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16 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
17 **FOR THE COUNTY OF FRESNO**

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

21 Petitioners,

22 v.

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

24 Respondents.
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CASE NO. 23CECG04744

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
MOTION FOR JUDGMENT ON
VERIFIED PETITION FOR
PEREMPTORY WRIT OF
MANDATE AND COMPLAINT
FOR INJUNCTIVE AND
DECLARATORY RELIEF**

Date: December 3, 2025

Time: 1:30 p.m.

Dept.: 97D

Judge: Hon. Robert Whalen

Petition Filed: November 15, 2023

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I. INTRODUCTION

As confirmed by recent discovery, the City of Fresno violated the Brown Act for years by holding secret Budget Committee meetings, frustrating both community members and City officials with its lack of transparency. The City paused its Brown Act violations only when the secret meetings were exposed. Although the City never disputed the underlying facts, it refused to make an unconditional commitment to stop violating the Brown Act. The City's intransigence demonstrates why judicial relief is necessary.

From 2018 to 2023, shortly before this action was filed, the Budget Committee met in secret to produce a final budget proposal reconciling the Mayor's draft with the City Council's wishes. Although the Council formally approved the final budget in open session, the Budget Committee wielded significant influence over decisions allocating billions in public funds.

The City's pattern and practice of secret Budget Committee meetings deprived the public of the opportunity to participate in discussion of the budget until final approval. The Brown Act guarantees the public more than the mere right to observe final approval of a budget. It grants the people the right to see how the political sausage is made, not just how it is served. On the undisputed facts, the Budget Committee met in secret year after year to produce a final budget proposal. Therefore, it is a standing committee subject to the Brown Act.

The City may not "decide what is good for the people to know and what is not good for them to know" by concocting the obvious ruse of labeling a standing committee as ad hoc. Gov't Code § 54950.¹ This Court is respectfully requested to enter judgment declaring that the City violated the Brown Act and preventing it from doing so again.

II. FACTS

A. The City Council Created and Repeatedly Confirmed the Budget Committee, Which Has Reconciled the Budget on a Recurring Basis Year After Year.

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Under Fresno's charter, the mayor prepares "the proposed annual City budget" and submits it to the "Council for its deliberation and approval." Fresno, Cal., Charter § 400(d) (2007). The Council makes and votes on motions to change the proposed budget. *E.g.*, Cappetta Decl. ¶ 1

¹ Further undesignated statutory citations are to the California Government Code.

1 & Ex. 1, at 3. If the cost of the approved motions creates a deficit, the Budget Committee then
2 reconciles the Mayor’s proposed budget with the Council’s motions, making recommendations to
3 fund some programs and defund others, to present a balanced budget for Council approval. *Id.*

4 The Council created the Budget Committee on June 21, 2018. *Id.* ¶ 2 & Ex. 2. At the time,
5 the Council was deliberating on motions to change the Mayor’s proposed budget. *Id.* Then-
6 Council President Soria amended a budget motion to “create a subcommittee” to discuss allocating
7 a specific pool of revenue. *Id.* ¶ 3 & Ex. 3, at 2. Soria proposed that the committee consist of three
8 council members “to meet with the administration, the City Manager and the staff to kind of sort
9 those things out before coming back with a final vote of the budget.” *Id.* at 2–3. The Council
10 approved the motion, creating the Budget Committee and directing it to meet. *Id.* ¶ 2 & Ex. 2.

11 After that budget ultimately passed, the Budget Committee continued meeting in the
12 following months and years to perform the same task. *E.g., id.* ¶ 4 & Ex. 4 (City Manager
13 planning a Budget Committee meeting for the end of August 2018, after the yearly budget had
14 passed); *id.* ¶ 5 & Ex. 5, at 3 (City Manager noting at Council meeting on November 29, 2018,
15 that “we have been working with the budget subcommittee” to decide which projects to fund). On
16 a recurring basis, the Budget Committee recommended tradeoffs necessary to present a balanced
17 budget for the Council’s approval. As explained by the City Manager in June 2022:

18 Just because all the budget motions passed today, that does not mean those projects
19 and funded items will move forward. ... We will probably be overbudget by 8
20 figures. The Administration and Budget Subcommittee will meet early next week
21 and pare down all the items to reconcile so that Council can pass a balanced
budget. A reconciliation sheet will be presented to Council that will bring the
budget into balance. So many of the motions that “passed” today will not actually
be funded. We simply don’t have enough money!

22 *Id.* ¶ 6 & Ex. 6; *id.* ¶¶ 7–9 & Exs. 7–9 (describing same process for 2020, 2021, and 2023).

