id.* The Budget  
11 Committee also discusses other budgetary matters, such as how to allocate unexpected revenue  
12 and costs or amend the final budget after its adoption. *Id.* ¶¶ 27, 40–43, 63–64, 75, 80.

13 The Budget Committee is composed of three members of the City Council, which has  
14 seven members and a quorum of four. *Id.* ¶ 25; Fresno, Cal., Charter §§ 300, 503 (1993).  
15 Respondents have never held open and public Budget Committee meetings, nor have they  
16 published agendas for the meetings or provided an opportunity for public comment, unlike other  
17 large California cities. Pet. ¶¶ 10, 35, 39, 43, 59, 61, 64, 75, 73, 77.

18 The Council voted to create the Budget Committee on June 21, 2018, and the Committee’s  
19 first task was to advise the Council on the disposition of \$13.4 million of City revenue in the FY  
20 2019 budget. *Id.* ¶¶ 8, 28, 33 & Ex. A. The Budget Committee met behind closed doors in June  
21 2018 and deliberated on how the City should spend that pool of revenue. *Id.* ¶¶ 34–35. Once the  
22 City adopted the FY 2019 budget, secret Budget Committee meetings continued to address various  
23 budgetary matters. *Id.* ¶¶ 37–38, 40–42. Those meetings continued in the years to come. *Id.* ¶ 55,  
24 58, 60.

25 At least once per year, the Council hears the agenda item: “Council Boards and  
26 Commissions Communications, Reports, Assignments and/or Appointments, Reappointments,  
27 Removals to/from City and non-City Boards and Commissions.” *Id.* ¶ 30. When it hears this item,  
28 it votes to approve the list of committees and the assignment of councilmembers to them (the

1 “Committee Roster”). *Id.* The “Budget Sub-Committee” appears on each Committee Roster  
2 passed from May 2, 2019, to January 19, 2023, confirming its continuing existence. *Id.* ¶ 31.

3 Since the Committee’s creation in 2018, there is no record of the City or Council taking  
4 any formal action to dissolve, or even to discuss dissolving, the Budget Committee. *Id.* ¶¶ 32, 70–  
5 72. Since its creation, the Budget Committee has in fact continued to meet and deliberate over  
6 budget reconciliation and other budgetary matters each year, outside of the public eye. *Id.* ¶ 58,  
7 60–61. After the passage of each year’s budget, the Budget Committee also continued to meet  
8 throughout the year. *Id.* ¶¶ 37–43, 63, 75, 80.

9 The City has enacted administrative procedures that are supposed to occur when the City  
10 Council creates a new committee. *Id.* ¶ 44. These procedures include preparing a resolution form  
11 and an organizational form for the committee to memorialize the name, asserted legal authority for  
12 the creation of the body, the purpose or mission of the body, how long the body will ostensibly be  
13 in existence, and its membership and contact information. *Id.* ¶ 45. Eventually, it came to the  
14 City’s attention that it had not completed those procedures when it created the Budget Committee.  
15 *Id.* ¶¶ 50, 52–53.

16 On or about July 30, 2019, more than a year after the Council created the Budget  
17 Committee, the City prepared an organizational form for it. *Id.* ¶ 53. Under “[p]urpose/mission”  
18 the Budget Committee’s purported organizational form states, “[a] subcommittee would meet  
19 prior to the approval of the FY19 budget to identify specific projects to spend the \$9.9M and  
20 \$3.5M on,” even though the City Clerk prepared the form more than a year after that task was  
21 complete. *Id.* ¶ 54. The Budget Committee’s organizational form alleges the legal authority for its  
22 creation as “Resolution 2004-185 and the minutes of June 21, 2018.” *Id.* ¶ 56. Under “[h]ow long  
23 body will be in existence[,]” the form states “[a]s needed.” *Id.* Under “Term of Office,” the  
24 organizational form states, “[u]ntil replaced by another councilmember.” *Id.*

25 After its formation in 2018, the Budget Committee continued to meet to deliberate on mid-  
26 year budgetary matters, even after the budget reconciliation process ended and the final budget  
27 was adopted. *Id.* ¶¶ 37–43, 63, 75, 80. First, on November 29, 2018, months after the final budget  
28 passed, the Council received a “budget update” from City staff, and the City Manager discussed

1 that they had been working with the Budget Committee to discuss whether to fund various parks  
2 projects before the update. *Id.* ¶ 40 & Ex. M. In another example, in April 2020, the Council  
3 directed the Budget Committee to meet and discuss creating a community grant program using  
4 COVID-19 appropriations. *Id.* ¶ 63 & Ex. P. The next year, before the budget reconciliation  
5 process began, the Budget Committee met to hear a proposal to establish appropriations for a  
6 “Homeless Housing Project.” *Id.* ¶ 75 & Ex. R.