23 The Budget Committee is composed of three members of the City Council, which has
24 seven members and a quorum of four. Fresno, Cal., Charter §§ 300, 503. At least once per year,
25 the Council hears an agenda item on “Council Boards and Commissions Communications,
26 Reports, Assignments and/or Appointments, Reappointments, Removals to/from City and non-
27 City Boards and Commissions.” *See, e.g., id.* ¶¶ 10–15 & Exs. 10–15. Deliberations on this item
28 include determining which council members should be appointed to which committees and

1 whether any City committees should be dissolved. *See, e.g., id.* ¶ 13 & Ex. 13 (noting the Council
2 voted to make new appointments or no changes to various committees and voted to terminate four
3 committees but maintain the Budget Committee on February 4, 2021); *id.* ¶ 16 & Ex. 16, at 3
4 (“[A]s you know, on our agenda, we go through those committees and this year we spent that time
5 to appoint new members, ... and I don’t think there’s any that were voluntarily eliminated this
6 year.”). When the Council hears this item, it takes a vote to approve the list of committees and the
7 assignment of councilmembers to them (the “Committee Roster”). *Id.* ¶¶ 10–15 & Exs. 10–15.

8 In hearing this item, the Council voted to approve Committee Rosters that included the
9 “Budget Sub-Committee” on or about May 2, 2019, September 19, 2019, January 30, 2020,
10 February 4, 2021, February 10, 2022, and January 19, 2023. *Id.*; *cf. id.* ¶ 16.1 & Ex. 16.1 (noting
11 dissolution of “Constituent Participation Budget Committee” that “[w]as only for the 2021
12 budget”). The Committee Roster in 2023 included a note next to the Budget Committee entry that
13 stated, “Recommend this be a standing committee, with members Maxwell, Perea, Karbassi.” *Id.*
14 ¶ 17 & Ex. 17. The Council approved this Roster. *Id.* ¶ 15 & Ex. 15.

15 The Council President serves as the Chair of the Budget Committee, and other members
16 remain on the Committee until the Council substitutes new members. *See id.* ¶ 18 & Ex. 18, at 3–4
17 (Councilmember Bredefeld expressing disagreement with being removed from the Budget
18 Committee); *id.* ¶ 19 & Ex. 19 (“[Arias] served as chair of the committee last year 2022 during his
19 Council presidency and was appointed again this year.”); *id.* ¶ 20 & Ex. 20 (“As President,
20 Councilmember Maxwell will ... serve as the Chair of the Council Budget Subcommittee.”).

21 Respondents have never held open and public Budget Committee meetings, nor have they
22 posted agendas for the meetings, kept minutes, or provided an opportunity for public comment. *Id.*
23 ¶ 21 & Ex. 21 (“The budget subcommittee is currently not a Brown Act body. ... There are no
24 agendas or minutes.”); Compl. ¶¶ 10, 35, 39, 61; Answer ¶¶ 10, 35, 39, 61.²

25
26 ² By asserting insufficient information to admit or deny these allegations, which are within their
27 knowledge, or by contesting only legal conclusions without disputing underlying facts,
28 Respondents effectively admitted these facts. *Dobbins v. Hardister*, 242 Cal. App. 2d 787, 791–92
(1966); *Taylor v. Newton*, 117 Cal. App. 2d 752, 760 (1953); Cal. Civ. Proc. Code § 431.30 note
18 (Denial of conclusions of law admission of certain facts).

1 **B. The Budget Committee Discussed Budgetary Matters on a Recurring Basis for Years.**

2 **1. 2019 Meetings**

3 After the Budget Committee was created in June 2018 and continued meeting after the
4 budget passed that year, it met again on November 12, 2019. *Id.* ¶ 22 & Ex. 22. Following up on
5 that meeting, the Budget Committee planned a meeting in late 2019 or early 2020 to discuss: (1)
6 an update on FY2020’s property tax analysis, (2) “Assessment Roll Information,” and (3) whether
7 to adopt a “Mid-Year Budget Review Policy.” *Id.* (proposing Budget Committee meeting to
8 consider whether the City should adopt a mid-year budget review policy).

9 Since then, the Budget Committee has also heard mid-year budget updates and has
10 recommended which projects should receive additional appropriations or cuts considering how the
11 budget year has unfolded. *Id.* ¶ 23 & Ex. 23 (Budget Committee mid-year review in 2021); *id.*
12 ¶ 24 & Ex. 24 (Budget Committee mid-year review in 2022); *id.* ¶ 25 & Ex. 25 (“Discussion with
13 the budget subcommittee regarding mid-year appropriations in anticipation of the April 20th[,
14 2023] city council meeting. Admin. will be bringing forward an agenda item to appropriate \$2.8M
15 from FY23’s general fund surplus to various projects.”).

16 From the beginning, the Budget Committee’s secret negotiations have created serious
17 transparency concerns for the public. For example, a coalition of community groups wrote to the
18 Council in December 2019 asking for “a funded participatory budget process in 2020 that values,
19 seeks, and integrates community input. A true participatory community budget process is needed
20 to achieve this shift to center equitable community reinvestment.” *Id.* ¶ 26 & Ex. 26, at 4.

21 **2. 2020 Meetings**

22 In 2020, City officials proposed or scheduled Budget Committee meetings to occur on the
23 following dates, and the City produced no evidence that these meetings were canceled or
24 otherwise failed to go forward: May 1, May 8, May 13, May 20, May 27, May 28, and June 19. *Id.*
25 ¶¶ 27–35 & Exs. 27–35. The Budget Committee also met on October 27, 2020, to “work[] on final
26 agreement towards their approval of the budget.” *Id.* ¶ 36–37 & Ex. 36–37.

27 As part of these negotiations, the Budget Committee requested information from staff to
28 explain why the FY21 proposed budget saw a \$16.8 million increase in the police department’s

1 general-fund budget from what it actually spent in the prior fiscal year. *Id.* ¶ 38 & Ex. 38 (“CM
2 Arias wanted to see a schedule that identify [sic] the variables that explained a \$16.8M increase in
3 [Police Department]’s GF budget from FY 2020 Actuals to the FY 2021 Revised Budget
4 (approved in October)”). Because this meeting occurred in secret, the public could not understand
5 what caused this increase or see how Committee members discussed it.

6 Additionally, in December 2020, an advocate wrote to then-Council President Arias after
7 learning that certain funding that passed as a motion before Council was not actually available:

8 The AB617 community steering committee and the Air District had a meeting last
9 week to discuss the Truck Reroute Study. To our surprise, Scott Mozier informed
10 the committee that the City would not be funding the \$250,000 that was approved
11 in the Budget Hearings. We were all present during these budget hearings and we
thought this was confirmed. There was no discussion of the funding source being
Air District 617 funds. The \$250,000 is an addition to the AB617 funds and was
supposed to be pulled from the General Fund dollars.

12 *Id.* ¶ 39 & Ex. 39. The source of this confusion was that the Budget Committee had proposed
13 defunding the truck re-route study behind closed doors. *Id.* (“[W]hat was presented back to
14 Council for the final budget adoption, was a budget that appropriated \$250,000 in Air District/AB
15 617 revenues to Public Works for the truck re-routing study; this was not included by the Council
16 budget subcommittee within the list of General Fund motions to be funded.”)

17 **3. 2021 Meetings**

18 The Budget Committee reconvened on May 6, 2021. *Id.* ¶ 23 & Ex. 23. An internal agenda
19 for this meeting included both “FY2021 Mid-Year” and “Briefing regarding FY2022 Budget
20 Build Process.” *Id.* ¶ 40 & Ex. 40. The City scheduled a Budget Committee meeting for the
21 regular budget process on June 21, 2021, and it continued meeting on June 23, 2021, before the
22 final budget it recommended passed on June 24, 2021. *Id.* ¶ 41–43 & Ex. 41–43.

23 **4. 2022 Meetings**

24 The Budget Committee again met for its next mid-year review on February 14, 2022. *Id.*
25 ¶ 44 & Ex. 44. At this meeting, the Budget Committee recommended cutting affordable housing
26 incentives by \$2.5 million but funding seven new positions—an additional staffer for every
27 Council member—for \$1,050,000. *Id.* ¶ 45 & Ex. 45, at 3 (noting recommended \$2.5 million
28 decrease in “Affordable Housing Incentives” and \$1.05 million increase to “Council Operating

1 Budgets”); *id.* ¶ 46 & Ex. 46, at 1 (“Administration added 7 Council Assistances totaling
2 \$1,050,000 (\$150K/district) per yesterday’s meeting w/ Council Budget Subcommittee.”). The
3 City scheduled the following additional Budget Committee meetings for the following dates in
4 2022 and produced no evidence that they were canceled: February 25, March 29, week of May 2,
5 week of June 7, June 22, June 28, and June 29. *Id.* ¶¶ 47–52 & Exs. 47–51, 52, at 1.

6 In 2022, the Budget Committee also deliberated on allocations of over \$170 million that
7 the federal government awarded Fresno through the American Rescue Plan Act (“ARPA”). *Id.*
8 ¶ 53 & Ex. 53; *id.* ¶ 24 & Ex. 24 (“Attached is the latest ARPA infrastructure document from the
9 budget subcommittee meeting.”); *id.* ¶ 54 & Ex. 54, at 3 (table of Budget Committee’s ARPA
10 funding recommendations in 2022). Councilmember Bredefeld, who was not on the Budget
11 Committee at the time, expressed concern in March 2022 about the Budget Committee’s closed-
12 door negotiations regarding which projects should receive ARPA funding: “I don’t want any
13 budget committee making any recommendations regarding my projects. This is the same group
14 that just used my operating project of \$500,000 to fund the audit. I know I expressed my concerns
15 about this months ago and I thought this wasn’t going to happen.” *Id.* ¶ 55 & Ex. 55.

16 Nonetheless, the Budget Committee’s ARPA negotiations continued on June 3, 2022, and
17 again on June 21, 2022, when it simultaneously began regular fiscal-year budget discussions. *Id.*
18 ¶ 56 & Ex. 56 (Budget Committee meeting held on June 3, 2022, regarding ARPA projects); *id.* ¶
19 51 & Ex. 51 (“This meeting is to discuss ARPA tranche 2 and FY 2023 Proposed Budget.”).
20 Budget Committee members reserved time for an additional meeting on June 22, 2022, “if the
21 discussion...need[ed] to be continued.” *Id.* ¶ 51 & Ex. 51.