7 **B. The Budget Committee’s Secret Meetings in 2023**

8 The 2023 Committee Roster included a note next to the Budget Committee entry that  
9 stated, “[r]ecommend this be a standing committee, with members Maxwell, Perea, Karbassi.” *Id.*  
10 ¶ 81 & Ex. K. The Council approved this Roster on the consent agenda, confirming that the  
11 Budget Committee would continue operating as a standing committee in 2023. *Id.*

12 In early June 2023, Councilmember Karbassi requested that the Mayor’s administration  
13 provide the Budget Committee with quarterly revenue reports, on a standing basis, and the  
14 administration agreed to do so. *Id.* ¶ 80 & Exs. S–T. During the 2023 budget process, the Budget  
15 Committee held a series of meetings beginning on or about June 16, 2023, during which the  
16 Committee made recommendations on which of the Council’s budget motions should receive  
17 funding. *Id.* ¶ 76. Despite the Council confirming that the Budget Committee is a standing  
18 committee, these deliberations occurred behind closed doors, without notice, posted agenda, or  
19 opportunity for public participation. *Id.* ¶ 77. The Budget Committee recommended funding more  
20 than 75 amendments to the Mayor’s proposed budget, totaling almost \$30 million. *Id.* ¶ 78.

21 On September 5, 2023, well within nine months of the Budget Committee’s most recent  
22 secret meetings, Petitioners demanded that Fresno cease and desist from holding Budget  
23 Committee meetings in secret and unconditionally commit to conduct all future Committee  
24 meetings in accordance with the Brown Act. *Id.* ¶ 83 & Ex. U. Respondents refused. *Id.* ¶ 84 &  
25 Ex. V. As interested persons, Petitioners subsequently filed this suit seeking both a declaration that  
26 Respondents previously violated the Brown Act by holding secret meetings of the Budget  
27 Committee in June 2023 and prospective relief to ensure Respondents do not repeat the same  
28



1 violation. *See* Gov. Code § 54960(a); *McKee v. Orange Cnty. Unified Sch. Dist.*, 110 Cal. App.  
2 4th 1310, 1320 (2003).

### 3 III. STANDARD OF REVIEW

4 “A motion for a judgment on the pleadings serves the same function as a general demurrer,  
5 i.e., the motion will be granted only if the pleadings, although uncertain or otherwise defective in  
6 form, fail to state a cause of action.” *Stockton Newspapers, Inc. v. Redevelopment Agency*, 171  
7 Cal. App. 3d 95, 99 (1985) (citations omitted); *see also* Code Civ. Proc. § 438(c)(1)(B)(ii)  
8 (judgment on the pleadings granted if “complaint does not state facts sufficient to constitute a  
9 cause of action”). In reviewing the City’s motion, the Court must accept as true and liberally  
10 construe all factual allegations in the Petition. *Env’t Health Advocs., Inc. v. Scream, Inc.*, 83 Cal.  
11 App. 5th 721, 728–29 (2022); *Stockton Newspapers*, 171 Cal. App. 3d at 99.

### 12 IV. ARGUMENT

13 Under the California Constitution, the “meetings of public bodies . . . shall be open to  
14 public scrutiny,” and a law such as the Brown Act “shall be broadly construed if it furthers the  
15 people’s right of access, and narrowly construed if it limits the right of access.” Cal. Const., Art. I,  
16 § 3(b)(1), (2). Therefore, the Brown Act must be “construed liberally in favor of openness so as to  
17 accomplish its purpose and suppress the mischief at which it is directed.” *Int’l Longshoremen’s &*  
18 *Warehousemen’s Union v. L.A. Exp. Terminal*, 69 Cal. App. 4th 287, 294 (1999).