22 These secret negotiations obscured the public’s view of the process so significantly that
23 even other city officials could not discern any reasoning behind Council’s funding decisions. In an
24 email to staff on June 23, 2022, the Fresno Fire Chief wrote:

25 In all of my years in Administration (19) I have never witnessed what happened at
26 Council today. The Council made a motion to approve ALL 92 budget motions as
27 presented – and it passed without discussion 7-0! Likely the Council Budget
Subcommittee will be negotiating with the Mayor/CM over the next couple days to
get to a budget they can agree on and afford.

28 *Id.* ¶ 57 & Ex. 57. Months later, after the final budget passed with the Budget Committee’s

1 changes, the Fresno Fire Chief wrote to the City Manager to try to understand why the Council
2 appropriated \$3,458,000 for “debt service,” for Fire Station 12, when those funds were ineligible
3 for the actual demolition and construction costs needed for that station, which had passed on
4 motion by Council. The City Manager responded, “You will recall that the original motion was for
5 \$24M for design and construction of [Stations] 12 and 10 and to bond up to \$60m for [Regional
6 Fire Training Center]. Of course that amount was reduced during negotiations with Budget
7 subcommittee to the \$3.458 amount. My notes say the money was for debt service.” *Id.* ¶ 58 & Ex.
8 58. The Budget Committee’s secrecy prevented even a senior City official from understanding in
9 real time how and why the committee recommended a significant budgetary adjustment.

10 Even with the confusion and concerns, the Budget Committee continued meeting on
11 budgetary matters in secret. For example, on November 4, 2022, the Budget Committee met to
12 consider reorganizing staff in the budget department. *Id.* ¶¶ 59–60 & Exs. 59, 60, at 1.

13 **C. The Budget Committee Secretly Negotiated a Record-Breaking Budget in 2023.**

14 In February 2023, Councilmember Arias, who was not on the Budget Committee,
15 “indicated that he was still struggling to make sense of information provide[d] by staff regarding
16 the Animal Center budget,” which ended up as “\$2,694,800 less than the published amount of
17 \$9,895,000” budgeted for the Animal Center. *Id.* ¶ 61 & Ex. 61. Staff clarified that this confusion
18 was because during “the FY2023 Budget negotiations between the Administration and the Budget
19 Subcommittee \$1 million of this funding was reduced and allocated to fund the agreed upon
20 council motions,” and a clerical error failed to reflect that change in certain budget documents. *Id.*

21 Despite rampant confusion, the Budget Committee insisted that its line-item discussions
22 and decisions ought to be shielded from public scrutiny. On April 17, 2023, the Budget Committee
23 met for its mid-year review. *Id.* ¶ 62 & Ex. 62. Later that day, Council and Budget Committee
24 member Karbassi emailed the City Manager on behalf of the Budget Committee to inquire why
25 staff added three items regarding the mid-year budget to a public Council presentation before the
26 Budget Committee could first privately discuss them. Karbassi specifically noted that the reason
27 such items should first go before the Budget Committee is to avoid “a fight, which won’t look
28 good publicly,” when heard before the full Council. *Id.* ¶ 63 & Ex. 63 (“That’s why I asked last

1 week why Administration didn't go out to the Council Budget committee beforehand."). Karbassi
2 also noted the Budget Committee planned to meet again on April 24, 2023. *Id.*

3 As the City's Budget Director explained in June 2023, the Budget Committee met for years
4 to discuss how to balance the City's annual budget before final approval by the City Council:

5 One thing I want to point out though is *as observed in prior years*, if the approved
6 costing creates a deficit in the general fund, then Council's Budget Subcommittee
7 with the Administration will then need to meet, work through a budget worksheet
reconciliation so then we can then realign the general fund budget back in balance
and then a follow-up motion will be needed to then be approved

8 *Id.* ¶ 1 & Ex. 1, at 4 (emphasis added). At the same time, the Council directed the City Manager to
9 review quarterly revenue reports with the Budget Committee on a "standing" basis. *Id.* at 17 ("We
10 can make it a standing item to go over the quarterly projections [with the Budget Committee]
11 when we get that analysis"); *id.* ¶ 64 & Ex. 64, at 4 ("I made ... Council Direction 24, which was
12 about quarterly reports and properly tax revenues. ... So just basically revenue reports quarterly to
13 the Council Budget Subcommittee, please."); *id.* ¶ 65 & Ex. 65 (meeting minutes noting direction
14 "that the Administration meet quarterly with the Council Budget Subcommittee").

15 Nonetheless, the Budget Committee continued meeting in secret to craft a final budget
16 proposal. Councilmembers voted on more than 100 motions to amend the Mayor's proposed
17 budget to fund or alter funding for various projects on June 14, 2023. *See generally id.* ¶¶ 65–68 &
18 Exs. 65–68. The Budget Committee planned to begin its secret deliberations later that day to make
19 recommendations on which motions should receive funding, and it planned to continue those
20 negotiations on June 16, June 17, and June 19. *Id.* ¶¶ 69–70 & Exs. 69–70. There is no evidence
21 the Committee failed to move forward with these meetings. *Id.* ¶ 71 & Ex. 71 ("[B]udget
22 committee discussions have just started. ... As the committee prioritizes projects it will take some
23 more analysis to match up the motions to potential funding sources").

24 Before the Budget Committee meeting planned for June 16, 2023, an executive assistant in
25 the City Attorney's Office asked the City Clerk to provide details on an upcoming Budget
26 Committee meeting so that the City Attorney could attend. The City Clerk responded by
27 effectively admitting that the Budget Committee's meetings violated the Brown Act:

1 I have no details. The budget subcommittee is currently not a Brown Act body. I
2 don't know when they meet. There are no agendas or minutes. The body should
3 actually be dissolved because it was a limited purpose committee to discuss one
aspect of the FY 19 budget. Or it should be changed to a broader purpose Brown
Act Committee.

4 *Id.* ¶ 21 & Ex. 21.

5 The Budget Committee recommended funding more than 75 amendments to the budget,
6 totaling almost \$30 million. *Id.* ¶ 72 & Ex. 72. The public had no sight into the Budget
7 Committee's deliberations on which programs should receive funding. *Id.* ¶ 21 & Ex. 21. As the
8 Mayor said, "A lot of sausage was being made in the back room." Omar Shaikh Rashad, *Fresno's*
9 *budget subcommittee doesn't meet in public. Legal experts say it's a 'major problem'*, FresnoLand
10 (Aug. 16, 2023), <http://bit.ly/3TQtgKU>. Following the Committee's input, the Council adopted a
11 record-breaking \$1.87 billion budget on June 22, 2023. *Id.*; *see also* Cappetta Decl. ¶ 73 & Ex. 73.

12 **D. Petitioners Filed Suit After the City Refused to Commit to Stopping Its Violations.**

13 After the FY 24 budget passed, the Budget Committee continued to meet in secret to
14 negotiate other budgetary matters—as it had done in previous years. *Id.* ¶¶ 74–75 & Ex. 74–75
15 (planning Budget Committees meetings on July 13, 2023, to discuss "capital project delivery
16 restructure" and August 14, 2023, "to discuss setting a [budget] policy for Sister City Travel.").

17 The City paused secret Budget Committee meetings only when the meetings were exposed.
18 On August 16, 2023, local news outlet FresnoLand published an investigation into the Budget
19 Committee's secret meetings. Rashad, *supra*. Responding to the reporter's questions for this story
20 in July 2023, the City Attorney acknowledged that the Budget Committee has been involved in the
21 "budget process ... going back to at least 2019." Cappetta Decl. ¶ 76 & Ex. 76.

22 On August 17, 2023—the day after FresnoLand published its investigation—City staff
23 exchanged emails to manufacture a purported end date of June 23, 2023, for the Budget
24 Committee, despite convening a Committee meeting to discuss a sister-city travel policy for
25 budget use just days earlier, on August 14, 2023. *Id.* ¶ 77 & Ex. 77 (noting that the "Budget Sub-
26 Committee has been archived with an end date of 6/23/23, the day after the 2024 Budget was
27 approved by Council" and that the City only created one organizational form for a singular Budget
28 Committee, rather than creating a new Budget Committee and filing the required form each year).

1 On September 5, 2023, about three weeks after the Budget Committee’s most recent
2 proposed secret meeting, Petitioners demanded that Fresno cease and desist from holding Budget
3 Committee meetings in secret and make an unconditional commitment to conduct all future
4 Committee meetings in accordance with the Brown Act. *Id.* ¶ 78 & Ex. 78.

5 Respondents refused. In a letter dated September 18, 2023, they did not dispute the facts
6 but argued the issue was “moot” because the committee was allegedly “ad hoc” and “dissolved”
7 after the most recent budget was approved. *Id.* ¶ 79 & Ex. 79. Respondents asserted their right to
8 continue treating the Committee as an “ad hoc” body not subject to the Brown Act. *Id.* at 3. As a
9 result, Petitioners filed this action seeking both a retrospective declaration that Respondents
10 violated the Brown Act by holding secret meetings of the Budget Committee in 2023 and
11 prospective relief to ensure Respondents do not repeat the same violation. *See* § 54960(a).

12 III. ARGUMENT

13 A. The Brown Act Guarantees Transparency in Local Government.

14 The California Constitution declares that “the meetings of public bodies ... shall be open
15 to public scrutiny,” and mandates that any law or rule “shall be broadly construed if it furthers the
16 people’s right of access, and narrowly construed if it limits the right of access.” Cal. Const. art. I,
17 § 3(b)(1), (2). To keep the people “informed so that they may retain control over the instruments
18 they have created,” the Brown Act mandates that “[a]ll meetings of the legislative body of a local
19 agency shall be open and public,” except for limited closed sessions not at issue. §§ 54950,
20 54953(a), 54956.7–54957.10. All such meetings must—absent an emergency—follow an agenda
21 posted in advance and provide an opportunity for public comment. §§ 54952.2(a), 54954–54954.3,
22 54954.5–54956.5, 54962. The Brown Act is “construed liberally in favor of openness so as to
23 accomplish its purpose and suppress the mischief at which it is directed.” *Int’l Longshoremen’s &*
24 *Warehousemen’s Union v. L.A. Exp. Terminal, Inc.*, 69 Cal. App. 4th 287, 294 (1999).