19 The Brown Act is founded on the premise that “[t]he people, in delegating authority, do  
20 not give their public servants the right to decide what is good for the people to know and what is  
21 not good for them to know.” Gov. Code § 54950. To ensure transparency, the Brown Act  
22 mandates that every meeting of a “legislative body” of a “local agency” shall be open to the  
23 public, with limited exceptions for closed sessions not at issue here. Gov. Code §§ 54953(a),  
24 54956.7–54957.10. The Act also requires that all such meetings must—absent an emergency—be  
25 publicized in advance, follow a noticed agenda, and provide an opportunity for public comment.  
26 Gov. Code §§ 54952.2(a), 54954–54954.3, 54954.5–54956.5, 54962.

1 The City is a local agency under the Brown Act. Gov. Code § 54951. On the facts pleaded,  
2 Fresno’s Budget Committee is a legislative body that has consistently violated the Brown Act by  
3 holding secret meetings without any opportunity for public involvement.

4 **A. Despite Respondents’ Meritless Attempts to Confuse the Issues, the Budget**  
5 **Committee Is a Legislative Body Subject to the Brown Act Because It Is a Standing**  
6 **Committee with Continuing Jurisdiction over Budgetary Matters.**

7 The Brown Act “defines ‘legislative body’ broadly in order to avoid its circumvention.”  
8 *Taxpayers for Livable Cmty. v. City of Malibu*, 126 Cal. App. 4th 1123, 1127 (2005). A  
9 “legislative body” includes not only the “governing body of a local agency,” such as a city  
10 council, but also any “standing committees of a legislative body, irrespective of their composition,  
11 which have a continuing subject matter jurisdiction” and were “created by charter, ordinance,  
12 resolution, or formal action of a legislative body,” regardless of whether they are “decisionmaking  
13 or advisory.” Gov. Code § 54952(a)–(b).

14 By its plain terms, the Brown Act applies to “advisory bodies” as well as those with  
15 decision-making power. *Dep’t of Fin. v. Comm’n on State Mandates*, 30 Cal. 4th 727, 732 (2003);  
16 *see also Frazer v. Dixon Unified Sch. Dist.*, 18 Cal. App. 4th 781, 792 (1993) (noting “Brown Act  
17 applies” to “advisory committees”); *Stockton Newspapers*, 171 Cal. App. 3d at 102 (holding “the  
18 Brown Act is applicable to collective investigation and consideration short of official action”).  
19 Accordingly, Respondents cannot evade the Brown Act merely by contending the Budget  
20 Committee is advisory.

21 **1. The Brown Act Requires the Court to Follow Function Over Form, and in**  
22 **Actual Function, the Budget Committee Is a Standing Committee with**  
23 **Continuing Jurisdiction.**

24 Although ad hoc committees “composed solely of the members of the legislative body that  
25 are less than a quorum of the legislative body are not legislative bodies,” Gov. Code § 54952(b),  
26 this “exception does not apply if the advisory committee is a standing committee.” Cal. Att’y  
27 Gen., *The Brown Act: Open Meetings for Local Legislative Bodies* 5 (2003) [hereinafter, “Brown  
28 Act Guide”]. As the Attorney General has explained, while an exempt “limited term ad hoc  
committee” “is charged with accomplishing a specific task in a short period of time,” *id.* at 6, a

1 “standing committee is a committee which has continuing jurisdiction over a particular subject  
2 matter (*e.g., budget, finance, legislation*),” *id.* at 5 (emphasis added).

3 The Budget Committee was created by formal action when the City Council voted to  
4 establish it in 2018. *See Frazer*, 18 Cal. App. 4th at 792–93 (adopting “a broad construction [of  
5 formal action] to prevent evasion” of the Brown Act); *Joiner v. City of Sebastopol*, 125 Cal. App.  
6 3d 799, 805 (1981) (committee created by formal action where city council designated two of its  
7 members to meet with planning commissioners “as a means of fulfilling its own responsibility to  
8 fill a vacancy on the planning commission”). Because it has regularly met to address budgetary  
9 matters for several years, the Budget Committee is a standing committee with continuing subject  
10 matter jurisdiction, and therefore it is a legislative body subject to the Brown Act.

11 On remarkably similar facts, the Attorney General determined that an advisory committee  
12 like Fresno’s Budget Committee was a legislative body under the Brown Act because it was a  
13 standing committee. As in this case, that committee was composed of three members of a seven-  
14 person governing board and had existed for several years. 79 Ops. Cal. Atty. Gen. 69, 70 (1996). It  
15 had “the responsibility of providing advice concerning budgets,” among other matters, and  
16 generally met monthly but did not have a fixed meeting schedule. *Id.* at 73.