25 B. The Budget Committee Is a Legislative Body Subject to the Brown Act.

26 The Brown Act “defines ‘legislative body’ broadly in order to avoid its circumvention.”
27 *Taxpayers for Livable Cmtys. v. City of Malibu*, 126 Cal. App. 4th 1123, 1127 (2005) (“*Malibu*”).
28 As relevant here, a “legislative body” is the “governing body of a local agency” or a “committee,

1 ... of a local agency, whether permanent or temporary, decisionmaking or advisory, created by
2 charter, ordinance, resolution, or formal action of a legislative body.” § 54952(a)–(b). Although in
3 other cases “advisory committees, composed solely of the members of the legislative body that are
4 less than a quorum of the legislative body are not legislative bodies,” the Act confirms that
5 “standing committees of a legislative body, irrespective of their composition, which have a
6 continuing subject matter jurisdiction ... are legislative bodies....” § 54952(b).

7 On the undisputed facts, Fresno’s Budget Committee is a standing committee of the City
8 Council with continuing subject matter jurisdiction. Therefore, it is a legislative body under the
9 Brown Act. It remains a legislative body regardless of whether it is advisory. *Dep’t of Fin. v.*
10 *Comm’n on State Mandates*, 30 Cal. 4th 727, 732 (2003) (noting Brown Act covers “local
11 advisory bodies”); *Frazer v. Dixon Unified Sch. Dist.*, 18 Cal. App. 4th 781, 792 (1993) (noting
12 “Brown Act applies” to “advisory committees”).

13 A committee covered by the Brown Act is “created by” charter, ordinance, resolution or
14 other formal action of a legislative body if the legislative body “played a role in bringing” “into
15 existence.” *Epstein v. Hollywood Ent. Dist. II Bus. Improvement Dist.*, 87 Cal. App. 4th 862, 870
16 (2001) (quoting *Int’l Longshoremen’s*, 69 Cal. App. 4th at 295). The City Council created the
17 Budget Committee by voting to establish it in 2018. *See Frazer*, 18 Cal. App. 4th at 792–93; *see*
18 *also Joiner v. City of Sebastopol*, 125 Cal. App. 3d 799, 801 (1981); Cappetta Decl. ¶ 2 & Ex. 2.

19 A “standing committee” subject to the Brown Act “is a committee which has continuing
20 jurisdiction over a particular subject matter (*e.g.*, *budget*, finance, legislation).” Cal. Att’y Gen.,
21 *The Brown Act: Open Meetings for Local Legislative Bodies*, at 5 (2003) (“Brown Act Guide”)
22 (emphasis added). The phrase “continuing subject matter jurisdiction” means the “authority to
23 hear” a “matter presented for consideration” that “need[s] no renewal.” 79 Ops. Cal. Atty. Gen.
24 69, 72 (1996).³ Further, “it is irrelevant ... that some, but not all, of the matters under [a standing
25 committee’s] jurisdiction are referred to it. The purpose of the subcommittee is to advise the
26 legislative body *when requested* on those matters within its continuing subject matter jurisdiction.”

27 ³ Attorney General opinions are entitled to great weight, especially in Brown Act matters.
28 *Californians Aware v. Joint Lab./Mgmt. Benefits Comm.*, 200 Cal. App. 4th 972, 980 (2011).

1 *Id.* at 73 (emphasis added).

2 Unlike a standing committee that “has continuing jurisdiction” over ongoing business like
3 budgetary matters, an ad hoc committee “is charged with accomplishing a specific task in a short
4 period of time.” Brown Act Guide at 6; *see also Malibu*, 126 Cal. App. 4th at 1127–29 (noting
5 “Brown Act applies to standing committees” but not to “‘limited term ad hoc committee’ charged
6 with accomplishing a specific task in a short period of time” such as “six months”). The Budget
7 Committee has met to accomplish the same recurring tasks for several years. Thus, the Budget
8 Committee is a legislative body under the Brown Act.

9 On similar facts, the Attorney General determined that an advisory committee like the
10 Budget Committee was a legislative body. 79 Ops. Cal. Atty. Gen at 69. As in this case, that
11 committee was composed of three members of a seven-person governing board and had existed for
12 several years. *Id.* at 70. It had “the responsibility of providing advice concerning budgets,” among
13 other matters, and generally met monthly but did not have a fixed schedule. *Id.* at 73. The
14 Attorney General determined that the committee was subject to the Brown Act because it was a
15 standing committee with continuing jurisdiction over the budget and other matters. Despite the
16 board’s formal disclaimer that “[t]his committee shall not exercise continuing subject matter
17 jurisdiction,” the Attorney General recognized that the committee was “not an ad hoc committee
18 charged with accomplishing a specific task in a short [] time.” *Id.* at 70, 73. The board’s disclaimer
19 could not be “determinative” because the “language of the local rule ... may not be used to thwart
20 the purposes and requirements of the Act.” *Id.* at 73. Under the Brown Act, the Attorney General
21 correctly instructed that one must “follow function over form” to carry “out the Legislature’s
22 purposes” of ensuring transparency in local government. *Id.*

23 Under that sound analysis, the undisputed facts show that the Budget Committee is a
24 standing committee with continuing jurisdiction over ongoing matters, not an “ad hoc” committee
25 charged with accomplishing a one-off task in a short time. It has met repeatedly over several years
26 to perform the recurring tasks of reconciling the Council’s budget priorities with the priorities of
27 the mayor and proposing a final budget for Council approval. *See, e.g.,* Cappetta Decl. ¶ 1 & Ex.
28 1, at 4 (describing Budget Committee’s purpose); *id.* ¶¶ 22–37, 41–60, 62, 69–71, 74–75 & Exs.

22–37, 41–60, 62, 69–71, 74–75 (reflecting nearly 40 Budget Committee meetings planned and/or held throughout the years between 2018 and 2023).

Since its inception, the Committee has met repeatedly to discuss the annual budget process, mid-year review, and other budget-related matters. *See, e.g., id.* ¶¶ 1, 6–9 & Exs. 1, at 4, 6–9 (describing Budget Committee’s role in yearly budget process); *id.* ¶ 22 & Ex. 22 (describing proposed mid-year review policy for Budget Committee to consider); *id.* ¶¶ 23–24, 44 & Exs. 23–24, 44; *id.* ¶¶ 74–75 & Exs. 74–75 (meetings in July and August 2023 to discuss “capital project delivery restructure,” and “sister city travel”). The City Council never dissolved the Budget Committee. Instead, the Council treated it as a standing committee. *Id.* ¶ 21 & Ex. 21. In January 2023, Council approved the recommendation that the “Budget Sub-Committee ... be a standing committee.” *See id.* ¶¶ 15, 17 & Exs. 15, 17. The Committee’s members maintained their positions unless the Council substituted new members. *See id.* ¶ 18 & Ex. 18, at 3; *id.* ¶ 19 & Ex. 19.

The City Clerk effectively admitted that the Budget Committee was a standing committee which violated the Brown Act by continuing to meet in secret for the same purpose after performing its initial tasks in 2018. *Id.* ¶ 21 & Ex. 21 (“There are no agendas or minutes. The body should actually be dissolved because it was a limited purpose committee to discuss one aspect of the FY 19 budget. Or it should be changed to a broader purpose Brown Act Committee.”).

Furthermore, the Budget Committee’s tasks are regular and recurring. The Mayor proposes a new budget every year that requires reconciliation, and in 2023, for example, the Council directed the administration to review quarterly revenue reports with the Budget Committee on a standing basis. *See id.* ¶ 1 & Ex. 1, at 17; *id.* ¶ 65 & Ex. 65 (meeting minutes noting Council’s direction “that the Administration meet quarterly with the Council Budget Subcommittee”).

On these undisputed facts, the Budget Committee is subject to the Brown Act because it is a standing committee with continuing subject matter jurisdiction over annually recurring budgetary matters. In actual fact, the Budget Committee “does not have a limited term, and it is not an ad hoc committee charged with accomplishing a specific task in a short period of time.” 79 Ops. Cal. Atty. Gen. at 73. Instead, it routinely addresses recurring issues such as reviewing and reconciling the mayor’s proposed budget for approval by the City Council, discussing and

1 proposing mid-year budget adjustments, and hearing miscellaneous budgetary matters. Therefore,
2 the Budget Committee is a legislative body that must follow the Brown Act.

3 To hold otherwise would allow local governments to subvert the Brown Act at will by
4 labeling standing committees as “ad hoc” and purporting to dissolve and reform them. That result
5 would frustrate the Act’s core purpose. The Brown Act was adopted precisely because of “local
6 government’s dismissive attitude to open meeting requirements and the tactics adopted to avoid
7 them,” such as “simply labelling” meetings with other names. Cal. Att’y Gen., Opinion No. 22-
8 402, slip op. at 6–7 (Feb. 29, 2024) (citation omitted). The Brown Act cannot be read to “offer
9 opportunities to structure deliberative bodies for the purpose of circumventing the public’s right of
10 participation.” *Id.* at 9; *see also Roberts v. City of Palmdale*, 5 Cal. 4th 363, 376 (1993) (“Of
11 course the intent of the Brown Act cannot be avoided by subterfuge[.]”).

12 *Malibu* does not hold otherwise. In that case, two of five city council members held
13 “private meetings” to accomplish the one-off task of responding to a draft land use plan released
14 by the Coastal Commission. *Malibu*, 126 Cal. App. 4th at 1125–26. Although the two members
15 “were the sole members of the city council’s standing committee for land use and planning,” they
16 were not acting as such in addressing the draft plan, because that “committee had jurisdiction over
17 planning and zoning code enforcement,” not “Malibu’s response to the Coastal Commission’s”
18 draft plan. *Id.* at 1127. When they were dealing with the Coastal Commission’s draft plan, they
19 were functioning not as a standing committee but as “a ‘limited term ad hoc committee’ charged
20 with accomplishing a specific task in a short period of time.” *Id.* at 1129.