17 In those circumstances, the Attorney General determined that the committee was subject to  
18 the Brown Act because it was in fact a standing committee with continuing jurisdiction over the  
19 budget and other matters. Despite the board’s formal disclaimer that “[*t*]his committee shall not  
20 exercise continuing subject matter jurisdiction,” *id.* at 70 (emphasis in original), the Attorney  
21 General recognized that the committee was “not an ad hoc committee charged with accomplishing  
22 a specific task in a short period of time,” *id.* at 73. The board’s disclaimer could not be  
23 “determinative” because “[*t*]he language of the local rule . . . may not be used to thwart the  
24 purposes and requirements of the Act.” *Id.* Consistent with the principles of the Brown Act and the  
25 mandate to construe it broadly in favor of public access, the Attorney General determined that one  
26 must “follow function over form in carrying out the Legislature’s purposes” of ensuring  
27 transparency in local government. *Id.*

28

1 The Attorney General’s analysis is entirely sound and applies directly to this case. Under  
2 that analysis, Petitioner’s allegations, taken as true, show that the Budget Committee is in fact a  
3 standing committee with continuing jurisdiction, not an “ad hoc” committee charged with  
4 accomplishing a one-off task. It has met repeatedly over several years to perform the recurring  
5 tasks of reconciling the Council’s budget priorities with the priorities of the Mayor and proposing  
6 a final budget for Council approval. Pet. ¶¶ 26–27, 34, 58, 60. Respondents cannot defeat the  
7 Brown Act’s mandate of transparency merely by labeling the Budget Committee as “ad hoc” when  
8 the Committee has in fact met year after year to address similar budgetary matters.

9 Nor can Respondents justify disregarding the Attorney General’s authoritative opinion on  
10 standing committees. The Attorney General’s opinions are entitled to great weight, especially in  
11 Brown Act matters, given that “the Attorney General regularly advises many local agencies about  
12 the meaning of the Brown Act and publishes a manual designed to assist local governmental  
13 agencies in complying with the Act’s open meeting requirements.” *Californians Aware v. Joint*  
14 *Lab./Mgmt. Benefits Comm.*, 200 Cal. App. 4th 972, 980 (2011). The Attorney General’s opinion  
15 on standing committees is the leading authority on point, and Respondents cite no “pertinent case  
16 authority” suggesting it should not be followed. *See* Resp’ts’ Mem. Supp. J. Pleadings 16.

17 Respondents cannot credibly avoid the Attorney General’s sound reasoning by  
18 manufacturing distinctions without a difference. It is irrelevant that the committee in the Attorney  
19 General’s opinion provided advice concerning “budgets, audits, contracts, and personnel matters,”  
20 rather than only budgetary matters. *Id.* (quoting 79 Ops. Cal. Atty. Gen. at 69). A committee that  
21 performs recurring tasks over time remains a standing committee regardless of whether it  
22 addresses one issue or multiple issues. As the Attorney General has explained, a “standing  
23 committee is a committee which has continuing jurisdiction over a particular subject matter (*e.g.*,  
24 *budget, finance, legislation*).” Cal. Att’y Gen., Brown Act Guide at 5 (emphasis added). Under  
25 that undisputed definition, the Budget Committee is a standing committee on the facts pleaded.

26 Respondents find no support in *Taxpayers for Livable Communities v. City of Malibu*.  
27 In that case, two of a city council’s five members held “private meetings with various individuals,  
28 constituents, and city staff” to accomplish the one-off task of responding to a draft land use plan

1 released by the Coastal Commission. *Taxpayers for Livable Cmtys.*, 126 Cal. App. 4th at 1125.  
2 Although the two council members “were the sole members of the city council’s standing  
3 committee for land use and planning,” they were not acting as such in addressing the Coastal  
4 Commission’s plan, because the “land use and planning committee had jurisdiction over planning  
5 and zoning code enforcement,” not “Malibu’s response to the Coastal Commission’s” draft plan.  
6 *Id.* at 1127. Therefore, when they were dealing with the Coastal Commission’s draft plan, the  
7 council members were functioning not as a standing committee but as “a ‘limited term ad hoc  
8 committee’ charged with accomplishing a specific task in a short period of time.” *Id.* at 1129.