21 The facts of this case are materially different. Here, the Budget Committee members were
22 dealing with budgetary matters at the core of its mission, and the Committee did not perform a
23 specific one-off task for a limited time period. Instead, it has performed the same recurring
24 budgetary tasks for years. That is the essence of a standing committee with continuing jurisdiction.
25 Because “the Brown Act applies to standing committees,” *id.* at 1127, Respondents violated the
26 Act by holding Budget Committee meetings in secret for years.

27 **C. Without an Unconditional Commitment by the City, This Case Is Not Moot.**

28 This case presents a live controversy, especially since the City refused to make an

1 unconditional commitment to stop violating the Brown Act. Regardless of whether the City
2 dissolved the Budget Committee, which is not conceded, Petitioners seek a judgment “to
3 determine the applicability” of the Brown Act “to past actions” within nine months of their cease-
4 and-desist letter. §§ 54960(a), 54960.2(a). That is sufficient to present a live dispute. *Cal. All. for*
5 *Util. Safety & Educ. v. City of San Diego*, 56 Cal. App. 4th 1024, 1030 (1997).

6 In any event, by contending that the Budget Committee “was only in existence between
7 January 19, 2023 until June 23, 2023” and was “dissolved ... when the Fiscal Year 2023/24 City
8 budget was approved by the City Council,” Cappetta Decl. ¶ 79 & Ex. 79, at 1, the City merely
9 restated its unfounded position on the merits, confirming this case presents a live dispute. *See Ctr.*
10 *for Loc. Gov’t Accountability v. City of San Diego*, 247 Cal. App. 4th 1146, 1157 (2016) (holding
11 case was not moot where city’s actions “did not equate to a change in the City’s legal position”
12 and city “has not conceded its former practice ... violated the Brown Act”).

13 The City’s actions and arguments demonstrate the need for a writ of mandate to prevent
14 future Brown Act violations. *See Shapiro v. San Diego City Council*, 96 Cal. App. 4th 904, 916
15 (2002) (affirming injunctive relief against future Brown Act violations “in light of city attorney’s
16 refusal to admit violation” arising from “ongoing procedure”); *cf. UFW of Am., AFL-CIO v. Dutra*
17 *Farms*, 83 Cal. App. 4th 1146, 1164 (2000) (rejecting argument that case was moot on ground that
18 committee “has been dissolved,” because “a ‘new’ committee ... could easily appear”). It is settled
19 that “voluntary discontinuance of alleged illegal practices” cannot moot a case “where by the mere
20 volition of a party the challenged practices may be resumed.” *Marin Cnty. Bd. of Realtors, Inc. v.*
21 *Palsson*, 16 Cal. 3d 920, 929 (1976). Given the City’s track record of doubling down on its
22 position that secret Budget Committee meetings are lawful, a writ of mandate is necessary.

23 IV. CONCLUSION


24 For the foregoing reasons, Petitioners respectfully request that the Court grant this motion,
25 enter declaratory judgment that Respondents violated the Brown Act by holding secret meetings of
26 the Budget Committee within nine months of the cease-and-desist letter, and issue a writ of
27 mandate compelling Respondents to comply with the Brown Act in any future meetings of the
28 Budget Committee.

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Dated: July 2, 2025


Respectfully submitted,

FIRST AMENDMENT COALITION

By  _____
DAVID LOY
ANN CAPPETTA
Attorneys for Petitioner
FIRST AMENDMENT COALITION

Dated: July 2, 2025

AMERICAN CIVIL LIBERTIES UNION
FOUNDATION OF NORTHERN CALIFORNIA, INC.

By  _____
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UNION OF NORTHERN CALIFORNIA

1 **PROOF OF SERVICE**

2 **STATE OF CALIFORNIA, COUNTY OF MARIN**

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

6 On July 2, 2025, I served true copies of the following document(s) described as
7 **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR**
8 **JUDGMENT ON VERIFIED PETITION FOR PEREMPTORY WRIT OF MANDATE**
9 **AND COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF** on the interested
10 parties in this action as follows:

11 Andrew N. Janz
12 Amanda B. Freeman
13 OFFICE OF THE FRESNO CITY ATTORNEY
14 2600 Fresno Street
15 Fresno, CA 93721-3620
16 Email: Andrew.janz@fresno.gov; Amanda.freeman@fresno.gov

15 Anthony R. Taylor
16 Michael R. Linden
17 ALESHIRE & WYNDER, LLP
18 3880 Lemon Street, Suite 520
19 Riverside, CA 92501
20 Email: ataylor@awattorneys.com; mlinden@awattorneys.com

19 ☒ **BY E-MAIL OR ELECTRONIC TRANSMISSION:** Based on an agreement of the
20 parties to accept service by e-mail or electronic transmission I caused a copy of the document(s) to
21 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.

22 I declare under penalty of perjury under the laws of the State of California that the
23 foregoing is true and correct. Executed on July 2, 2025, at East Palo Alto, California.

24
25 
26 Robin P. Regnier