9 Here, by contrast, the Budget Committee did not in fact perform a specific one-off task for  
10 a limited time period. Instead, it has performed the same recurring task for at least five years—the  
11 fundamental governing task of preparing a final budget for City Council approval and considering  
12 mid-year budget adjustments. That is the essence of a standing committee with continuing subject  
13 matter jurisdiction. Because “the Brown Act applies to standing committees,” *id.* at 1127,  
14 Respondents have consistently violated the Act by holding Budget Committee meetings in secret.

15 **2. The Budget Committee Has Operated Continuously Since at least 2018.**

16 The Budget Committee has met regularly for years and cannot be deemed “ad hoc” merely  
17 because there is a June 30 deadline to pass the budget. Resp’ts’ Mem. Supp. J. Pleadings 16.  
18 Deadlines may exist in numerous areas—for example, taxation, audits, grant applications, or  
19 legislation to meet funding conditions—but a committee that addresses such matters does not  
20 cease to be a standing committee merely because it must meet certain deadlines.

21 In any event, the City ignores well-pled allegations that the Budget Committee operated  
22 throughout the year, not just during the budget reconciliation process that is subject to the June  
23 deadline. *See* Pet. ¶¶ 37–43, 63, 75, 80. In Respondents’ own brief, they acknowledge that  
24 budgetary matters come before the City Council even after the June 30 deadline to pass a budget.  
25 Resp’ts’ Mem. Supp. J. Pleadings 5 (“to make changes to a budget after its adoption a  
26 supermajority vote by Council is required through a different process than budget adoption”). As  
27 pleaded in the petition, the Budget Committee regularly meets to consider those mid-year  
28 budgetary matters.

1 For example, after the FY 2019 budget was adopted, when Respondents contend the  
2 Budget Committee first dissolved, the City Council received a “budget update” on November 29,  
3 2018, and the City Manager discussed that her staff had been working with the Budget Committee  
4 to discuss whether to fund various parks projects before the update.<sup>1</sup> Pet. ¶ 40 & Ex. M. The  
5 Council directed the Budget Committee to meet in April 2020 to discuss COVID-19  
6 appropriations. *Id.* ¶ 63 & Ex. P. The Budget Committee also met in May 2021, before the budget  
7 reconciliation process began, to hear a budget proposal for a “Homeless Housing Project.” *Id.* ¶ 75  
8 & Ex. R. In June 2023, Council and staff agreed that the Budget Committee would receive  
9 quarterly revenue reports on a standing basis, going forward. *Id.* ¶ 80 & Ex. S–T. In 2023, the  
10 Council even voted to approve a Committee Roster that confirmed the Budget Committee would  
11 operate as a standing committee. *Id.* ¶ 81 & Ex. K. Accepting these allegations as true, the Budget  
12 Committee was a standing committee that continued to meet throughout the year, not just to  
13 discuss reconciling the budget with a deadline of June 30.

14 On the facts pleaded, the Budget Committee has met year after year since at least 2018  
15 with the same continuing subject matter jurisdiction—to advise the City Council on budgetary  
16 matters. *See id.* ¶¶ 26–27, 34, 58, 60. The Committee has taken on various projects or tasks within  
17 that subject matter, such as recommending budget-motion reconciliation for a single year’s budget  
18 and advising on mid-year budget adjustments. Performing a specific task does not transform a  
19 standing committee into an ad hoc committee for the purpose of that task.

20 For example, a standing committee on zoning and land use does not become “ad hoc”  
21 every time it considers a different general plan update, zoning ordinance, variance, or conditional  
22 use permit. The same is true for the Budget Committee when it considers different budgetary  
23 matters. To interpret the Brown Act otherwise would swallow its command that standing  
24 committees with continuing subject matter jurisdiction must hold their meetings open to the  
25 public. Under Respondents’ position, every standing committee could be characterized as “ad hoc”  
26

27  
28 <sup>1</sup> To the extent Respondents dispute that this discussion pertained to the Budget Committee, *see*  
Resp’ts’ Mem. Supp. J. Pleadings 13, they are disputing facts, and Petitioner’s allegations must be  
assumed true at this stage.

1 at the whim of a local government merely because it addresses different items at different  
2 meetings. The Court should not permit Respondents to eviscerate the Brown Act in this way.

3 The Brown Act was adopted precisely because of “local government’s dismissive attitude  
4 to open meeting requirements and the tactics adopted to avoid them,” such as “simply labelling”  
5 meetings with other names. Cal. Att’y Gen., No. 22-402, 2024 CAL. AG LEXIS 1, \*8–9 (Feb. 29,  
6 2024) (quotations and citation omitted). It cannot be read to “offer opportunities to structure  
7 deliberative bodies for the purpose of circumventing the public’s right of participation.” *Id.* at \*13;  
8 *see also Roberts v. City of Palmdale*, 5 Cal. 4th 363, 376 (1993) (“Of course the intent of the  
9 Brown Act cannot be avoided by subterfuge[.]”). Instead, the key inquiry is whether, “follow[ing]  
10 function over form in carrying out the Legislature’s purposes,” 79 Ops. Cal. Atty. Gen. at 73, the  
11 Budget Committee exercises “continuing jurisdiction over a particular subject matter (*e.g.*,  
12 *budget[]*),” Cal. Att’y Gen., Brown Act Guide at 5 (emphasis added). In actual function, the  
13 Budget Committee has met and deliberated on budgetary matters every year since 2018 on an  
14 ongoing basis. Under the Brown Act as properly construed and applied to the facts pleaded, the  
15 Budget Committee is a legislative body that must comply with the Brown Act’s transparency  
16 mandate.

17 **B. The Budget Committee Did Not Automatically Dissolve, and in Fact It Continued to**  
18 **Meet Year After Year to Discuss Budgetary Matters after the Budget Was Adopted.**

19 Respondents miss the point by arguing that allegations that the Council never voted to  
20 dissolve the Budget Committee are insufficient to support that it was a standing committee.  
21 Resp’ts’ Mem. Supp. J. Pleadings 12–17. Petitioners do not plead the lack of formal dissolution as  
22 the lone allegation to support the claim that the Budget Committee is a standing committee.  
23 Rather, Petitioners allege that the Budget Committee was never formally dissolved, and that the  
24 City Council voted to confirm its continued existence and operation every year since its formation,  
25 and most importantly, that the Budget Committee met throughout the year, year after year, to  
26 deliberate on budgetary matters. Pet. ¶¶ 26, 34–35, 58, 60–61. Taken together, the facts pleaded  
27 establish that the Budget Committee is a standing committee with continuing jurisdiction subject  
28 to the Brown Act.

1 As a matter of law, Respondents cannot defeat the Brown Act merely by contending the  
2 Budget Committee somehow dissolved and reformed each year after the budget was adopted. That  
3 position makes a mockery of the Brown Act by elevating form over substance. In addition,  
4 Respondents’ position contradicts the factual allegations, which show that the Budget Committee  
5 met throughout the year, every year, even after the budget passed, to discuss adjustments and other  
6 budgetary matters. *Id.* ¶¶ 37–43, 63, 75, 80. If the Budget Committee did, in fact, “dissolve  
7 automatically” when the budget passed, it would not have continued to meet after June 30 to  
8 discuss budgetary matters, as expressly alleged in the Petition.

9 Regardless of whether Respondents originally intended that the Budget Committee would  
10 merely recommend disposition of two specific pools of money for a single fiscal year, *see id.* ¶¶  
11 33–35, the Budget Committee has in fact operated as a standing committee with continuing  
12 subject matter jurisdiction by continuing to meet, year after year, to recommend reconciliation of  
13 the budget and address other budgetary matters. Respondents cannot disclaim those facts out of  
14 existence and avoid the Brown Act’s mandate of transparency by the subterfuge of labeling the  
15 ongoing Budget Committee as “ad hoc.”

16 **C. The City Charter Does Not Deprive the Budget Committee of Continuing Subject**  
17 **Matter Jurisdiction Over Budgetary Matters.**

18 Respondents cannot evade the Brown Act by asserting that the City Charter somehow  
19 forecloses the existence of a standing Budget Committee with continuing subject matter  
20 jurisdiction to advise the City Council on budgetary matters. Resp’ts’ Mem. Supp. J. Pleadings  
21 12–13. Although the Mayor makes an initial budget proposal and has veto power after the Council  
22 passes a budget, the charter reserves to the Council the power to deliberate on and amend the  
23 Mayor’s proposal before voting to approve the final budget. *See id.* at 12; Fresno, Cal. Charter  
24 §§ 400(d), 500 (1993). On the facts pleaded, the Council created the Budget Committee to advise  
25 the Council on budgetary matters, and nothing in the Charter prohibited it from doing so.

26 The Budget Committee need not control every aspect of the budget process to be a  
27 standing committee. Because the Brown Act covers “advisory committees,” the term “continuing  
28 subject matter jurisdiction” in the definition of a “legislative body” does not require the power to



1 propose, approve, or veto a budget. Gov. Code § 54952(b). The power to advise the City Council  
2 on budgetary matters is enough, and that is exactly what the Budget Committee does year after  
3 year, making it a legislative body subject to the Brown Act. *See* 79 Ops. Cal. Atty. Gen. at 73  
4 (“[I]t is irrelevant for the purposes of section 54952 that the []committee is advisory rather than  
5 decision making.”). The fact that the Council has jurisdiction over budgetary matters does not  
6 deprive the Budget Committee of its jurisdiction to advise the Council on such matters. *See id.* at  
7 75 (noting “items within the subject matter jurisdiction of a []committee will necessarily also be  
8 within the subject matter jurisdiction of the parent legislative body.”).

9 **D. This Action Is Proper With Respect to Both Prospective and Retrospective Relief.**

10 Petitioners seek both prospective relief to prevent future violations of the Brown Act and  
11 retrospective relief “to determine the applicability of this chapter to past actions of the legislative  
12 body.” Gov. Code § 54960(a); *see* Pet. ¶¶ 17, 102. This action is proper as to both forms of relief.

13 For prospective relief to prevent future violations, the Brown Act imposes no preconditions  
14 to bring such a claim. *Ctr. for Local Gov’t Accountability v. City of San Diego*, 247 Cal. App. 4th  
15 1146, 1154–56 (2016). For retrospective relief to determine the legality of past actions, the Brown  
16 Act requires the petitioner to send a “cease and desist letter . . . to the legislative body within nine  
17 months of the alleged violation.” Gov. Code § 54960.2(a)(2). Petitioners met that requirement.

18 The Petition alleges Respondents violated the Brown Act by holding secret Budget  
19 Committee meetings in June 2023. *Id.* ¶¶ 76–80. Petitioners sent their cease and desist letter on  
20 September 5, 2023, well within nine months of that alleged violation. *Id.* ¶ 83. While the Petition  
21 alleges background facts occurring before 2023 to establish the creation of the Budget Committee  
22 and its ongoing existence as a standing committee, for purposes of their claim for retrospective  
23 relief Petitioners only seek a determination that the Budget Committee violated the Brown Act by  
24 holding secret meetings in June 2023. Therefore, their cease and desist letter in September 2023  
25 was more than timely. *Cf. Pugliese v. Superior Ct.*, 146 Cal. App. 4th 1444, 1452 (2007)  
26 (“[W]here a tort involves a continuing wrong, the statute of limitations does not begin to run until  
27 the date of the last injury or when the tortious acts cease.”).

28

1 **E. This Action Presents a Live Controversy.**

2 This case is not “moot.” As an initial matter, Petitioners’ claim for retrospective relief to  
3 determine if the Budget Committee violated the Brown Act in June 2023 is sufficient to present a  
4 live dispute. *See Cal. All. for Util. Safety & Educ. v. City of San Diego*, 56 Cal. App. 4th 1024,  
5 1030 (1997) (holding “a controversy between the parties exists over city’s past compliance with  
6 the Brown Act and the charter. On that basis alone plaintiffs are entitled to declaratory relief  
7 resolving the controversy.”).

8 This case also presents a live controversy for prospective relief, even if the City  
9 purportedly “dissolved” the Budget Committee when it approved the FY24 budget, Resp’ts’ Mem.  
10 Supp. J. Pleadings 8, which is not conceded. By contending that the adoption of the FY 24 budget  
11 “dissolv[ed] the budget committee for this budgetary cycle,” Resp’ts’ Mem. Supp. J. Pleadings 18,  
12 Respondents merely restate their merits position that the Budget Committee is an “ad hoc”  
13 committee that can be formed and dissolved at will, regardless of the undisputed fact that it has  
14 consistently met year after year to perform similar tasks. In taking that position, Respondents  
15 confirm this case presents live issues over the legality of the Budget Committee’s secret meetings.

16 Given the history of secret Budget Committee meetings and Respondents’ contention that  
17 they can evade the Brown Act by forming and dissolving new “ad hoc” committees at will, this  
18 case is far from moot. *Shapiro v. San Diego City Council*, 96 Cal. App. 4th 904, 916 (2002)  
19 (noting “courts may presume that municipality will continue similar practices in light of city  
20 attorney’s refusal to admit violation” and when past actions reflect an “ongoing procedure,” a  
21 “court could reasonably infer, in light of the city attorney’s refusal to change that procedure, that  
22 there would be continuing or future threatened Brown Act violations” sufficient to justify  
23 injunctive relief) (citations omitted); *cf. United Farm Workers of Am. v. Dutra Farms*, 83 Cal.  
24 App. 4th 1146, 1164 (2000) (rejecting argument that case was moot on ground that committee  
25 “has been dissolved,” because “a ‘new’ committee . . . could easily appear”).

26 As the California Supreme Court has held, “the voluntary discontinuance of alleged illegal  
27 practices does not remove the pending charges of illegality from the sphere of judicial power or  
28 relieve the court of the duty of determining the validity of such charges where by the mere volition

1 of a party the challenged practices may be resumed.” *Marin Cnty. Bd. of Realtors, Inc. v. Palsson*,  
2 16 Cal. 3d 920, 929 (1976) (citation omitted). Even if the City discontinued the Budget  
3 Committee, which is not conceded, it could easily reinstate such a committee at any time and  
4 continue its meetings in secret. As a result, this case is not moot.

5           Indeed, even when a city adopts a new ordinance to end a challenged practice, that does  
6 not moot a Brown Act case where the ordinance “did not equate to a change in the City’s legal  
7 position” and the city “has not conceded its former practice . . . violated the Brown Act.” *Ctr. for*  
8 *Local Gov’t Accountability*, 247 Cal. App. 4th at 1157 (holding Brown Act challenge to public  
9 comment policy was not mooted by adoption of ordinance changing policy). Similarly,  
10 Respondents have not changed their legal position or conceded that they violated the Brown Act.  
11 Accordingly, there is a “reasonable expectation” Respondents would resume the challenged  
12 practice of holding secret Budget Committee meetings, and this case is not moot. *Id.*

13           Respondents cannot distinguish this case simply by reiterating their merits position that the  
14 practice of holding Budget Committee meetings in secret was always for one-off “limited  
15 timeframe[.]” committees, rather than an ongoing practice like the policy at issue in *Center for*  
16 *Local Government Accountability*. Resp’ts’ Mem. Supp. J. Pleadings 19. In doing so, Respondents  
17 reveal precisely why *Center for Local Government Accountability* controls: they have doubled  
18 down on their legal position and refused to concede that they violated the Brown Act. In these  
19 circumstances, as in *Center for Local Government Accountability*, the facts pleaded show that this  
20 case is far from moot.

## 21   V.       CONCLUSION

22           For the foregoing reasons, Petitioners respectfully request that the Court deny  
23 Respondents’ motion for judgment on the pleadings.

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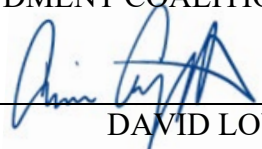
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Dated: August 13, 2024

Respectfully submitted,

FIRST AMENDMENT COALITION

By



\_\_\_\_\_  
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Attorneys for Petitioner  
FIRST AMENDMENT COALITION

Dated: August 13, 2024

AMERICAN CIVIL LIBERTIES UNION  
FOUNDATION OF NORTHERN CALIFORNIA, INC.

By



\_\_\_\_\_  
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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF MARIN

At the time of service, I was over 18 years of age and **not a party to this action**. I am employed in the County of Marin, State of California. My business address is 534 4th Street, Suite B, San Rafael, CA 94901-3334.

On August 13, 2024, I served true copies of the following document(s) described as **PETITIONERS' OPPOSITION TO RESPONDENTS' MOTION FOR JUDGMENT ON THE PLEADINGS** on the interested parties in this action as follows:

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**BY E-MAIL OR ELECTRONIC TRANSMISSION:** Based on an agreement of the parties to accept service by e-mail or electronic transmission I caused a copy of the document(s) to be sent from e-mail address rregnier@firstamendmentcoalition.org 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 electronic message or other indication that the transmission was unsuccessful.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on August 13, 2024, at East Palo Alto, California.

  
\_\_\_\_\_  
Robin P. Regnier